

EXHIBIT 3

Asset Purchase Agreement, dated January 28, 2022

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) is made and entered into as of the ___ day of _____, 2022 by and between New York American Water Company, Inc. n/k/a Liberty Utilities (New York Water) Corp., a New York corporation (“**Liberty**” or “**Buyer**”), Arbor Hills Waterworks Inc., a New York corporation (the “**Company**” or “**Seller**”) and Andrew Sferra, as the sole shareholder of the Company (“**Shareholder**”). Hereinafter, Buyer, Seller or the Shareholder may be referred to individually as a “Party” or together as the “Parties.”

RECITALS:

A. Shareholder currently owns all issued and outstanding shares (the “**Shares**”) of the capital stock of the Company.

B. The Company owns a water system that provides water service to 67 residential customers in a real estate development known as Arbor Hills (collectively, the “**Business**”) in Lewisboro, Westchester County, New York.

C. The Company desires to sell and assign to Buyer, and Buyer wishes to purchase and assume from the Company, certain of the assets of the Company, as more fully described herein, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, and the representations, warranties, and covenants contained herein, and in exchange for other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS AND RELATED MATTERS

For purposes of this Agreement, the capitalized terms used herein and not defined shall have the meanings assigned to them herein or in the attached Exhibit 1 and, for purposes of this Agreement and all other documents executed in connection herewith, the rules of construction set forth in Exhibit 1 shall govern.

ARTICLE 2 PURCHASE AND SALE; CLOSING

2.1 Purchase and Sale of Assets. On and subject to the terms and conditions of this Agreement, at the Closing on the Closing Date and effective as of the Effective Time, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller’s right, title and interest in and to all of Seller’s property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, used, held for use or useful in the Business (other than Excluded Assets), including the following (collectively, the

“Purchased Assets”). Buyer understands that it is purchasing the Purchased Assets “as is” and will not make any claims against Seller relating to the Purchased Assets and that payment of the Purchase Price will not be subject to any offsets or claims:

- a) All Escrow Accounts as of the Closing Date, including such Escrow Accounts set forth on Section 2.1(a) of the Disclosure Schedules;
- b) All Contracts set forth on Section 3.8 of the Disclosure Schedules (the **“Assigned Contracts”**);
- c) All intellectual property of the Business;
- d) all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies (including chemicals and spare parts), materials, vehicles and other items of tangible personal property of every kind owned or leased by the Company (wherever located and whether or not carried on the Company’s books), together with any express or implied warranty by the manufacturers or lessors of any item or component part thereof, and all maintenance records and other documents relating thereto (the **“Tangible Personal Property”**);
- e) All files related to the Business, including but not limited to client and customer lists and records, referral sources, research and development reports and records, service and warranty records, equipment logs, financial and accounting records, creative manuals, advertising manuals, studies, reports, correspondence and other similar documents and records;
- f) All Permits listed on Section 3.10 of the Disclosure Schedules;
- g) All prepaid expenses, credits, advance payments, security deposits, charges, sums and fees to the extent related to any Purchased Assets;
- h) All claims of the Company against third parties relating to the Purchased Assets, whether choate or inchoate, known or unknown, contingent or non-contingent, including all such claims listed on Section 2.1(h) of the Disclosure Schedules;
- i) All inventory of the Company;
- j) All rights to receive mail and other communications related to the Business on and after the Closing Date;
- k) The Real Property and Real Property Leases set forth on Section 3.4(a) of the Disclosure Schedules; and
- l) All goodwill, trade secrets and confidential information associated with the Business including, without limitation, the goodwill associated with existing customer relationships of the Business, and all rights, claims or credits relating to or deriving from, any of the assets described in the foregoing clauses.

2.2 Excluded Assets. Other than the Purchased Assets set forth in Section 2.1 above, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, the following assets or properties of Seller, which shall be excluded from the Purchased Assets (the **“Excluded Assets”**):

- a) all cash and cash equivalents and securities of Seller (as such exist prior to the Closing Date);
- b) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder (including all premiums prepaid by Seller for such policies);
- c) all benefits plans and trusts or other assets attributable thereto;
- d) all tax assets (including duty and tax refunds, prepayments and deferred taxes) of Seller or any of its Affiliates;
- e) all Contracts that are not Assigned Contracts;
- f) the corporate seals, organizational documents, minute books, stock books, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law and is required by applicable Law to retain;
- g) all securities or other equity interests of any person owned or held by Seller or any stockholder of Seller or its Affiliates; and
- h) those assets, properties and rights listed on Section 2.1(h) of the Disclosure Schedules which are used by Seller other than in connection with the Business.

2.3 Liabilities. Buyer shall not assume and shall not be responsible to pay, perform or discharge any liabilities or obligations of Seller (collectively, the “**Excluded Liabilities**”). The Excluded Liabilities shall remain the sole responsibility of, and shall be retained, paid, performed and discharged solely by, Seller and shall include, but not be limited to, the following:

- a) any liability and obligation under any Assigned Contract that arises after the Closing Date but that arises out of or relates to any breach thereof or default thereunder that occurred prior to the Closing Date;
- b) any liability for Seller’s Taxes consisting of (i) any Taxes arising as a result of Seller’s operation of the Business or ownership of the Purchased Assets or Excluded Assets prior to the Closing Date, (ii) any Taxes that will arise as a result of the sale of the Purchased Assets pursuant to this Agreement and (iii) any deferred Taxes of any nature;
- c) any liability and obligation under any Contract not assumed by Buyer hereunder, including any liability arising out of or relating to Seller’s credit facilities or any security interests related thereto;
- d) any default or breach of any Contract, breach of warranty, tort, infringement, violation of law or environmental, health or safety matter, including, without limitation, any arising under any environmental laws or relating to hazardous substances;
- e) any liabilities and/or violations of applicable laws, rules and regulations relating to

ownership and operation of the water system prior to closing of the asset purchase under this agreement, including provision of water to customers of Arbor Hills and

f) any liability or obligation owed to any current or former shareholder of Seller.

2.4 Consideration. The consideration for the sale and transfer of the Purchased Assets shall be \$25,000.00 (the “**Purchase Price**”). At the Closing, Buyer shall pay to the Seller, in accordance with wire transfer instructions to be provided by the Seller to Buyer at least ten (10) Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price.

2.5 Non-assignable assets. Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.5, to the extent that the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery, thereof; provided, however, that, subject to the satisfaction or waiver of the conditions contained herein, including those conditions set forth in Section 5 hereof (it being understood that unless Buyer waives such conditions in writing then the Closing shall not occur), the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account thereof. Following the Closing, Seller and Buyer shall use commercially reasonable best efforts, and shall cooperate with each other to obtain any such required consent, authorization, approval or waiver, or any release, substitution or amendment required to novate all liabilities and obligations under any and all Purchased Assets or to obtain in writing the unconditional release of all parties to such arrangements, so that, in any case, Buyer solely benefit from the Purchased Assets from and after the Closing Date; provided, however, that neither Seller nor Buyer shall be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, Seller shall sell, assign, transfer, convey and deliver to Buyer the relevant Purchased Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Applicable transfer taxes in connection with such sale, assignment, transfer, conveyance or license shall be paid by the parties in accordance with the terms herein.

To the extent that any Purchased Asset and/or Assumed Liability cannot be transferred to Buyer following the Closing pursuant to this Section 2.5, Buyer and Seller, to the maximum extent permitted by Law, shall, and Seller shall cause its Affiliates to, enter into such arrangements (such as subleasing, sublicensing or subcontracting) to provide to the parties the economic and to the extent (i) permitted under applicable Law and (ii) not prohibited by the Purchased Asset, operational equivalent of the transfer of such Purchased Asset and/or Assumed Liability to Buyer as of the Closing and the performance by Buyer of its obligations with respect thereto. To the extent such an arrangement cannot be entered into, Seller shall (a) use commercially reasonable best efforts to enforce any rights of Seller arising from such Purchased Asset (including, without limitation, a right of termination) and (b) indemnify and hold harmless each Buyer Indemnified Party from any and all damages incurred or suffered by a Buyer Indemnified Party resulting from, arising out of or related to such arrangement not being obtained.. To the extent permitted under applicable Law, Seller shall hold in trust for and give/pay to Buyer promptly upon receipt thereof, such Purchased Asset and all income, proceeds and other monies received by Seller to the extent related to such Purchased Asset in connection with the arrangements under this Section 2.5.

2.6 Closing. Unless this Agreement is first terminated pursuant to Article 8 hereof, and subject to the satisfaction or, if permissible, waiver of each of the conditions set forth in Article 5 hereof, the Closing will take place at the offices of Buyer's attorney or such other place or by such other means (e.g., e-mail/PDF or facsimile and overnight delivery of original execution documents) as is agreed to by the Parties at 10:00 A.M., Eastern time, on (a) such date as is three (3) Business Days after the date on which all of the conditions set forth in Article 5 hereof shall have been satisfied or (to the extent permissible) waived (other than those conditions which, by their nature are to be satisfied or waived at Closing but subject to their satisfaction or waiver at Closing) or (b) such other date as the Parties hereto may agree upon in writing. In any event, the Closing shall be effective as of the Effective Time.

