

EQUITY PURCHASE AGREEMENT

EQUITY PURCHASE AGREEMENT (this "**Agreement**") dated as of February 26, 2015 between Pacolet Milliken Enterprises, Inc., a Delaware corporation ("**Buyer**") and Ni America Capital Management LLC ("**Seller**"), relating to the purchase and sale of 100% of the equity interests of each of Ni South Carolina Utilities Inc., a Delaware corporation ("**Ni South Carolina Inc.**"), Ni South Carolina LLC, a Delaware limited liability company ("**Ni South Carolina LLC**", and together with Ni South Carolina Inc., the "**Ni South Carolina Companies**"), Ni Florida, LLC, a Delaware limited liability company ("**Ni Florida**"), Ni America Texas, LLC, a Delaware limited liability company ("**Ni Texas**") and Ni America Operating, LLC, a Delaware limited liability company ("**Ni America**", and together with the Ni South Carolina Companies, Ni Florida and Ni Texas, the "**Companies**"). Buyer and Seller are each referred to herein as a "**Party**" and, collectively, as the "**Parties**."

W I T N E S S E T H :

WHEREAS, Seller is the record and beneficial owner of all the issued and outstanding shares of capital stock of Ni South Carolina Inc. and all the issued and outstanding membership interests of Ni South Carolina LLC, Ni Florida, Ni Texas and Ni America (collectively, the "**Equity Interests**"), and Seller desires to sell all of the Equity Interests to Buyer, and Buyer desires to purchase all of the Equity Interests from Seller, upon the terms and subject to the conditions set forth herein; and

WHEREAS, the Board of Representatives of Seller and the Board of Directors of Buyer have approved and declared advisable this Agreement and the transactions contemplated hereby, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* (a) As used herein, the following terms have the following meanings:

"**Accounting Policies**" means the accounting policies, principles, practices and methodologies set forth on Exhibit A hereto.

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "**control**" of a Person shall mean the power, direct or indirect, to direct or cause the management and policies of such Person, whether by ownership of voting securities, by contract or otherwise.

“Aggregate Purchase Price” means the sum of the Initial Purchase Price, the Ni Florida Purchase Price and the Ni Texas Purchase Price.

“Applicable Law” means, with respect to any Person, any transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, executive order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person.

“Balance Sheet” means the unaudited consolidated balance sheet of Seller, the Companies and the Company Subsidiaries as of December 31, 2014.

“Balance Sheet Date” means December 31, 2014.

“Borrowing Group” means Palmetto Utilities, Inc., Ni South Carolina Inc., 1710 Woodcreek Farms Road LLC, Ni Florida, Ni Texas, Palmetto of Richland County LLC, and Palmetto Wastewater Reclamation LLC.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

“Closing” means the Initial Closing, the Florida Closing or the Texas Closing, as applicable.

“Closing Date” means the Initial Closing Date, the Florida Closing Date or the Texas Closing Date, as applicable under the circumstances.

“Code” means the U.S. Internal Revenue Code of 1986.

“Company Return” means any Tax Return of, with respect to, or that includes any Company or Company Subsidiary.

“Company Subsidiary” means any Subsidiary of any Company.

“Confidentiality Agreement” means the letter agreement between Buyer and Seller dated as of October 9, 2014.

“Employee Services Agreement” means the employee services agreement by and between Buyer, Ni America and Seller, in the form of Exhibit B hereto.

“Environmental Law” means any Applicable Law that has as its principal purpose the protection of the environment.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“Final Closing Date” means the later of the Texas Closing Date and the Florida Closing Date; *provided* that if (i) the transactions contemplated by Section 2.03 have been terminated in accordance with Section 12.02 the Final Closing Date shall be

deemed to be the later of the Texas Closing Date and the date of such termination, (ii) the transactions contemplated by Section 2.04 have been terminated in accordance with Section 12.03 the Final Closing Date shall be deemed to be the later of the Florida Closing Date and the date of such termination and (iii) if the transaction contemplated by each of Sections 2.03 and 2.04 have been terminated in accordance with Section 12.02 or 12.03 as applicable, the Final Closing Date shall be deemed to be the later of the two termination dates.

“Florida Closing Date” means the date of the Florida Closing.

“Florida Regulatory Approval” means each approval from the Florida Public Service Commission required under Florida Applicable Law (including final approval by the Florida Public Service Commission under Section 367.071, Florida Statutes) in connection with the consummation of the transactions contemplated by this Agreement or the other Transaction Documents.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Authority” means any transnational, or domestic or foreign federal, state, or local, governmental authority, commission, department, court, agency or official, including any political subdivision thereof.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Initial Closing Date” means the date of the Initial Closing.

“Intellectual Property Right” means any trademark, service mark, trade name, mask work, patent, trade secret, copyright, domain name, know how (including any registrations or applications for registration of any of the foregoing) or any other similar type of proprietary intellectual property right.

