

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made and entered into by and between UTILITY BOARD OF CITY OF KEY WEST, FLORIDA d/b/a KEYS ENERGY SERVICES ("KEYS"), and the CITY OF KEY WEST, FLORIDA, a municipal corporation under the laws of the State of Florida ("City") (KEYS and City are referred to in this Agreement as the "Parties" or individually as a "Party"). This Agreement is effective (the "Effective Date") on the last date on which KEYS and City execute this Agreement, as reflected on the signature pages below.

RECITALS:

WHEREAS, City wishes to acquire any and all interest KEYS has in that certain real property located in Monroe County, Florida, more particularly as described in the attached **Exhibit "A"** and depicted in the attached **Exhibit "B"**, together with all improvements, personal property, equipment, machinery, and fixtures thereon and all privileges, rights, and appurtenances related thereto (collectively, the "Property"), subject to the terms and conditions of this Agreement; and

WHEREAS, KEYS wishes to sell and convey any and all interest it has in the Property to City, subject to the terms and conditions of this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. **Recitals.** The Recitals above are true and correct and are incorporated into this Agreement by reference.

2. **Sale and Purchase.** In consideration for the promises, agreements, and other obligations undertaken by City on behalf of KEYS as set forth in this Agreement, KEYS agrees to sell and convey any and all interest it has in the Property to City, and City agrees to purchase and accept from KEYS any and all interest KEYS has in the Property, subject to the Permitted Exceptions (as defined below).

3. **Title Commitment and Survey.**

(a) Within ten (10) days from the Effective Date, City may, at its expense, obtain an Owner's Commitment for Title Insurance ("Title Commitment") from a title insurer selected by City (the "Title Company").

(b) Within twenty-five (25) days from the Effective Date, City may, at its expense, obtain a survey ("Survey") of the Property by a professional land surveyor licensed in the State of Florida. City shall cause the Survey to provide or include all of the following: (i) an accurate legal description of the Property; (ii) a depiction of all improvements, visible evidence of easements in use, evidence of boundaries, all easements, and any encroachments or overlaps; and (iii) certify the gross area of the Property to the 00/10 sq. ft.

(c) If the Title Commitment or the Survey disclose any matters which render title to the Property unmarketable or otherwise unacceptable to City, then City shall give KEYS written notice thereof within ten (10) days after receipt of the Title Commitment or Survey, specifying those matters

shown on the Title Commitment or Survey which render title unmarketable or are otherwise unacceptable to City and to which City objects (the "Objections Letter"). All matters shown on the Title Commitment or Survey, or would have been disclosed by such a title commitment or survey, or which are disclosed by the title information attached as **Exhibit "C"**, which are not made the subject of the Objections Letter shall be "Permitted Exceptions."

(d) KEYS shall have no obligation to cure any objection to title or the Survey raised by City in its Objections Letter. If City gives its Objections Letter within the time period specified above, however, KEYS, at its option, in its sole and absolute discretion, shall have the right to attempt to cure any title or Survey objection. In the event KEYS is unable or elects not to cure any title or survey objection properly and timely made by City, KEYS may so notify City ("Title Response"), within ten (10) days of KEYS's receipt of the Objections Letter, and City shall have the right, within ten (10) days of City's receipt of KEYS's Title Response, or within ten (10) days of the date of City's Objections Letter if KEYS has not timely provided a KEYS's Title Response, to either (i) terminate this Agreement and, upon such termination, this Agreement, shall terminate except for the rights, obligations and liabilities of the Parties that expressly survive the termination of this Agreement, or (ii) waive any and all title or Survey objections and proceed to Closing. In the event KEYS does not timely respond to City's Objections Letter, KEYS shall be deemed to have elected not to cure any title or Survey objections. Notwithstanding anything herein to the contrary, KEYS shall not be required to cure any of City's objections to title or the Survey.