2.7 Closing Obligations. In addition to any other documents to be delivered under other provisions of this Agreement, at Closing:

a) Shareholder and Seller shall deliver or cause to be delivered to Buyer the following documents: A bill of sale in the form attached hereto as Exhibit 2 (the "**Bill of Sale**") duly executed by Seller, transferring the Tangible Personal Property included in the Purchased Assets to Buyer;

(i) Assignments of all intellectual property and separate assignments of all registered marks, patents and copyrights in a form acceptable to Buyer;

(ii) An assignment and assumption agreement, in the form attached hereto as Exhibit 3 (the "**Assignment and Assumption Agreement**"), duly executed by Seller, pursuant to which Seller is assigning to Buyer, and Buyer is assuming, the Assigned Contracts;

(iii) an affidavit, as provided in Section 1445(b)(2) of the Code, stating under penalties of perjury that neither Seller nor the Company is a foreign person within the meaning of Section 1445(f)(3) of the Code;

(iv) the deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer to transfer the Real Property to Buyer;

(v) a copy of each permit, license, easement, land-right and other necessary authority for the operation of the Business and the assets of the Company, in each case validly issued in the name of the Company and in full force and effect;

(vi) results from a New York State Department of Taxation and Finance tax search dated within 30 days of Closing indicating that the Company has no due and unpaid Tax assessments;

(vii) a certificate, dated as of the Closing Date and executed by Seller (or a duly authorized representative of a Seller) and Shareholder, confirming that (i) each of the representations and warranties of the Seller and Shareholder contained in this Agreement or in any Transaction Document are true, correct and accurate in all respects as of said date (except to the extent that any such representation or warranty is made solely as of the date hereof or as of another date earlier than the Closing Date, which shall be accurate as of such date); and (ii) each of Seller and Shareholder has performed, observed and complied in all respects with all of its obligations, covenants, undertakings and agreements contained in this Agreement or any Transaction Document and required to be performed, observed or complied with by Seller and/or Shareholder prior to or at the Closing;

(viii) a certificate of good standing issued by the Secretary of State of the State of New York with respect to the Company, dated not earlier than ten (10) Business Days prior to Closing;

(ix) a copy, certified by the Secretary of Seller to be true, complete and correct as of the Closing Date, of the certificate of incorporation of the Company, and a copy of the bylaws or other governing documents and resolutions of the board of directors and (to the extent required) Shareholder authorizing and approving the Contemplated Transactions and as to the incumbency and signatures of the officers of the Company executing this Agreement or any of the Transaction Documents on behalf of the Company;

(x) to the extent such transfer is requested by Buyer, evidence satisfactory to Buyer of the transfer of all utility accounts (including those serviced by any third party providers) relating to the Business from Seller to Buyer;

(xi) all other documents, instruments and writings required or reasonably requested by Buyer to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith; and

(xii) the Consents and approvals from Governmental Authorities, and third parties under Contracts, as set forth in Section 2.8(a)(xiv) of the Disclosure Schedules, in each case in form and substance acceptable to Buyer.

b) At the Closing, Buyer shall deliver the following to Seller:

(i) in accordance with wire transfer instructions to be provided by the Seller to Buyer at least ten (10) Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price;

(ii) a copy of the bylaws or other governing documents and resolutions of the board of directors and (to the extent required) shareholders of the Buyer authorizing and approving the Contemplated Transactions and as to the incumbency and signatures of the officers of the Buyer executing this Agreement or any of the Transaction Documents on behalf of Buyer; and

(iii) all other documents, instruments and writings required or reasonably requested by Seller to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith.

2.8 Allocation. The Purchase Price shall be allocated in the manner in which the Parties mutually agree in good faith. After the Closing, the Parties shall make consistent use of the allocation, fair market value and useful lives agreed to between the Parties for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Code. Buyer shall prepare and deliver IRS Form 8594 to Seller within forty-five (45) days after the Closing Date to be filed with the IRS. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller or Shareholder shall contend or represent that such allocation is not a correct allocation.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER AND SHAREHOLDER

Seller and Shareholder hereby jointly and severally represent and warrant to Buyer that the statements contained in Article 3 are true and correct on the date hereof, will be true and correct at

Closing and shall survive the Closing and the Contemplated Transactions hereby to the extent set forth herein:

3.1 Organization of the Company; Power and Authority. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of New York. The Company has full power and authority to conduct its Business as it is now being conducted and operated and to own, lease and operate the assets of the Company, including the Purchased Assets.

3.2 Enforcement; Authority; No Conflict.

a) This Agreement constitutes the legal, valid and binding obligation of Seller and Shareholder, enforceable against Seller and Shareholder, respectively, in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the rights of creditors generally and by general principles of equity. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents and to consummate the Contemplated Transactions. No other proceeding on the part of Seller is necessary to authorize the execution, delivery and performance of this Agreement, other than such approvals set forth in Section 3.2(d) and Section 5.1(f) hereto.

b) This Agreement has been, and the Transaction Documents will be, duly executed and delivered by Seller and Shareholder.

c) Neither the execution, delivery or performance by Seller of this Agreement or the Transaction Documents nor the consummation by Seller of the Contemplated Transactions will (i) contravene, conflict with or result in a violation of any provisions of the certificate of incorporation or bylaws or other governing documents of the Company, (ii) contravene, conflict with or result in a violation of or give any Governmental Authority or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Laws or any Order to which either Seller, the Shareholder, the Shares or the Purchased Assets of the Company may be subject; (iii) contravene, conflict with or result in a violation of any of the terms or requirements of or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit or other authorization by a Governmental Authority that is held by either Seller or Shareholder or that otherwise relates to the Business, (iv) contravene, conflict with or result in a violation or breach of any provision of, require the Consent of any Person under, or give any Person the right to declare a default or exercise any remedy under or to accelerate the maturity or performance of or to cancel, terminate or modify any Contract, indenture, mortgage, note, lease or other instrument or document to which either Seller or Shareholder is a party or by which any of the assets of the Company are bound, or (v) result in the imposition or creation of any Encumbrance upon or with respect to the Shares or any of the assets of the Company.

d) Except as set forth on Section 3.2(d) of the Disclosure Schedules, no filings or registrations with, notifications to, or authorizations, Consents or approvals of, a Governmental Authority or third party are required to be obtained or made by Seller in connection with the execution, delivery or performance by Seller of this Agreement or the Transaction Documents or the consummation by Seller of the Contemplated Transactions. The execution and consummation of the Contemplated Transactions and the Transaction Documents will not result in the creation of any Encumbrance against any of the assets of the Company.

3.3 Assets. The Company has clear, good, and marketable title to, or a valid leasehold

interest in, all of the Purchased Assets, which as of the Closing Date, shall be free and clear of all Encumbrances, except for Permitted Encumbrances. None of the assets of the Company that are necessary or used or useful in the operation of the Business are leased or on loan to any third party. The Purchased Assets constitute all of the assets and property that, together with the rights granted or conveyed under the Transaction Documents, are necessary for the operation of the Business, and the operation of the Company as currently conducted. Upon the Closing, Buyer, through its ownership of the Purchased Assets) shall continue to be vested with good title or a valid leasehold interest in all of the assets of the Company that are necessary, used or useful in the Business. Set forth on Section 3.3 of the Disclosure Schedules is a complete listing of all of the Purchased Assets.

3.4 Real Property; Easements.

a) Set forth on Schedule 3.4(a) is a complete and accurate listing of all Real Property that is necessary, used or useful in the Business. All such Real Property will be transferred to Buyer at Closing. The Company is not the lessor or lessee of any real property, and there are no outstanding options, rights of first refusal or rights of first offer to purchase any of the Real Property or any portion thereof or interest therein. Seller has made available to Buyer copies of all title reports, surveys, title policies and appraisals relating to the Real Property. At and after the Closing, Buyer shall have all rights, easements and agreements necessary for the use and maintenance of water, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Real Property for the operation of the Business as currently operated.

b) The Company's current use and occupancy of the Real Property and its operation of the Business thereon does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or any unrecorded agreement to which the Real Property is subject or the Company is a party, or any zoning Laws, ordinances and regulations affecting such Real Property. There are no notes or notices of any violations of Law affecting any of the Real Property, nor the Company has received any notice of violation of any easements, covenants, restrictions or similar instruments and there is no basis for the issuance of any such notice or the taking of any action for such violation. Set forth on Section 3.4(b)(i) of the Disclosure Schedules hereto is a true, correct and complete list of all easements necessary, used or useful in the operation of the Business. All such easements are legal and valid and will be assigned to Buyer at the Closing and upon such assignment will remain in full force as of the Closing. Set forth on Section 3.4(b)(ii) of the Disclosure Schedules hereto is a true, correct and complete list of all rights of way necessary, used or useful in the operation of the Business. All such rights of way are legal and valid and will be assigned to Buyer at the Closing and upon such assignment will remain in full force as of the Closing. Neither the assignment of any easement nor the assignment of any right of way requires the Consent of any Person. All Improvements located on, and the use presently being made of, the Real Property comply with all applicable zoning and building codes, ordinances and regulations and all applicable fire, environmental, occupational safety and health standards and similar standards established by Law and the same use thereof by the Company and Buyer on the Closing Date will not result in any violation of any such code, ordinance, regulation or standard.

c) No Improvements located on the Real Property encroach on any land that is not included in any Real Property or on any easements affecting such Real Property, or violate any building lines or set-back lines, and there are no encroachments onto the Real Property, or any portion thereof, which would interfere with the use or occupancy of such Real Property or the continued operation of the Business as currently conducted.

d) There is no unpaid property Tax, levy or assessment against the Real Property

being conveyed to Buyer under this Agreement (except for Permitted Encumbrances), nor is there pending or threatened any condemnation Proceeding against the Real Property or any portion thereof.