“knowledge of Seller,” “Seller’s knowledge” or any other similar knowledge qualification in this Agreement means to the actual knowledge of Edward R. Wallace Stan Jones, Andy Thomas and/or Mark S. Daday.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

“Material Adverse Effect” means a material adverse effect on Seller’s ability to consummate the transactions contemplated hereby or on the business, results of operations or financial condition of the Companies and the Company Subsidiaries, taken as whole, except any such effect on the business, results of operations or financial condition resulting from or arising in connection with (i) this Agreement, the other Transaction Documents or the performance of the transactions contemplated hereby or thereby or any announcement hereof or thereof, or any facts or circumstances relating to Buyer, including the impact of any of the foregoing on the relationships, contractual or otherwise, of any of the Companies or the Company Subsidiaries with third parties, (ii) changes or developments affecting the water utility or water services industries generally,

(iii) changes in market or economic conditions generally (including changes in financial, banking and/or securities markets), (iv) changes in political or social conditions generally, including acts of war, sabotage or terrorism that do not damage any property of a Company or a Company Subsidiary, or military actions, or any escalation or worsening thereof, (v) changes in Applicable Law or the interpretation or enforcement thereof, (vi) changes in accounting requirements or principles under GAAP, (vii) any failure (but not the underlying cause of such failure) by any Company or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or any other financial or operating metrics for any period, (viii) actions taken or not taken by Buyer or any of its Affiliates or actions taken by any of the Companies or the Company Subsidiaries with the express permission or at the express request of Buyer or any of its Affiliates or (ix) earthquakes, floods, hurricanes, tornadoes, natural disasters or other "acts of God" that do not damage any property of a Company or a Company Subsidiary.

"Ni LLCs" means each of Ni South Carolina LLC, Ni Florida, Ni Texas and Ni America.

"Ni LLCs' Assets" means the assets that are treated, for U.S. federal income tax purposes, as being sold directly as a result of the sale of the outstanding membership interests of the Ni LLCs contemplated by Article 2hereof.

"Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

"Post-Closing Tax Period" means, with respect to (x) the Ni South Carolina Companies, Ni America and their respective Subsidiaries, (y) Ni Florida and its Subsidiaries or (z) Ni Texas and its Subsidiaries, any Tax period beginning after (a) the Initial Closing Date, (b) the Florida Closing Date or (c) the Texas Closing Date, respectively; and, with respect to a Straddle Tax Period, the portion of such Tax period beginning on and including the day after the applicable Closing Date.

"Pre-Closing Tax Period" means, with respect to (x) the Ni South Carolina Companies, Ni America and their respective Subsidiaries, (y) Ni Florida and its Subsidiaries or (z) Ni Texas and its Subsidiaries, any Tax period ending on or before (a) the Initial Closing Date, (b) the Florida Closing Date or (c) the Texas Closing Date, respectively; and, with respect to a Straddle Tax Period, the portion of such Tax period ending on the applicable Closing Date.

"PSC" means the Public Service Commission of South Carolina.

"Seller Disclosure Schedules" means the disclosure schedules delivered by Seller on the date hereof, which are subject to Section 13.12

"Service Provider Plan" means any "employee benefit plan," as defined in Section 3(3) of ERISA and any employment, severance or similar contract or plan and

each other arrangement providing for compensation, bonuses, profit-sharing, equity-related rights or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangements), health or medical benefits, employee assistance, disability or sick leave benefits, supplemental unemployment benefits, severance benefits, change of control benefits or post-employment or retirement benefits which is maintained, administered or contributed to by any Company or any Company Subsidiary (or which was maintained, administered or contributed to by any Company or any Company Subsidiary and with respect to which any Company or any Company Subsidiary has any liability) and covers any current or former individual service provider of any Company or any Company Subsidiary.

“Straddle Tax Period” means, with respect to (x) the Ni South Carolina Companies, Ni America and their respective Subsidiaries, (y) Ni Florida and its Subsidiaries or (z) Ni Texas and its Subsidiaries, a Tax period that begins on or before the (a) Initial Closing Date, (b) the Florida Closing Date or (c) the Texas Closing Date, respectively, and ends thereafter.

“Subsidiary” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“Tax” means any tax, governmental fee or other like assessment or charge of any kind whatsoever (including, but not limited to, withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount with respect thereto.

“Tax Return” means any Tax return, statement, report, election, declaration, disclosure, schedule or form (including any estimated tax or information return or report) filed or required to be filed with any Taxing Authority.

“Taxing Authority” means any governmental authority (domestic or foreign) responsible for the imposition or collection of any Tax.

“Texas Closing Date” means the date of the Texas Closing.

“Texas Regulatory Approval” means each approval and compliance required under Texas Applicable Law (including any approval required pursuant to Title 13 of the Texas Water Code or Title 30 of the Texas Administrative Code or the rules and regulations promulgated thereunder), administered by and through the Texas Commission on Environmental Quality or the Public Utility Commission, in connection with the transactions contemplated by this Agreement or the other Transaction Documents.