(e) City may elect to obtain, at its expense, updates to the Title Commitment at any time prior to Closing. If such an update reveals any matter encumbering the Property rendering title unmarketable, or otherwise unacceptable to City and not appearing on the Survey, then City shall give KEYS written notice thereof within ten (10) days after receipt of such updated Title Commitment, specifying such matters shown on the Title Commitment which render title unmarketable or are otherwise unacceptable to City and to which City objects ("New Objections"). All matters shown on any updated Title Commitment which are not made the subject of the New Objections shall be included within the definition of "Permitted Exceptions." City shall not be entitled to object to matters of title or survey caused by or arising from or through City. KEYS shall have no obligation to cure any objection to title. If City gives notice of New Objections within the time period specified above, KEYS, at its option, in its sole and absolute discretion, shall have the right to attempt to cure any title objection properly and timely made by City if KEYS elects to do so. In the event KEYS is unable or elects not to cure any title objection properly and timely made by City, KEYS may so notify City, within ten (10) days of KEYS's receipt of the New Objections and City shall have the right, within ten (10) days of City's receipt of KEYS's notice electing not to cure any New Objections, or within ten (10) days of the date of City's notice of New Objections if KEYS has not timely provided a response to City's notice of New Objections, to either (i) terminate this Agreement and, upon such termination, this Agreement, shall terminate except for the rights, obligations and liabilities of the Parties that expressly survive the termination of this Agreement, or (ii) waive any and all title objections and proceed to Closing. In the event KEYS does not timely respond to City's notice of New Objections, KEYS shall be deemed to have elected not to cure any title objections. Notwithstanding anything herein to the contrary, KEYS shall not be required to cure any of City's objections to title.

(f) City may elect to obtain, at its expense, updates to the Survey at any time prior to Closing. In the event City's update of the Survey reveals new matters, not previously disclosed by the Survey or Title Commitment or any update to the Title Commitment, rendering title unmarketable or are otherwise unacceptable to City, the same notice and cure rights as set forth above relating to title shall apply to any such new Survey matters, including City's right to terminate this Agreement as set forth above. However, City shall not be entitled to object to matters of title or survey caused by or arising from or through City.

4. **Due Diligence Period.**

(a) City shall have a maximum period of thirty (30) days, beginning on the Effective Date (the "Due Diligence Period") during which time City and its employees, agents, contractors, engineers, surveyors and representatives (collectively, "Consultants") shall have the right to enter the Property to make inspections, surveys, soil analysis and other non-invasive tests, studies and surveys, including without limitation, environmental tests, and analysis and studies within the Property, provided City has given KEYS reasonable prior notice in each instance. KEYS may, at its election, have a representative or agent present during City's or its Consultants' access of the Property. KEYS and its agents and representatives shall reasonably cooperate with City and the Consultants in connection with any test or inspection. Notwithstanding the foregoing, City may engage an environmental engineering firm to perform Phase I and, if reasonably necessary, Phase II environmental studies of the Property. However, if any such test or study requires test boring(s) or other intrusions into the Property or which testing would otherwise damage or disturb any portion of the Property or any existing infrastructure or improvements (collectively, the "Improvements") thereon, City shall obtain KEYS's prior written consent thereto, which consent shall not be unreasonably withheld. If KEYS approves any such testing, by any Consultant, City shall be responsible for, and shall dispose of, all such test samples in accordance with applicable law at no cost or liability to KEYS. City shall provide to KEYS copies of any and all independent tests, studies or test results obtained after the Effective Date and relating to the Property as soon as practical after City's receipt thereof.

(b) In accessing the Property to perform tests and studies as permitted under this Section, City shall not interfere unreasonably with KEYS or KEYS's agents. City shall bear the cost of all inspections or tests undertaken by the Consultants and shall be responsible for properly disposing of any wastes generated by those tests. The Property shall be restored by City or the Consultants to its original condition as of the Effective Date, at City's or the Consultants' sole expense following any site work by City or any Consultant.