3.5 Personal Property.

a) Set forth on Section 3.5(a) of the Disclosure Schedules is a complete and accurate listing of all assets of the Company which are personal property. Seller has good, valid title and marketable title to, or a valid leasehold interest in all Tangible Personal Property included in the Purchased Assets. Except as set forth on Section 3.5(a) of the Disclosure Schedules: (i) no asset of the Company which is Tangible Personal Property is in the possession of others (other than immaterial items temporarily in the possession of others for maintenance or repair), (ii) neither the Company nor any of its Affiliates holds any such property on consignment, and (iii) each asset of the Company has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear) and is suitable for the purposes for which it is presently used. None of such Tangible Personal Property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature.

b) The Purchased Assets (including, without limitation, the Assigned Contracts), (i) constitute all the rights, property and assets necessary and sufficient for the continued conduct of the Business after the Closing by Buyer as currently conducted by Seller prior to the Closing, and (ii) there are no assets, properties or rights used in, held for use, or relied upon for the conduct of the Business other than the Purchased Assets. The Assigned Contracts listed in Section 3.8 of the Disclosure Schedules include all Contracts with any customer of the Business.

3.6 Capitalization; Subsidiaries; No Undisclosed Liabilities.

a) The Company does not have any subsidiaries and does not directly or indirectly own or hold any capital stock or other equity interest in any Person.

b) Except Liabilities incurred in the Ordinary Course of Business (none of which will or may reasonably be expected to have an adverse effect upon the Business), the Company does not have any Liabilities whatsoever, known or unknown, asserted or unasserted, liquidated or unliquidated, accrued, absolute, contingent, or otherwise, and there is no basis for any claim against the Company, the Business or any of the Purchased Assets for any such Liability and there is no basis for any such Liability to become the Liability of Buyer from and after the Closing.

3.7 Tax Matters.

a) The Company has timely and properly filed all Tax Returns that they were required to file. All such Tax Returns were complete and correct in all respects and were prepared in compliance with all applicable Laws. All Taxes owed by and due from the Company have been paid. The Company is not the beneficiary of any extensions of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the assets of either Company that arose in connection with any failure (or alleged failure) to pay any Tax.

b) The Company has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member, stockholder, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

c) There are no audits or examinations of any Tax Returns pending or threatened that relate to the operation of the Business or the assets of the Company. Neither Shareholder nor the Company is a party to any action or Proceeding by any Governmental Authority for the assessment or collection of Taxes relating to the operation of the Business or the assets of the Company, nor has such event been asserted or threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any Tax Returns relating to the operation of the Business or the assets of the Company.

d) None of the assets of the Company (i) have been or could be treated as a partnership or corporation for United States federal income Tax purposes or (ii) is property that is required to be treated for Tax purposes as being owned by any other Person (other than those assets of the Company that are leased).

e) None of the assets of the Company represent property or obligations of the Company, including but not limited to uncashed checks to vendors, customers or employees, non-refunded overpayments or unclaimed subscription balances, that is escheatable to any Governmental Authority under any applicable escheatment Laws as of the date hereof or that may at any time after the date hereof become escheatable to any Governmental Authority under any applicable escheatment Law.

3.8 Contracts. Set forth on Section 3.8 of the Disclosure Schedules is a complete and correct list of all Contracts related to the Business to which the Company is a party or is otherwise bound. Shareholder has delivered or caused to be delivered to Buyer correct and complete copies of each such Contract (including any and all amendments), a description of the terms of each such Contract which is

not in writing, if any, and all documents affecting the rights or obligations of any party thereto.

3.9 Environmental Matters.

a) The Company is and at all times has been in full compliance with all Environmental Laws, and the Company has not been and is not now in violation of or liable under any applicable Environmental Law. Neither Shareholder nor the Company has any basis to expect, nor has it received any actual or threatened, Order, notice or other communication from any Governmental Authority or other Person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to the Real Property or any other properties or assets (whether real, personal or mixed) in which either Shareholder or the Company has or ever had an interest, or with respect to the Real Property or any other real property at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by either Shareholder or the Company or any other Person for whose conduct the Company is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

b) There are no pending or threatened claims, Encumbrances or other restrictions of any nature, resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting the Real Property or any other properties and assets (whether real, personal or mixed) in which either Shareholder or the Company has an interest.

c) Neither Shareholder, the Company, nor any other Person for whose conduct either of them is or may be held to be responsible has any Environmental, Health and Safety Liabilities with respect to the Real Property or with respect to any other properties and assets (whether real, personal or mixed) in which Shareholder or the Company (or any predecessor) has or has had an interest.

d) There are no Hazardous Materials, except those used in connection with the operation of the Business and set forth in the list on Section 3.9(d)(i) of the Disclosure Schedules, present on or in the Environment at the Real Property, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the Real Property or incorporated into any structure therein or thereon. Neither Shareholder, the Company nor any other Person for whose conduct either of them is or may be held to be responsible has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to the Real Property or any other properties or assets (whether real, personal or mixed) in which either Shareholder or the Company has or has had an interest except in compliance with all applicable Environmental Laws. There has been no Release or threat of Release of any Hazardous Materials at or from the Real Property or from or by any other properties and assets (whether real, personal or mixed) in which either Shareholder or the Company has or has had an interest, whether by Shareholder, the Company or any other Person. Except as set forth on Section 3.9(d)(ii) of the Disclosure Schedules, none of the following exists with respect to the Business or on the Real Property: underground storage tanks; asbestos-containing material in any form; materials or equipment containing polychlorinated biphenyl; groundwater monitoring wells; or landfills, surface impoundments, or bulk disposal areas.

e) Except as set forth on Section 3.9(e) of the Disclosure Schedules, neither Shareholder, the Company nor any of their respective Affiliates is obligated to provide financial

assurance in consideration of the Business under any Environmental Law.

f) Shareholder has delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests or monitoring, including without limitation, any and all Phase I and/or Phase II environmental reports now or hereafter in the possession or control of Shareholder or the Company (collectively “Environmental Reports”) possessed or initiated by either Shareholder or the Company pertaining to Hazardous Materials or Hazardous Activities in, on or under the Real Property, or concerning compliance by Shareholder, the Company, or any other Person for whose conduct Shareholder or the Company is or may be held to be responsible under any Environmental Laws.

3.10 Permits. Set forth on Section 3.10 of the Disclosure Schedules is a complete and correct list of all Permits held by, issued to or used by the Company in the continuing operation of the Business. Such Permits constitute all those necessary for the continuing operation of the Business and are all valid and subsisting and in full force and effect. To the best of Shareholder’s Knowledge, information and belief, no fact or circumstance currently exists which is reasonably likely to cause any such Permit to be revoked or altered subsequent to the execution of this Agreement and the Closing Date. Neither the execution of this Agreement nor the Closing does or will constitute or result in a default under or violation of any such Permit.

3.11 Absence of Certain Changes. There has not been any occurrence or event which, individually or in the aggregate, has had or is reasonably expected to have any Material Adverse Effect. The Company has continually operated the Business only in the Ordinary Course of Business. Without limitation of the foregoing, the Company has not entered into, amended, terminated or received notice of termination of any Permit necessary for the continued operation of the Business. In addition, neither Shareholder nor the Company has taken any action in connection with the Business which, if taken on or after the date hereof, would have required the prior written Consent of Buyer pursuant to Section 6.6 hereof.

3.12 Litigation and Proceedings. Except as set forth on Section 3.12 of the Disclosure Schedules, there are no Proceedings pending or, to the Knowledge of the Company or Shareholder, threatened, against either Shareholder or the Company or involving the operation of the Business, any of the assets of the Company, or the Company’s shareholders, directors, officers, agents or other personnel in their capacity as such, which could adversely affect any of the assets of the Company or the Business. Neither Seller nor the Company has been charged with any violation of any applicable Law with respect to any of the assets of the Company or the Business and there is no valid basis for any such charge. Neither Shareholder, the Company nor any of their respective Affiliates has been subject to or threatened to be subject to any Proceeding or Order relating to personal injury, death or property or economic damage arising from products sold, licensed or leased and services performed by the Company or any of its Affiliates with respect to the Business. No judgment, Order, writ, injunction, decree, assessment or other command of any Governmental Authority affecting either Shareholder, the Company or any of the assets of the Company or the Business has been entered which is presently in effect. There is no Proceeding pending or, to Seller’s Knowledge, threatened which challenges the validity of this Agreement or the Contemplated Transactions or otherwise seeks to prevent, directly or indirectly, the consummation of the Contemplated Transactions, nor is there any valid basis for any such Proceeding.

3.13 Compliance with Laws. The Company is in compliance with all Laws, Permits, Orders, ordinances, rules and regulations, whether civil or criminal, of any federal, state, local or foreign governmental authority applicable to the Business and has not committed any violation of any Law or

any provision of its articles of incorporation or bylaws applicable to the assets of the Company and/or the operation of the Business. Except as set forth in Section 3.13 of the Disclosure Schedules, neither Shareholder, the Company nor any of their respective Affiliates has received any notice alleging such default, breach or violation.

3.14 Escrow Accounts.

Set forth on Section 2.1(a) of the Disclosure Schedules is a list of all the customers of the Company as of January 1, 2020 and a list of all Escrow Accounts of the Company. None of the Escrow Accounts are subject to, and neither Seller nor the Company has received notice of, any counter-claim, set-off, defense, or encumbrance with respect to any of the Escrow Accounts

3.15 Employees, Officers, Directors and Consultants.

a) The Company currently has no employees.

b) Set forth on Section 3.15(b) of the Disclosure Schedules is a list of: (i) all current directors of the Company, (ii) all current officers (with office held) of the Company, and (iii) all current paid consultants to the Company.

c) No officer, director, or consultant of the Company is indebted to the Company except for advances for ordinary business expenses on a basis consistent with past practices.

d) All payments to agents, consultants and others made by the Company have been in payment of bona fide fees and commissions and not as bribes, kickbacks or as otherwise illegal payments. All such payments have been made directly to or for the account of the parties providing the goods or services for which such payments were made, and no such payment has been paid in a manner intended to avoid currency controls or any party's Tax reporting or payment obligations. The Company has properly and accurately reflected on its books and records: (i) all compensation paid to and perquisites provided to or on behalf of its agents and employees; and (ii) all compensation and perquisites that are due and payable to such persons, but which have not been paid or provided as of the Closing Date. Such compensation and perquisites have been properly and accurately reflected in the records or Governmental Authority filings of the Company, to the extent required by Law.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby makes the following representations and warranties to Seller and Shareholder:

4.1 Organization. Buyer is a duly organized and validly existing corporation in good standing under the Laws of the State of New York and has the power and authority to own, lease and operate its assets and properties.

4.2 Enforcement; Authority; No Conflict.

e) This Agreement constitutes the legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the rights of creditors generally and by general

principles of equity. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder. No other proceeding on the part of Buyer is necessary to authorize the execution, delivery and performance of this Agreement.

f) This Agreement has been, and the Transaction Documents will be, duly executed and delivered by the Buyer.

g) Neither the execution, delivery, or performance by Buyer of this Agreement or the Transaction Documents, nor the consummation by Buyer of the Contemplated Transactions will: (i) contravene, conflict with or result in a violation of any provisions of the articles of incorporation or the bylaws of Buyer; (ii) contravene, conflict with or result in a breach of or default under any term, condition or provision of any Contract to which Buyer is a party, or an event which, with the giving of notice, lapse of time, or both, would result in any such breach or default; or (iii) contravene, conflict with or result in a violation of any applicable Law, Order, judgment, writ, injunction, decree or award or any event which, with the giving of notice, lapse of time, or both, would result in any such violation.

ARTICLE 5 CONDITIONS PRECEDENT TO CLOSING

5.1 Conditions Precedent to the Obligations of Buyer. Buyer's obligations to consummate the Contemplated Transactions are subject to the satisfaction in full, unless expressly waived in writing by Buyer, of each of the following conditions:

a) Representations and Warranties. Each of the representations and warranties of the Seller and Shareholder contained in this Agreement or in any Transaction Document shall have been true, correct and accurate in all respects on and as of the date hereof and shall also be true, correct and accurate in all respects on and as of the Closing Date with the same force and effect as though made by Seller and Shareholder on and as of the Closing Date (except to the extent that any such representation or warranty is made solely as of the date hereof or as of another date earlier than the Closing Date, which shall be accurate as of such date);

b) Covenants. Each of Seller and Shareholder shall have performed, observed and complied in all respects with all of its obligations, covenants, undertakings and agreements contained in this Agreement or any Transaction Document and required to be performed, observed or complied with by Seller and Shareholder prior to or at the Closing;

c) Certificates. Seller and Shareholder shall have delivered to Buyer a certificate, dated as of the Closing Date and executed by Seller and Shareholder, to the effect that the conditions set forth in Sections 5.1(a) and (b) have been satisfied;

d) Proceedings. No provision of any Law or Order shall be in effect, and no Proceeding by any Person shall be threatened or pending before any Governmental Authority, or before any arbitrator, which would: (i) prevent consummation of the Contemplated Transactions; (ii) have a likelihood of causing the Contemplated Transactions to be rescinded following consummation; (iii) adversely affect the right of Buyer to own the Purchased Assets or to operate the Business after the Closing; or (iv) cause Material Adverse Effect;

e) Closing Deliveries. Seller and Shareholder shall have delivered or caused to be

delivered to Buyer each of the items set forth in Section 2.7(a);

f) Governmental and Third Party Approvals. (i) Buyer shall have obtained any and all necessary regulatory approvals from the New York State Public Service Commission, and any other applicable regulatory body, and all other applicable Consents and approvals from Governmental Authorities and other third parties which are required in connection with the Contemplated Transactions, each in form and substance (including without limitation with respect to the terms and conditions contained in any such approval) acceptable to Buyer in its sole and absolute discretion, and at Buyer's sole cost and expense, except for any expense of the Seller which will be borne by the Seller, *i.e.*, any time spent by Seller on the approval and any attorneys hired by Seller will be paid by the Seller and (ii) any waiting periods under existing Laws, and all extensions thereof, the passing of which is necessary to consummate the Contemplated Transactions, shall have expired. For the avoidance of doubt, the Buyer shall be solely responsible for the the cost of any professionals, legal or otherwise, hired by the Buyer to gain approval for the Contemplated Transactions;

g) Due Diligence. Buyer shall have completed its due diligence review of the Company and the Business, the results of which shall be satisfactory to the Buyer in its sole and absolute discretion, including without limitation, the results of any Phase I environmental site assessment or other environmental assessment performed with respect to the Real Property, any and all liens and other due diligence investigations of the Purchased Assets, all title, survey, engineering and other due diligence investigations of the Real Property, a review of all Contracts and operating Permits and licenses of the Business, and the Business' operations, Contracts, employment practices, compliance, accounting and other items as Buyer deems necessary, as each of the foregoing items relate to the Company and the Business; and

h) No Material Adverse Effect. Buyer shall have determined that there shall not have occurred any event or circumstance which, individually or in the aggregate, has had or is reasonably expected to have a Material Adverse Effect on the Real Property or the Purchased Assets.

5.2 Conditions Precedent to Obligations of Seller. Seller's obligation to consummate the Contemplated Transactions is subject to the satisfaction in full, unless expressly waived in writing by Seller, of each of the following conditions:

a) Representations and Warranties. Each of the representations and warranties of Buyer contained in this Agreement or in any Transaction Document shall have been true, correct and accurate in all respects on and as of the date hereof and shall also be true, correct and accurate in all respects on and as of the Closing Date with the same force and effect as though made by Buyer on and as of the Closing Date (except to the extent that any such representation or warranty is made solely as of the date hereof or as of another date earlier than the Closing Date, which shall be accurate as of such date);

b) Covenants. Buyer shall have performed, observed and complied in all respects with all of its obligations, covenants, undertakings and agreements contained in this Agreement or any Transaction Document and required to be performed, observed or complied with by Buyer prior to or at the Closing; and

c) Closing Deliveries. Buyer shall have delivered or caused to be delivered to Seller and Shareholder each of the items set forth in Section 2.7(b).

ARTICLE 6
COVENANTS AND AGREEMENTS

6.1 Access to Information; Confidentiality

a) Access. Between the date of this Agreement and the Closing Date, Buyer may, directly and through its representatives, make such confirmatory investigation of the Business, the Purchased Assets and the Company as each deems necessary or advisable. In furtherance of the foregoing, Buyer and its representatives shall have reasonable access, upon reasonable notice during normal business hours, to all employees, properties, books, Contracts, customer lists, commitments and records of the Business, and Shareholder shall furnish and cause to be furnished to Buyer and its representatives such financial and operating data and other information as may from time to time be reasonably requested relating to the Business, shall permit Buyer or its representatives to conduct such physical inspections and environmental audits of the Real Property as requested by Buyer and shall permit Buyer or its representatives to conduct interviews of Persons servicing the Business. Shareholder and the management, employees, accountants and attorneys of or servicing the Business shall cooperate fully with Buyer and its representatives in connection with such investigation.

b) Confidentiality.