(c) To the fullest extent permitted by law, City hereby indemnifies, exonerates, releases, will defend and hold harmless KEYS, and its affiliates, successors and assigns, and their officers, elected and unelected officials, directors, attorneys, insurers, employees, agents, from and against any and all losses, liabilities, damages, claims, demands, actions, judgments, suits, fines, penalties, costs or expenses (including but not limited to reasonable consultants and attorneys' fees, or injuries to any persons or property) (collectively, "Claims") arising out of or resulting from (a) acts or omissions of City or its Consultants arising in any way from or relating to the Property; (b) the use, occupancy and presence of City or its Consultants, within the Property; and (c) any liens, charges or other encumbrances which may be filed or asserted against the Property due to the failure of City to pay when due all bills incurred, arising from City or its Consultant's access to the Property. City's obligations under this indemnification provision shall survive any expiration or termination of this Agreement. This obligation to indemnify, exonerate, release, defend and hold harmless includes, without limitation, third-party claims for contribution, reasonable attorneys' fees, claims for injury or alleged injury of any kind to any persons (including, but not limited to, death) and for any violation or alleged violation of any federal, state or local environmental, health or safety laws or any "release" or "threatened release" of any Hazardous Substance on the Property. For purposes hereof, the term "Hazardous Substance" shall mean all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA", or state super lien or environmental clean-up statutes. Nothing herein shall be deemed to be a waiver of sovereign immunity, as more fully described in Section 26 below.

(d) City shall keep the Property free and clear of any construction, mechanics' or materialmen's liens related to City's right of inspection and City's activities contemplated by this Agreement.

(e) City acknowledges that it has received copies of the items attached as **Exhibit "D"** from KEYS relating to the Property ("Due Diligence Items"). Notwithstanding anything in this Agreement to the contrary, City acknowledges and agrees that KEYS makes no representations or warranties as to the completeness or accuracy of any of the Due Diligence Items and that City shall rely exclusively on its own investigation of the Property.

(f) If, prior to the end of the Due Diligence Period, City finds any information or conditions relating to the Property that are objectionable to City, in City's sole and absolute discretion, City shall have the right to terminate this Agreement by giving written notice of termination to KEYS by no later than the end of the Due Diligence Period and, in such case, neither KEYS nor City shall have any further rights, obligations or liabilities under or in connection with this Agreement, except for the rights, obligations and liabilities of the Parties that expressly survive the termination of the Agreement.

5. **Closing.** Subject to extensions as provided elsewhere in this Agreement, and provided that all conditions precedent to the Parties' obligations to close set forth in this Agreement have been satisfied or waived in writing, the closing of the transaction contemplated by this Agreement (the "Closing") shall be held within twenty (20) days from the expiration of the Due Diligence Period (the "Closing Date"). Notwithstanding anything in this Agreement to the contrary, as an outside maximum date, the Closing Date shall be on or before August 31, 2017. The Closing shall take place at the offices of KEYS at such time of day as may be mutually agreed upon by the Parties hereto. Neither Party shall be required to attend the Closing. Instead, the Closing may take place by means of an escrow arrangement pursuant to which each Party shall deliver to Title Company all fully executed documents and funds required by this Agreement, together with any desired escrow instructions that are not inconsistent with this Agreement.

6. **Closing Conditions.**

(a) The Parties will execute and deliver documents reasonably necessary to consummate the sale-purchase transaction of the Property contemplated by the Agreement, including without limitation:

(i) A quit claim deed ("Deed") from KEYS, in the form attached as **Exhibit "E"**;

(ii) A quit claim Bill of Sale "(Bill of Sale)" from KEYS and accepted by the City, in the form attached as **Exhibit "F"**;

(iii) A closing statement executed by all Parties evidencing the financial terms of the transaction ("Closing Statement");

(iv) Duly executed certificate that KEYS is not a "foreign person" within the meaning of the Internal Revenue Code for the purposes of substantiating exemption from the withholding provisions of the Foreign Investment in Real Property Tax Act;

(v) Instruments in form and substance satisfactory to KEYS evidencing the status, capacity and authority of City and its representatives to consummate the transaction contemplated by this Agreement; and

(vi) Instruments in form and substance satisfactory to City evidencing the status, capacity and authority of KEYS and its representatives to consummate the transaction contemplated by this Agreement; and

(vii) Duly executed owner's affidavit, in form attached as **Exhibit "G"**.