(i) Prior to Closing, each Party shall ensure that all Confidential Information which such Party or any of its respective officers, directors, employees, counsel, agents, or accountants may have obtained, or may hereafter obtain, from the other Party (or create using any such information) relating to the financial condition, results of operations, Business, properties, assets, Liabilities or future prospects of the other Party or the Company, any Related Person of the other Party or the Company or any customer or supplier of such other Party or the Company or any such Related Person shall not be published, disclosed or made accessible by any of them to any other Person at any time or used by any of them, in each case without the prior written Consent of the other Party; provided, however, that the restrictions of this sentence shall not apply (i) as may otherwise be required by Law, (ii) to the extent such Confidential Information shall have otherwise become publicly available, and (iii) as to Buyer, to disclosure by or on its behalf to regulatory authorities or other third parties whose Consent or approval may be required to consummate the Contemplated Transactions and to its lenders for the purpose of obtaining financing of such transactions and to its accountants, advisors and attorneys in connection with the Contemplated Transactions. Following Closing, Seller and Shareholder shall ensure that all Confidential Information relating to the financial condition, results of operations, Business, properties, assets, Liabilities or future prospects of the Company, any Related Person of the Company or any customer or supplier of the Company or any such Related Person shall not be published, disclosed or made accessible by any of them to any other Person at any time or used by any of them, in each case without the prior written Consent of the Buyer; provided, however, that the restrictions of this sentence shall not apply (i) as may otherwise be required by Law, (ii) to the extent such Confidential Information shall have otherwise become publicly available, and (iii) as to Buyer, to disclosure by or on its behalf to regulatory authorities or other third parties whose Consent or approval may be required to consummate the Contemplated Transactions and to its lenders for the purpose of obtaining financing of such transactions and to its accountants, advisors and attorneys in connection with the Contemplated Transactions .

(ii) In the event of termination of negotiations or failure of the Contemplated Transactions to close for any reason whatsoever, each Party promptly will destroy or deliver to the

other Party and will not retain any documents, work papers and other material (and any reproductions thereof) obtained by each Party or on its behalf from such other Party or its subsidiaries as a result of this proposal or in connection therewith, whether so obtained before or after the execution hereof, and will not use any information so obtained and will cause any information so obtained to be kept confidential and not used in any way detrimental to such other Party.

6.2 Publicity; Announcements. Until after the Closing, no press release or other public statement concerning this Agreement or the transactions contemplated hereby shall be issued or made without the prior written approval of the Parties hereto, except as required by applicable law. After the Closing, no press release or other public statement concerning this Agreement or the transactions contemplated hereby shall be issued or made by either party without the prior approval of the other party which approval shall not be unreasonably withheld or delayed, except as required by applicable law.

6.3 Cooperation. Subject to the terms and conditions of this Agreement, the Parties shall cooperate fully with each other and their respective counsel and accountants in connection with, and take or cause to be taken and do or cause to be done, any actions required to be taken under applicable Law to make effective the Contemplated Transactions as promptly as practicable. Prior to the Closing, the Parties shall proceed expeditiously and in good faith to make such filings and take such other actions as may be reasonably necessary to satisfy the conditions to Closing set forth in Section 5.1(f). Any and all filing fees in respect of such filings shall be paid by Buyer. From and after the Closing, the Parties shall do such acts and execute such documents and instruments as may be reasonably required to make effective the transactions contemplated hereby. On or after the Closing Date, the Parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments, including Contract assignments, and doing any and all such other things as may be reasonably required by the Parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. Should Seller, in its reasonable discretion, determine after the Closing that books, records or other materials constituting assets of the Company are still in the possession of Seller, Seller shall promptly deliver them to Buyer at no cost to Buyer. Seller hereby agrees to cooperate with Buyer to ensure a proper transition of all customers with respect to billing and customer service activities. Buyer shall take the lead in obtaining the required regulatory approvals with respect to the Contemplated Transactions. Prior to the Closing, Shareholder shall cause the Company to comply with all obligations of the Company set forth in this Agreement.

6.4 Exclusivity. Shareholder will not and will not permit or cause the Company or its respective Affiliates, officers, directors, employees or other agents or representatives to, at any time prior to the termination of this Agreement, directly or indirectly, (i) take any action to solicit, initiate or encourage the making of any Acquisition Proposal, or (ii) discuss or engage in negotiations concerning any Acquisition Proposal with, or further disclose any non-public information relating to the Company to, any person or entity in connection with an Acquisition Proposal, in each case, other than Buyer and its representatives.

6.5 No Inconsistent Action. Prior to the Closing Date, no Party shall take any action, and each Party will use its best efforts to prevent the occurrence of any event (but excluding events which occur in the Ordinary Course of Business and events over which such Party has no control), which would result in any of its representations, warranties or covenants contained in this Agreement or in any Transaction Document not to be true and correct, or not to be performed as contemplated, at and as of the time immediately after the occurrence of such action or event. If at any time prior to the Closing Date, a Party obtains knowledge of any facts, circumstances or situation which constitutes a breach, or will with the passage of time or the giving of notice constitute a breach, of any representation, warranty

or covenant of such Party under this Agreement or any Transaction Document or will result in the failure of any of the conditions contained in Article 5 to be satisfied, such Party shall give the other Party prompt written notice thereof; provided, however, that no such notice shall cure any breach of any representation, warranty or covenant contained herein or therein or will relieve any such Party of any obligations hereunder or thereunder unless specifically agreed to in writing by the other Party.

6.6 Conduct of Business. From the date hereof until the earlier of the Closing Date and the date this Agreement is terminated in accordance with its terms, as required by applicable Law or as required by this Agreement, or otherwise with Buyer's prior written consent (not to be unreasonably withheld, conditioned or delayed), Shareholder shall cause the Company to conduct, and the Company shall conduct, the Business in all material respects in the Ordinary Course of Business, and (ii) use commercially reasonable efforts to (A) preserve the Business substantially intact, and (B) maintain and preserve the assets, properties and material business relationships (including with employees) of the Business. Without limiting the generality of the foregoing, from the date hereof until the earlier of the Closing Date and the date this Agreement is terminated, as required by applicable Law or as required by this Agreement, or otherwise with Buyer's prior written consent (not to be unreasonably withheld, conditioned or delayed), the Company shall not (and the Shareholder shall not cause or permit the Company to):

- a) amend or modify its organizational documents;
- b) acquire or sell, assign, transfer, lease, license, pledge, or otherwise dispose of any Real Property;
- c) acquire or sell, assign, transfer, lease, license, pledge, or otherwise dispose of (i) any assets of the Business except in the Ordinary Course of Business and not in excess of \$2,500 individually or \$5,000 in the aggregate or (ii) any leased Real Property (whether by merger, consolidation, acquisition of stock or assets, license or otherwise);
- d) sell, transfer, pledge or otherwise dispose of any of its equity interests;
- e) propose or adopt a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization or file a petition in bankruptcy or consent to the filing of any bankruptcy petition under any applicable Law;
- f) make any change in any method of accounting or accounting practice or policy, except as required by applicable Law or GAAP;
- g) make any loan, advancement or investment in any Person;
- h) authorize new individual capital expenditures in excess of \$2,500 individually or \$5,000 in the aggregate, in each case to the extent Buyer would be responsible for the payment thereof after the Closing, except for capital expenditures (i) required pursuant to the terms of Assigned Contracts in existence on the date hereof, or (ii) reflected in the budget or financial forecast previously provided to Buyer;
- i) amend or modify in any material respect adverse to the Business or terminate any Assigned Contract, or cancel, modify, amend, release, assign or waive any material rights or claims under any Assigned Contract;
- j) cancel, compromise or settle any material Proceeding for which Buyer would have any Liability after the Closing;

k) make or change any material Tax election, (ii) change any annual Tax accounting period, (iii) adopt or change any material method of Tax accounting, (iv) compromise or settle any material Tax liability, (v) amend any material Tax Return, or (vi) surrender any right to claim a refund of material Taxes; or

l) agree or commit to do any of the foregoing.

6.7 Release of Encumbrances. Seller promptly shall take such actions as shall be requested by Buyer to secure the release of all Encumbrances relating to the Purchased Assets, in each case in substance and form reasonably satisfactory to Buyer and its counsel.

6.8 Retention of Records. Subject to applicable Law and any applicable restrictions as to confidentiality (as to which Buyer does not provide indemnification, or the waiver of which Seller shall not have obtained after using reasonable best efforts), Seller shall preserve (and Shareholder shall cause the Seller to preserve) any books and records relating to the Company and the Business that are not delivered to Buyer hereunder for a period no less than seven (7) years after the Closing Date (or such longer period as shall be required by applicable Law), and Seller shall make available such books and records for review and copying to Buyer and its authorized representatives following the Closing at Buyer's expense upon reasonable notice during normal business hours. During such period, Seller shall permit, to the extent permitted by applicable Law and upon request of Buyer, Buyer and any of its agents, representatives, advisors or consultants reasonable access to persons servicing the Business for information related to periods up to and including the Closing.

6.9 Tax Covenants.

a) Shareholder shall be responsible for and pay all Taxes of Shareholder and shall be solely responsible for and pay all Taxes of the Company, the Business and the assets of the Company for any Tax year or period (or portion thereof) ending at or before the Closing. For the purposes of this Section 6.9(a), the portion of such personal property or similar ad valorem Tax that relates to the Tax period ending as of the Closing shall be deemed to be the amount of such Tax for the entire Tax period multiplied by a fraction, the numerator of which is the number of days in the Tax period ending as of the Closing and the denominator of which is the number of days in the entire Tax period. For purpose of this Section 6.9(a), the portion of all other Taxes that relates to the Tax period ending as of the Closing shall be determined on the basis of an interim closing of the books.

b) Each Party agrees to furnish or cause to be furnished to the other Party, upon request, as promptly as practical, such information (including reasonable access to books and records, Tax Returns and Tax filings) and assistance as is reasonably necessary for the filing of any Tax Return, the conduct of any Tax audit, and for the prosecution or defense of any claim, suit or Proceeding relating to any Tax matter. The Parties shall cooperate with each other in the conduct of any Tax audit or other Tax Proceedings and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 6.9(b).

c) Seller shall pay for any realty transfer taxes that may be due or owing as a result of the Contemplated Transactions, and the parties agree to prorate any property taxes as of the Closing Date.

6.10 Termination of Intercompany Obligations. As of or prior to the Closing, Seller shall, and shall cause its Affiliates to, settle all intercompany accounts payable and Accounts Receivable

between and among such Persons and the Company.

ARTICLE 7 INDEMNIFICATION

7.1 Survival of Representations and Warranties and Covenants. All of the representations and warranties made by Seller and Shareholder in this Agreement, the Disclosure Schedules, or any certificates or documents delivered hereunder shall survive the Closing Date and consummation of the Contemplated Transactions for a period of three (3) years; provided, however, that the representations and warranties contained in Sections 3.1, 3.2, 3.3, 3.4, 3.7 and 3.9 shall survive indefinitely. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

7.2 Indemnification and Payment of Damages by Seller and Shareholder. Seller and Shareholder hereby jointly and severally agree to defend, indemnify and hold harmless Buyer, and its representatives, directors, officers, shareholders, subsidiaries and Related Persons (collectively, the "**Buyer Indemnified Persons**") from, and will reimburse the Buyer Indemnified Persons for, any Loss, Liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third Party Claim (collectively, "**Damages**"), arising out of, resulting from, relating to or caused by: (i) any misrepresentation or breach of (or any claim by any third party alleging or constituting a breach of) any representation or warranty or any provision or covenant contained in this Agreement or any other Transaction Document by Shareholder or the Company; (ii) any Encumbrance affecting the Purchased Assets (other than Permitted Encumbrances); (iii) assessments, charges and other similar claims due or owing by Seller on account of the assets of the Company or the Business at any time prior to the Closing Date; (iv) intercompany accounts payable and Accounts Receivable by and among the Company and/or its Affiliates; (v) transaction costs and expenses incurred by or on behalf of Seller or Shareholder in connection with this Agreement or the Contemplated Transactions, whether or not arising due to Third Party Claims; and (vi) any and all Liabilities relating to or arising out of the Business or the Purchased Assets prior to the Effective Time.

7.3 Indemnification by Buyer. Buyer hereby agrees to defend, indemnify and hold harmless Shareholder and Seller, and Seller's representatives, directors, officers, shareholders, subsidiaries and Related Persons (collectively, the "**Seller Indemnified Persons**") from, and will reimburse the Seller Indemnified Persons for, any and all Damages incurred by any of them arising out of, resulting from, relating to or caused by (i) any misrepresentation or breach of (or any claim by any third party alleging or constituting a breach of) any representation or warranty or any provision or covenant contained in this Agreement or any other Transaction Document by Buyer or (ii) transaction costs and expenses incurred by or on behalf of Buyer in connection with this Agreement or the Contemplated Transactions, whether or not arising due to Third Party Claims.

7.4 Notice of Claim. In the event that either Party seeks indemnification on behalf of an indemnified person, such party seeking indemnification (the “**Indemnified Party**”) shall give reasonably prompt written notice to the indemnifying party (the “**Indemnifying Party**”) specifying the facts constituting the basis for such claim and the amount, to the extent known, of the claim asserted; provided, however, that the right of a person or entity to be indemnified hereunder shall not be adversely affected by a failure to give such notice unless, and then only to the extent that, an Indemnifying Party is prejudiced thereby. Subject to the terms hereof, the Indemnifying Party shall pay the amount of any valid claim not more than 10 days after the Indemnified Party provides notice to the Indemnifying Party of such amount.

7.5 Third Party Claims. If any Indemnified Party receives written notice of the assertion or commencement of any Proceeding or other legal action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof (a “**Claim Notice**”). The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations. Such Claim Notice shall describe the Third Party Claim in reasonable detail, shall include a copy of all papers served with respect to such Third Party Claim, if any, and any other documents reasonably necessary (as determined by the Indemnified Party) and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in or, by giving written notice within ten (10) Business Days of receipt of a Third Party Claim, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel; provided, that such notice contains confirmation that the Indemnifying Party has agreed to indemnify the Indemnified Party (subject to the limitation on indemnification set forth herein) for the Damages arising out of or resulting from the Third Party Claim of which it is assuming the right to conduct and control the defense thereof. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 7.6, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party; provided, however, that the Indemnifying Party shall not be entitled to control, and the Indemnified Party shall be entitled to have sole control over, the defense or settlement of any claim if: (i) such claim is part of an action to which the Indemnifying Party is also a party and the Indemnified Party is advised by counsel that a conflict exists as a result of the Indemnifying Party’s control over such proceedings, (ii) such Third Party Claim seeks injunctive or other equitable relief against the Indemnified Party, (iii) the Third Party Claim relates to or arises in connection with any governmental proceeding, action, indictment, allegation or investigation in respect of the business of Buyer or their respective Affiliates, (iv) the Indemnifying Party failed or is failing to reasonably prosecute or defend such Third Party Claim, or (v) such claim involves any customer, supplier, distributor or other material business relation of Buyer or its Affiliates. If the Indemnifying Party has validly made such election, the Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party. The Indemnified Party and the Indemnifying Party shall cooperate with each other in all reasonable respects to ensure the proper and adequate defense of any Third Party Claim, including making available books and records and other information relating to such Third Party Claim and furnishing employees and representatives as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

7.6 Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, if the Indemnifying Party assumes the defense of any Third Party Claim pursuant to Section 7.5, (i) the Indemnified Party shall not file any papers or consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim and (ii) the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of the Indemnified Party (which consent shall be given if the settlement by its terms (1) obligates the Indemnifying Party to pay the full amount of the liability in connection with such Third Party Claim, (2) fully and finally releases the Indemnified Party completely in connection with such Third Party Claim, and (3) does not impose any obligation or restriction on such Indemnified Party or its Affiliates). If the Indemnifying Party does not assume the defense of such Third Party Claims or fails to diligently prosecute or withdraws from the defense of a Third Party Claim, the Indemnifying Party will not be obligated to indemnify the Indemnified Party for any settlement entered into or any judgment consented to without the prior the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned). Notwithstanding any other provision of this Agreement, whether or not the Indemnifying Party shall have assumed the defense of a Third Party Claim, if the Indemnified Party admits any liability with respect to, or settles, compromises or discharges, such Third Party Claim without the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned), then such admission, settlement or compromise will not be binding upon or constitute evidence against the Indemnifying Party for purposes of determining whether the Indemnified Party has incurred Damages that are indemnifiable pursuant to this section or the amount thereof.

7.7 Direct Claims. Any claim by an Indemnified Party on account of Damages which do not result from or involve a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party by providing prompt written notice thereof to the Indemnifying Party after the Indemnified Party becomes aware of such Direct Claim. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Damages that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim asserting or denying its responsibility with respect to such Direct Claim. During such thirty (30)-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall reasonably assist the Indemnifying Party's investigation. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have accepted such claim.