(b) KEYS shall be responsible solely for the payment of its own legal fees incurred prior to or at the time of Closing.

(c) City shall pay all closing costs and expenses of any kind other than KEYS's own attorney's fees, including, without limitation, City shall be responsible for the payment of the following items prior to or at the time of Closing: (i) all recording fees payable in connection with the transfer KEYS's interest in the Property; (ii) documentary stamp tax due in connection with the recording of the Deed, if any; (iii) all title premiums or search charges for the Title Commitment and title policies, (iii) the costs of any survey obtained by City, (vi) any costs associated with due diligence investigation, and (v) City's own legal fees.

(d) There shall be no proration of any ad valorem and similar taxes and assessments, if any, relating to the Property and KEYS will not be responsible for any ad valorem taxes or any assessments.

7. **Representations and Warranties.**

(a) KEYS's representations and Warranties. KEYS represents and warrants to City as follows:

(i) KEYS has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement and the other agreements and documents to be executed and delivered by KEYS pursuant to the provisions of this Agreement have been duly authorized.

(ii) This Agreement has been duly executed and delivered on behalf of KEYS and is a legal, valid, and binding obligation of KEYS enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights.

(iii) There are no actions, suits, proceedings or investigations, either at law or in equity, or before any commission or other administrative authority in any United States or foreign jurisdiction, of any kind now pending or, to KEYS's knowledge, threatened or proposed in any manner, or any circumstances which should or could reasonably form the basis of any such action, suit, proceeding or investigation, involving KEYS or any of its respective properties or assets that: (i) questions the validity of this Agreement; or (ii) seeks to delay, prohibit or restrict in any manner any action taken or contemplated to be taken by KEYS under this Agreement.

(b) City's Representations and Warranties. City hereby represents and warrants to KEYS as follows:

(i) City is a municipal corporation existing and operating under the laws of the State of Florida and has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement and the other agreements and documents to be executed and delivered by City pursuant to the provisions of this Agreement have been duly authorized.

(ii) This Agreement has been duly executed and delivered on behalf of City and is a legal, valid, and binding obligation of City enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights.

(iii) There are no actions, suits, proceedings or investigations, either at law or in equity, or before any commission or other administrative authority in any United States or foreign jurisdiction, of any kind now pending or, to City's knowledge, threatened or proposed in any manner, or any circumstances which should or could reasonably form the basis of any such action, suit, proceeding or investigation, involving City or any of its respective properties or assets that: (i) questions the validity of this Agreement; or (ii) seeks to delay, prohibit or restrict in any manner any action taken or contemplated to be taken by City under this Agreement.

(iv) City is purchasing the Property solely in reliance on its own investigation, analysis, and inspections of the Property and not on any information, representation, or warranty provided, or to be provided, by KEYS or KEYS's employees, representatives, agents or assigns.

(v) Neither KEYS, nor KEYS's employees, representatives, agents or assigns, have made any representations or warranties, express or implied, relating to the condition, status, or suitability of the Property.

8. **Agents.** KEYS and City each represent and warrant to the other that it has not engaged the services of any agent, broker, or other similar party who is seeking a commission in connection with this transaction.

9. **Notices.**

(a) Any notice under this Agreement shall be in writing and shall be deemed to have been served and received (i) when delivered in person to the address set forth below for the party to whom the notice is given, (ii) within 3 business days if placed in the United States mail, return receipt requested, addressed to such party at the address specified below, (iii) the next business day if deposited into the custody of FedEx Corporation to be sent by FedEx Overnight Delivery or other reputable overnight carrier for next day delivery, addressed to the party at the address specified below, or (iv) upon transmission if electronically transmitted to the party at the email address or telecopy number listed below, provided that the electronic transmission is confirmed by the recipient on the date of the transmission.