7.8 Certain Indemnification Matters.

a) Notwithstanding anything contained herein or elsewhere to the contrary, all "material" and "Material Adverse Effect" or similar materiality type qualifications contained in the representations and warranties set forth in this Agreement shall be ignored and not given any effect for purposes of the indemnification provisions hereof, including, without limitation, for purposes of determining whether or not a breach of a representation or warranty has occurred and/or determining the amount of any Damages.

b) No information or knowledge acquired, or investigations conducted by Buyer or its representatives, of Shareholder, the Company or the Business or otherwise shall in any way limit, or constitute a waiver of, or a defense to, any claim for indemnification by any Indemnified Persons under this Agreement.

ARTICLE 8 TERMINATION

8.1 Termination. This Agreement may be terminated at any time prior to the Closing only (a) by mutual written Consent of the Seller, Shareholder and Buyer, (b) by Buyer, if Buyer is not in breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Seller or Shareholder, (d) by Buyer, if, at any time before Closing, Buyer is not satisfied with the results of its due diligence review of the Business, the Company and the Purchased Assets, (e) by Seller, if Seller is not in breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Buyer and Buyer has not cured such breach within five (5) Business Days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured), (f) by Seller or Buyer upon written notice to the other, if any court of competent jurisdiction or other Governmental Authority shall have issued a statute, rule, regulation, Order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions, and such statute, rule, regulation, Order, decree or injunction or other action shall have become final and non-appealable, (g) by Buyer, if all necessary regulatory approvals contemplated hereby or otherwise necessary to close the Contemplated Transactions have not been obtained, despite Buyer's good faith and diligent efforts, within 270 days of the date hereof, or (h) by Buyer, if any Material Adverse Effect shall have occurred or shall be reasonably likely to occur.

8.2 Effect of Termination. The right of each Party to terminate this Agreement under Section 8.1 is in addition to any other rights such Party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate, except that the obligations set forth in the Section 6.1(b) ("**Confidentiality**"), Section 6.2 ("**Publicity; Announcements**"), this Section 8.2 ("**Effect of Termination**") or Article 9 ("**General Provisions**") will survive; provided, however, that if this Agreement is terminated by a Party because of the breach of the Agreement by another Party or because one or more of the conditions to the terminating Party's obligations under this Agreement is not satisfied as a result of the other Party's failure to comply with its obligations under this Agreement, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 9 GENERAL PROVISIONS

9.1 Amendment and Modification. No amendment, modification or supplement of any provision of this Agreement will be effective unless the same is in writing and is signed by the Parties. The respective counsel to the Parties shall be authorized to agree on a Party's behalf as to changes in the provisions hereof related to the Closing date and method of payment of the Purchase Price hereunder.

9.2 Assignments. Neither Seller nor Shareholder may assign or transfer any of its rights or obligations under this Agreement to any other Person without the prior written Consent of Buyer. Buyer may not assign its rights and obligations under this Agreement to any third party, without the prior written Consent of Seller, but may assign its rights and obligations under this Agreement to any Related Person without the Consent of Seller provided that such assignment shall not relieve Buyer from any of its obligations hereunder and such obligation shall thereafter be considered the joint and several responsibility of Buyer and its assignee. Subject to this Section 9.2, all provisions of this Agreement

are binding upon, inure to the benefit of and are enforceable by or against the Parties hereto and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

9.3 Captions; Construction. Captions contained in this Agreement and any table of contents preceding this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

9.4 Counterparts; Facsimile. This Agreement may be executed by the Parties hereto on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties hereto notwithstanding that all the Parties hereto are not signatories to the same counterpart. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by e-mail is to be treated as an original document.

9.5 Entire Agreement. This Agreement and the other Transaction Documents constitute the entire agreement among the Parties hereto pertaining to the subject matter hereof and supersede all prior agreements, letters of intent, understandings, negotiations and discussions of the Parties hereto, whether oral or written, executed by the Parties pertaining to the subject matter hereof. All of the Exhibits and Schedules attached to this Agreement are deemed incorporated herein by reference.

9.6 Governing Law. This Agreement and the rights and obligations of the Parties hereunder are to be governed by and construed and interpreted in accordance with the Laws of the State of New York applicable to Contracts made and to be performed wholly within the State of New York, without regard to choice or conflict of laws rules.

9.7 Legal Fees, Costs. Except as provided herein, all legal, consulting and advisory fees and other costs and expenses incurred in connection with this Agreement and the Contemplated Transactions are to be paid by the Party incurring such costs and expenses.

9.8 Notices. All notices, Consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered (i) when delivered in person or by e-mail, (ii) three (3) Business Days after deposited in the United States mail, first class postage prepaid, or (iii) in the case of overnight courier services, one (1) Business Day after delivery to the overnight courier service with payment provided, in each case addressed as follows:

(a) if to Seller, (i) to Andrew Sferra [Address] and (ii) with a copy to [Name and Address];

(b) if to Buyer, (i) to Liberty Utilities (New York Water) Corp., 60 Brooklyn Avenue, Merrick, New York 11566, Attn: President and (ii) with a copy to Liberty Utilities (Eastern Water Holdings) Corp., 14920 W. Camelback Road, Litchfield Park, AZ, 85340, Attn: Vice President, Assistant General Counsel; or

(c) to such other address as any Party hereto may designate by notice to the other Parties in accordance with the terms of this Section 9.8.

9.9 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability

of this Agreement or of any other term hereof, which shall remain in full force and effect.

9.10 Specific Performance and Injunctive Relief; Remedies. The Parties hereto recognize that if any or all of them fail to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at law may not provide adequate relief to the other Parties hereto. Therefore, in addition to any other remedy provided for in this Agreement or under applicable Law, any Party hereto may demand specific performance of this Agreement, and such Party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time when any of the other Parties hereto fail to comply with any of the provisions of this Agreement applicable to such Party. To the extent permitted by applicable Law, all Parties hereto hereby irrevocably waive any defense based on the adequacy of a remedy at law which might be asserted as a bar to such Party's remedy of specific performance or injunctive relief. Except as otherwise provided herein, all rights and remedies of the parties under this Agreement are cumulative and without prejudice to any other rights or remedies under Law. Nothing contained herein shall be construed as limiting the Parties' rights to redress for fraud.

9.11 No Third-Party Beneficiary. This Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns (and those Persons entitled to recover under the indemnity provisions hereof), and no other Person (other than those Persons entitled to recover under the indemnity provisions hereof) has any right, title, priority or interest under this Agreement or the existence of this Agreement.

9.12 Waiver of Compliance; Consents. Any failure of a Party to comply with any obligation, covenant, agreement or condition herein may be waived by the other Party only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or Permits Consent by or on behalf of any Party hereto, such Consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.12.

9.13 Jurisdiction; Venue; Consent to Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Supreme Court for the State of New York, County of Westchester, or any court of competent civil jurisdiction sitting in Westchester County, New York. In any action, suit or other Proceeding, each of the Parties irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise, any claims that it is not subject to the jurisdiction of the above courts, that such action or suit is brought in an inconvenient forum or that the venue of such action, suit or other Proceeding is improper. Each of the Parties also hereby agrees that any final and unappealable judgment against a Party in connection with any action, suit or other Proceeding shall be conclusive and binding on such Party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. Each Party irrevocably consents to service of process in the manner provided for the giving of notices pursuant to Section 9.8. Nothing in this Section 9.13 shall affect the right of any Party to serve process in any other manner permitted under applicable Law.

9.14 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above:

BUYER:
NEW YORK AMERICAN WATER COMPANY
A New York Corporation

By: _____
Name:
Title:

SELLER:
Arbor Hills Waterworks Inc.
A New York Corporation

By: _____
Name: Andrew Sferra
Title:

SHAREHOLDER:

Andrew Sferra

EXHIBIT 1

“**Accounting Methodologies**” shall mean those accounting methodologies used in the annual report of Seller that is filed with the New York State Public Service Commission. In the event of any conflict between GAAP and the Accounting Methodologies, the Accounting Methodologies shall prevail.

“**Acquisition Proposal**” means any offer or proposal for the acquisition of the Company, the Shares, the assets of the Company, or any portion thereof, whether by way of merger, consolidation or statutory share exchange or the acquisition of shares of capital stock, the acquisition of assets or similar transaction.

“**Accounts Receivable**” means all trade receivables (including, without limitation, accounts receivable and customer advances but excluding any notes receivable), if any, arising from or related to the Business, including those are set forth in Section 2.1(a) of the Disclosure Schedules.

“**Affiliate**” means, with respect to any Person, any Person which, directly or indirectly controls, is controlled by, or is under common control with, such Person.

“**Business Day(s)**” means any day other than (i) Saturday or Sunday, or (ii) any other day on which governmental offices in the State of New York are permitted or required to be closed.

“**Clean Up**” means investigation, cleanup, removal, containment or other remediation or response.

“**Closing**” means the closing of the Contemplated Transactions.

“**Closing Date**” means the date on which the Closing actually occurs.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the regulations and other guidance promulgated thereunder.

“**Confidential Information**” means (i) information not available to the public concerning the Business or the Company and financial affairs with respect to a Party hereto or its Affiliates, and (ii) analyses, compilations, forecasts, studies and other documents prepared on the basis of such information by the Parties or their agents, representatives, any Related Person, employees or consultants.