If to KEYS:

Utility Board of City of Key West, Florida
1001 James Street
Key West, Florida 33040
Attn: Chief Executive Officer
and General Manager
Email: lynne.tejeda@keysenergy.com

with copy to:

Carlton Fields Jordan Burt, P.A.
450 South Orange Avenue, Suite 500
Orlando, Florida 32801
Attn: Daniel L. DeCubellis
Email: ddecubellis@carltonfields.com

If to City:

City of Key West, Florida
1300 White St.
Key West, Florida 33040
Attn: James K. Scholl, City Manager

With copy to:

City Attorney's Office
Attn: George B. Wallace, Assistant City Attorney
P. O. Box 1409
Key West, FL 33041-1409
Email: gwallace@cityofkeywest-fl.gov

From time to time any Party may designate another address or email address under this Agreement by giving the other Party advance written notice of the change.

10. **Termination, Default, Remedies, Extensions and Authority to Execute.**

(a) If, (i) this Agreement is not duly executed by the City and an executed copy delivered to Keys on or before June 10, 2017, and (ii) this Agreement is not duly executed by Keys on or before July 14, 2017, then this Agreement will automatically terminate and be of no further force or effect.

(b) The City hereby appoints its City Manager and KEYS hereby appoints its Chief Executive Officer as their respective agents and empowers them to extend any deadline or time period in this Agreement by a period of thirty (30) days, but such extensions may not result in a cumulative total delay of more than ninety (90) days in the Closing Date. The time line attached as **Exhibit "H"** is made a part of this Agreement and outlines the deadlines and critical dates set forth in this Agreement.

(c) The City hereby appoints its City Manager and KEYS hereby appoints its Chief Executive Officer as their respective agents and empowers them to execute the Closing Statement and any other instruments he or she deems necessary or expedient to accomplish the transaction described in this Agreement, including on the part of KEYS, without limitation, the execution of the certificate as to non-foreign status required by Section 6 (a) (iii).

(d) If City fails or refuses to consummate the purchase of the Property pursuant to this Agreement on or before the date of Closing for any reason other than KEYS's prior failure to perform KEYS's obligations under this Agreement, then KEYS, as KEYS's sole and exclusive remedy, shall have the right to terminate this Agreement by giving written notice thereof to City on or before the date of Closing, whereupon neither Party hereto shall have any further rights or obligations hereunder except those which expressly survive termination of the Agreement.

(e) If KEYS fails or refuses to consummate the sale of the Property pursuant to this Agreement on or before the date of Closing or fails to perform any of KEYS's obligations hereunder for any reason other than due to City's prior failure to perform City's obligations under this Agreement, then City, at City's option, shall have the right to terminate this Agreement by giving written notice thereof to KEYS on or before the date of Closing, and thereafter neither Party hereto shall have any further rights or obligations hereunder except those which expressly survive termination of the Agreement.

(f) In no event shall City or KEYS be liable for any special, indirect, punitive, exemplary, incidental or consequential loss or damages of any nature howsoever caused, and whether based on contract, tort (including negligence), indemnity, strict liability or any other theory of the law.

(g) Prior to either City or KEYS declaring a default under this Agreement (other than a default in the nature of the failure of a Party to close, for which no cure period shall apply), the non-defaulting Party shall send written notice of the default to the defaulting Party. The defaulting Party shall have a period of ten (10) days after receipt of the notice of default to cure such default. Neither City nor KEYS shall be entitled to any of the remedies set forth in this Section prior to the sending of a notice of default to the defaulting Party and the allowance of an opportunity to cure such default within ten (10) days after the receipt of the notice by the defaulting Party.

11. **Indemnification.** City shall defend, exonerate, indemnify and hold harmless KEYS, its employees, representatives, agents and assigns from and against all causes of action, claims, debts, losses, damages, demands, liabilities, injuries, fines, penalties, costs, and expenses, suits or obligations of any and every nature whatsoever to the extent arising out of, or in any manner connected with, or relating to, the Property. This Section shall survive the Closing or termination of this Agreement.

12. **Entire Agreement.** This Agreement and any written addenda and all exhibits hereto (which are expressly incorporated herein by this reference) shall constitute the entire agreement between City and KEYS; no prior written or prior or contemporaneous oral promises or representations shall be binding. All prior understandings and agreements between the Parties with respect to the subject matter of this Agreement are merged within this Agreement, which alone fully and completely sets forth the understanding of the Parties with respect thereto. This Agreement shall not be amended, changed or extended except by written instrument signed by both parties hereto.

13. **Successors and Assigns.** Subject to the restrictions on transfer set forth in this Agreement, this Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties hereto. This Agreement is for the sole benefit of the Parties hereto and no other person or entity shall be a third party beneficiary hereunder.

14. **Assignment.** This Agreement is personal to KEYS and City and KEYS and City shall not be entitled to assign such rights under this Agreement. If City makes a request to assign this Agreement, then KEYS may deny such request for any reason or for no reason as it is the intent of the parties that the City become the owner of the Property, rather than any assignee and this Agreement is structured to be a benefit to the City and would not have been so structured for any other buyer. Further, no assignment shall cause a release of City's obligations pursuant to this Agreement. Subject to the restrictions on transfer set forth herein, this Agreement shall be binding upon and inure to the benefits of the successors and assigns of the Parties hereto.

15. **Time of the Essence.** Time is of the essence under this Agreement.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

17. **Attorneys' Fees.** If any action or proceeding is commenced by either Party to enforce their rights under this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the substantially prevailing Party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to recover costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, and court costs, in addition to any other relief awarded by the court. The provisions of this Section will survive the Closing or the termination of this Agreement.

18. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

19. **Business Days.** If the date of Closing or the day for performance of any act required under this Agreement falls on a Saturday, Sunday, or legal holiday, then the date of Closing or the day for such performance, as the case may be, shall be the next following regular business day.

20. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but which together will constitute one instrument.

21. **Disclaimer.** THE CITY ACKNOWLEDGES AND AGREES THAT THE CITY WILL PURCHASE AND ACCEPT THE PROPERTY, AND HAS PURCHASED AND ACCEPTED THE PROPERTY, IN ITS AND THEIR "AS IS" AND "WHERE IS" CONDITIONS, WITH ALL FAULTS, AND THAT, EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, KEYS HAS MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROPERTY, THE GROUNDWATER LOCATED IN OR UNDER ANY PORTION OF THE PROPERTY, OR THE AIR LOCATED ABOVE ANY PORTION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PHYSICAL OR ENVIRONMENTAL CONDITION OF ANY PORTION OF THE PROPERTY, THE GROUNDWATER LOCATED IN OR UNDER ANY PORTION OF THE PROPERTY, OR THE AIR LOCATED ABOVE ANY PORTION OF THE PROPERTY, THE VALUE OF ANY PORTION OF THE PROPERTY, THE SUITABILITY OF ANY PORTION OF THE PROPERTY, THE GROUNDWATER LOCATED IN OR UNDER ANY PORTION OF THE PROPERTY, OR THE AIR LOCATED ABOVE ANY PORTION OF THE PROPERTY FOR THE CITY'S INTENDED USE, OR THE FEASIBILITY OF THE CITY'S INTENDED USE. IN ENTERING INTO THIS ADDENDUM, THE CITY HAS NOT RECEIVED AND THE CITY HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY BY OR ON BEHALF OF KEYS, OR ITS DIRECTORS, ELECTED OR APPOINTED OFFICIALS, OFFICERS, MEMBERS, EMPLOYEES, CONSULTANTS, AFFILIATES, PREDECESSORS, ATTORNEYS OR AGENTS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN. THE CITY MADE ITS OWN INVESTIGATION OF THE PROPERTY PRIOR TO PURCHASE AND SHALL UTILIZE THE DUE DILIGENCE PERIOD TO MAKE ITS OWN INVESTIGATION AND DETERMINATION AS TO THE ACCURACY OR ACCEPTABILITY OF ANY AND ALL MATTERS REGARDING THE PROPERTY, THE GROUNDWATER LOCATED IN OR UNDER THE PROPERTY, THE AIR LOCATED ABOVE THE PROPERTY, AND THE CITY'S INTENDED USE OF THE PROPERTY, THE GROUNDWATER LOCATED IN OR UNDER THE PROPERTY, AND THE AIR LOCATED ABOVE THE PROPERTY. The provisions of this Section shall survive the Closing or any termination of the Agreement and shall run with the title to the Property.