“**Consent**” means any approval, consent, ratification, waiver or other authorization of, or the filing with or giving of notice to, any Governmental Authority or other Person.

“**Contemplated Transactions**” means the transactions contemplated by this Agreement and the Transaction Documents.

“**Contract**” means any agreement, contract, obligation, legally binding commitment or undertaking (whether written or oral and whether express or implied).

“Effective Time” means 12:01 a.m. on the Closing Date.

“Encumbrance” means any charge, claim, community property interest, condition, easement, equitable interest, encumbrance, lien, mortgage, option, pledge, security interest, right of first refusal, right of way, servitude or restriction of any kind, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership, or any repayment obligation under any grant.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental, Health and Safety Liabilities” means any cost, damages, expense, liability, obligation or other responsibility arising from or under Environmental Law or Occupational Safety and Health Law and consisting of or relating to (a) any environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of chemical substances or products), (b) fines, penalties, judgments, awards, settlements, legal or administrative Proceedings, Damages, Losses, claims, demands and response, investigative, remedial or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law, (c) financial responsibility under Environmental Law or Occupational Safety and Health Law for Clean Up costs or corrective action, including any Clean Up required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Clean Up has been required or requested by any Governmental Authority or any other Person) and for any natural resource damages, or (d) any other compliance, corrective, investigative or remedial measures required under Environmental Law or Occupational Safety and Health Law. The terms “removal,” “remedial,” and “response action,” include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended, and the United States Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended.

“Environmental Law” means any Law relating to pollution or protection of human health, safety, the environment, natural resources or Law relating to releases or threatened releases of Hazardous Materials into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport or handling of Hazardous Materials.

“GAAP” means United States generally accepted accounting principles as in effect on the date hereof, applied on a consistent basis.

“Governmental Authority(ies)” means any (a) nation, state, county, city, village, district or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal), (d) multi-national organization or body or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of

any nature.

“Hazardous Activity” means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about or from the Real Property or any part thereof into the Environment, and any other act, system, operation or thing that increases the danger or risk of danger, or poses an unreasonable risk of harm to persons or property on or off the Real Property, or that may affect the value of the Business.

“Hazardous Materials” means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

“Improvements” means all buildings, structures, fixtures, building systems and equipment, and all components thereof, including the roof, foundation, load-bearing walls, and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing, and other building systems, environmental control, remediation, and abatement systems, sewer, storm, and waste water systems, irrigation and other water distribution systems, parking facilities, fire protections, security, and surveillance systems, and telecommunications, computer, wiring, and cable installations, included in the Real Property.

“Knowledge” means (i) the actual knowledge of a particular fact by any officer, director or shareholder of Seller (**“Knowledge Party”**), and (ii) knowledge that would have been acquired by the Knowledge Party acting reasonably and diligently in the performance of such person’s role with and duties to the Company. The words “know,” “knowing” and “known” shall be construed accordingly.

“Law(s)” means any law, rule, regulation or ordinance of any federal, foreign, state or local Governmental Authority or other provisions having the force or effect of law, including all judicial or administrative Orders and determinations, and all common law.

“Liability” or **“Liabilities”** means any liability, indebtedness or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of a Person.

“Losses” means all losses, damages, liabilities, deficiencies, claims, interest, awards, judgments, penalties, costs or expenses, including reasonable attorneys’ fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing.

“Material Adverse Effect” means any event, occurrence, fact, condition, change, circumstance, effect, development or state of facts that has had, or would reasonably be expected to have, a material adverse effect on (a) the business, results of operations, condition (financial or otherwise), assets or liabilities of the Business, taken as a whole, or (b) the ability of Seller to perform its obligations under this Agreement or the Transaction Documents or consummate the transactions contemplated hereby or thereby.

“Occupational Safety and Health Law” means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

“Order” means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator.

“Ordinary Course of Business” means, with respect to the Business, only the ordinary course of commercial operations customarily engaged in by Seller and the Business consistent with past practices, and specifically does not include (a) activity (i) involving the purchase or sale of the Business or any product line or business unit thereof, or (ii) that requires approval by the board of directors or shareholders (or other governing persons or equity holders) of Seller, the Company or any of their respective Affiliates, or (b) the incurrence of any Liability for any tort or any breach or violation of or default under any Contract or Law.

“Permits” means all permits, licenses, approvals, franchises, notices, authorizations and similar filings (whether federal, state, local or foreign), necessary to carry on the Business by, or on behalf of, or for the benefit of, the Company as currently conducted, or to own, operate or lease the properties and assets owned, operated or leased by, or on behalf of, or for the benefit of, the Company, or to consummate the transactions contemplated by this Agreement.

“Permitted Encumbrances” means (a) liens for Taxes not yet due and payable; (b) easements, right of way, zoning ordinances and other similar encumbrances affecting Real Property that do not interfere with the use of such assets or properties as currently used; and (c) other Encumbrances that are set forth on Section 1(a) of the Disclosure Schedules.

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, cooperative, estate, trust, association, organization, labor union or other entity or Governmental Authority.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Real Property” means those parcels of real property and those easements, rights-of-way, licenses and other real property rights that are used in or necessary for the operation of the Business, together with all fixtures, fittings, buildings, structures and other Improvements erected therein or thereon.

“Related Person” means: (a) with respect to a particular individual, (i) each other member of such individual’s family, (ii) any Person that is directly or indirectly controlled by such individual or one or more members of such individual’s family, (iii) any Person in which such individual or members of such individual’s family hold (individually or in the aggregate) a material interest; and (iv) any Person with respect to which such individual or one or more members of such individual’s family serves as a director, officer, partner, executor or trustee (or in a similar capacity) and (b) with respect to a specified Person other than an individual, (i) any

Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person, (ii) any Person that holds a material interest in such specified Person, (iii) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity), (iv) any Person in which such specified Person holds a material interest, (v) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity) and (vi) any Related Person of any individual described in clause (ii) or (iii). For purposes of this definition, (x) the term “family” of an individual includes (A) the individual, (B) the individual’s spouse, (C) any other natural person who is related to the individual or the individual’s spouse within the second degree, and (D) any other natural person who resides with such individual; and (y) “material interest” means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of voting securities or other voting interests representing at least five percent (5%) of the outstanding equity securities or equity interests in a Person.

“**Release**” means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment, whether intentional or unintentional.

“**Tax**” or “**Taxes**” means all taxes, charges, withholdings, fees, duties, levies, or other like assessments including, without limitation, income, gross receipts, ad valorem, value added, excise, property, sales, employment, withholding, social security, Pension Benefit Guaranty Corporation premium, environmental (under Section 59A of the Code) occupation, use, service, service use, license, payroll, franchise, transfer and recording taxes, fees and charges, windfall profits, severance, customs, import, export, employment or similar taxes, charges, fees, levies or other assessments, imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or any other basis, and shall include any interest, fines, penalties, assessments, or additions to tax resulting from, attributable to, or incurred in connection with any such Tax or any contest or dispute thereof, and including any Liability for the Taxes of another Person under Treasury Regulation section 1.1502-6 (or any similar provisions of state, local, or foreign Law), as transferee or successor, by Contract or otherwise.

“**Tax Return**” or “**Tax Returns**” means any return, declaration, report, claim for refund, or information return or statement relating to, or required to be filed in connection with any Taxes, including any schedule or attachment thereto and including any amendment thereof.

“**Third Person**” means a claimant other than an indemnified person hereunder.

“**Transaction Documents**” means this Agreement, and all other documents, certificates, assignments and agreements executed and/or delivered in connection with this Agreement in order to consummate the Contemplated Transactions, as the same may be amended, restated, modified or otherwise replaced from time to time.

Rules of Construction

For purposes of this Agreement and the other documents executed in connection herewith, the following rules of construction shall apply, unless specifically indicated to the contrary: (i) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (ii) the term “or” is not exclusive; (iii) the term “including” (or any form thereof) shall not be limiting or exclusive; (iv) the terms

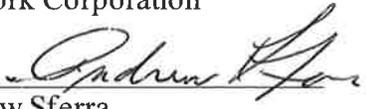
“hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including the Schedules and Exhibits hereto) and not to any particular provision of this Agreement; (v) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations as well as all rules and regulations promulgated thereunder, unless the context otherwise requires; (vi) all references in this Agreement or in the Schedules to this Agreement to sections, schedules, exhibits and attachments shall refer to the corresponding sections, schedules, exhibits and attachments of or to this Agreement; and (vii) all references to any instruments or agreements, including references to any of the documents executed in connection herewith, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above:

BUYER:
NEW YORK AMERICAN WATER COMPANY
A New York Corporation

By: 
Chris Alario
President, New York

SELLER:
Arbor Hills Waterworks Inc.
A New York Corporation

By:  1/28/22
Andrew Sferra

SHAREHOLDER:

 1/28/22
Andrew Sferra