22. **Release.** The City, for itself and its elected and appointed officials, officers, employees, agents, representatives, predecessors, successors or assigns (collectively, the “**Releasors**”), completely releases and forever discharges KEYS and each of its members, elected and appointed officials, directors, officers, employees, agents, attorneys, representatives, consultants, affiliates, predecessors, successors, and assigns, individually and together, (collectively, the “**Releasees**”), and the Releasors shall hold the Releasees harmless, from any and all types of claims, including, without limitation, past, present, and future demands, complaints, actions, causes of action, suits, judgments, executions, attachments, levies, garnishments, debts, liabilities, profits, bonuses, royalties, reimbursements, obligations, costs, expenses, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, and contribution, and compensation, of any nature whatsoever, at law or in equity, whether based on tort, statute, strict liability, or contract, whether for compensatory, special, punitive, statutory, or any other damages or remedies, and regardless of whether such claims are known or presently unknown to the City or any other Releasor, which the City or any other Releasor now has or might hereafter have against any or all of the Releasees arising out of, or related to, the condition of any portion of the Property, the groundwater located in or under any portion of the Property, or the air located above any portion of the Property, any use made of any portion of the Property, the groundwater located in or under any portion of the Property, or the air located above any portion of the Property, or any activity conducted or not conducted by the Releasees, or any of them, on or with regard to any portion of the Property, the groundwater located in or under any portion of the Property, or the air located above any portion of the Property (collectively, the “**Release**”). Without limiting the generality of the foregoing, the Release encompasses any element, chemical, compound, substance, waste, contaminant, pollutant, or other material (including those regulated by, or defined in, any environmental law, rule, or regulation), which was stored, utilized, produced, spilled, leaked, or released at, or which originated, flowed, discharged, or emanated from, within, under or above, any of the Property, any other material that could present a risk to human health or the environment, or any other substances whatsoever from, within, under or above any portion of the Property. Without limiting the generality of the foregoing, the Release also encompasses any increased levels or concentrations of any materials or substances in, on or under any portion of the Property, the groundwater located in or under any portion of the Property, or the air located above any portion of the Property, as compared to the levels or concentrations of such materials or substances that may have existed prior to any activities that have disturbed the natural surface of any such portion of the Property, and any spillage, leakage, release, emanation, or dispersal, or any exacerbation thereof, which may result or have resulted from any activities carried out or permitted at any time before or following the Closing by the Releasees, or any of them, in, on or under any portion of the Property, the groundwater located in or under any portion of the Property, or the air located above any portion of the Property. The provisions of this Section shall survive the Closing or any termination of the Agreement and shall run with the title to the Property.

23. **Assumption of the Risk, Waiver, Estoppel, and Covenant not to Sue.** The City represents, warrants, covenants, and agrees that it has had the opportunity, directly and through its lawyers to, among other things, investigate the material issues and facts relating to this Agreement, conduct any investigation, and consult with experts retained by it or its lawyers. Accordingly, after consulting with its lawyers regarding this Agreement, the Release, and all matters contemplated by this Agreement, the City, for itself and all other Releasors, hereby knowingly, willingly, and expressly: (a) assumes any and all risks associated with participating in this Agreement and providing the Release, and (b) waives all rights relating to any claims against the Releasees as provided in the Release, even if (i) the City or any other Releasor does not know or suspect that any such claim exists, whether through oversight, error, impossibility of knowledge, or any other reason, (ii) any such claim does not currently exist but, instead, is discovered or accrues in the future, or (iii) the City’s or any other Releasor’s knowledge or lack of knowledge regarding any claim - whether present or future, known or unknown -

would have affected in any way whatsoever the City's decision to participate in this Agreement or to provide the Release. Additionally, the City acknowledges and agrees that KEYS has reasonably relied and will rely on the City's representations, warranties, covenants, agreements, and promises as set forth in this Agreement and the Release. Consequently, the City, for itself and all other Releasors, acknowledges and agrees that it and they are estopped from ever asserting any claims against KEYS or any other Releasee for any matter described in the Release. Accordingly, the City, for itself and all other Releasors, represents, warrants, covenants, and agrees that it and they will never sue KEYS or any other Releasee for any claim, or allow any other person or organization to do so on its or their behalf, in connection with a matters described in the Release. The provisions of this Section shall survive the Closing or any termination of the Agreement and shall run with the title to the Property.

24. **Investigation.** City represents and warrants that City will inspect and conduct tests and studies of the Property, and that City will become familiar, in all respects, with the condition of the Property. City represents and warrants that City is acting, and will act only, upon information obtained by City directly from City's own inspection of the Property and that no person acting on behalf of KEYS is authorized to make, and that no person has made, any representation, agreement, statement, warranty, guarantee or promise regarding the Property or the transaction contemplated herein or the zoning, construction, physical condition or other status of the Property except as may be expressly set forth in this Agreement.

25. **Waiver of Trial By Jury.** CITY AND KEYS HEREBY AGREE AS FOLLOWS: (A) EACH OF THEM KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION (AN "ACTION") BASED UPON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY RELATED DOCUMENTS, INSTRUMENTS, OR AGREEMENTS (WHETHER ORAL OR WRITTEN AND WHETHER EXPRESS OR IMPLIED AS A RESULT OF A COURSE OF DEALING, A COURSE OF CONDUCT, A STATEMENT, OR OTHER ACTION OF EITHER PARTY); (B) NEITHER OF THEM MAY SEEK A TRIAL BY JURY IN ANY SUCH ACTION; (C) NEITHER OF THEM WILL SEEK TO CONSOLIDATE ANY SUCH ACTION (IN WHICH A JURY TRIAL HAS BEEN WAIVED) WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED; AND (D) NEITHER OF THEM HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER OF THEM THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

26. **Sovereign Immunity.** KEYS's and City's limits of liability are set forth in section 768.28, Florida Statutes, and nothing herein shall be construed to extend the liabilities of the Parties beyond that provided in section 768.28, Florida Statutes. Further, nothing herein is intended as a waiver of the Parties' sovereign immunity under section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to, anything which might allow claims otherwise barred by sovereign immunity or operation of law.

27. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department.

28. **Lead Based Paint.** City acknowledges that the Property may contain Lead Based Paint and represents and warrants to KEYS that any and all such lead based paint will be remediated to applicable governmental standards before the Property is occupied.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused these presents to be executed on the day and year indicated below.

“KEYS”

**UTILITY BOARD OF CITY OF KEY WEST,
FLORIDA** d/b/a Keys Energy Services

By: _____
Name: _____
Title: _____
Date: _____

“CITY”

CITY OF KEY WEST, FLORIDA, a municipal corporation under the laws of the State of Florida

By: _____
Name: _____
Title: _____
Date: _____