“Transaction Documents” means this Agreement, the Employee Services Agreement and each Assignment and Assumption Agreement contemplated by Article 2 hereof.

“**Transfer Tax**” means any transfer, documentary, sales, use, stamp, registration, value added or other similar Tax (including any penalties and interest).

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Accounting Referee	2.07(b)
Agreement	Preamble
Allocation Statement	2.07(b)
Bonus Payment	8.01(c)
Bonus Payment Date	8.01(c)
Buyer	Preamble
Buyer Indemnified Persons	11.02(a)
Companies	Preamble
Company Securities	3.05
Company Subsidiary Securities	3.07(b)
Continuing Service Providers	8.01(a)
Current Representation	6.03(a)
Damages	11.02(a)
Designated Person	6.03(a)
e-mail	13.01
Eligible Service Provider	8.01(c)
Environmental Matters	3.20(b)
Equity Interests	Recitals
Florida CapEx	5.07
Florida Closing	2.03(a)
Florida Closing End Date	12.02
FL/TX Base Working Capital	2.06(c)
FL/TX Closing Statement	2.05(b)
FL/TX Closing Working Capital	2.05(b)
FL/TX Final Working Capital	2.06(c)
Fundamental Representations	11.01
Indemnified Party	11.03(a)
Indemnifying Party	11.03(a)
Initial Closing	2.02(a)
Initial Closing End Date	12.01(b)
Initial LLC Purchase Price	2.07(b)
Initial Purchase Price	2.01(a)
Ni America	Preamble
Ni Florida	Preamble
Ni Florida Purchase Price	2.01(b)
Ni South Carolina Companies	Preamble
Ni South Carolina Inc.	Preamble
Ni South Carolina LLC	Preamble
Ni Texas	Preamble
Ni Texas Purchase Price	2.01(c)

Term	Section
Parties	Preamble
Party	Preamble
Permits	3.13(b)
Permitted Liens	3.14(h)
Post-Closing Representation	6.03(a)
Potential Contributor	11.06
SC Base Working Capital	2.06(c)
SC Closing Statement	2.05
SC Closing Working Capital	2.05
SC Final Working Capital	2.06(c)
Seller	Preamble
Seller Indemnified Persons	11.02(c)
Tax Contest	7.04(c)
Texas Closing	2.04(a)
Texas Closing End Date	12.03
Third-Party Claim	11.03(a)

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; *provided* that with respect to any agreement or contract listed on any Seller Disclosure Schedules, all such amendments, modifications or supplements must also be listed in the appropriate schedule. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to any statute or law shall be deemed to refer to such statute or law as amended from time to time and to any rules and regulations promulgated thereunder. The term “dollars” and “\$” mean United States Dollars.

ARTICLE 2
PURCHASE AND SALE

Section 2.01. *Purchase and Sale.* Upon the terms and subject to the conditions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Equity Interests. The aggregate purchase price for (a) all of the issued and outstanding shares of capital stock of Ni South Carolina Inc. and all of the issued and outstanding membership interests of Ni South Carolina LLC and Ni America shall be [REDACTED] in cash (the “**Initial Purchase Price**”), (b) all of the issued and outstanding membership interests of Ni Florida shall be [REDACTED] (the “**Ni Florida Purchase Price**”) and (c) all of the issued and outstanding membership interests of Ni Texas shall be \$7,875,000 in cash (the “**Ni Texas Purchase Price**”). The Aggregate Purchase Price shall be subject to adjustment, and each portion of the Aggregate Purchase Price shall be paid, as provided in this Article 2.

Section 2.02. *Initial Closing.* (a) The closing (the “**Initial Closing**”) of the purchase and sale of all of the issued and outstanding shares of capital stock of Ni South Carolina Inc. and all of the issued and outstanding membership interests of Ni South Carolina LLC and Ni America shall take place at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, as soon as possible, but in no event later than the third Business Day after satisfaction or, to the extent legally permissible, waiver by the party entitled to the benefit of, each of the conditions set forth in Article 9 (other than those conditions that, by their terms, are to be satisfied or waived at the Initial Closing, but subject to the satisfaction or waiver of those conditions at the Initial Closing) or at such other time or place as the Parties may mutually agree.

(b) At the Initial Closing, Seller shall:

(i) deliver to Buyer a duly executed Assignment and Assumption Agreement, in the form attached hereto as Exhibit C, transferring all of the issued and outstanding membership interests of South Carolina LLC and Ni America;

(ii) deliver to Buyer certificates representing each of the outstanding shares of capital stock of Ni South Carolina Inc. accompanied by stock powers duly endorsed in blank, with any required transfer stamps affixed thereto;

(iii) deliver (and cause Ni America to deliver) to Buyer a duly executed counterpart to the Employee Services Agreement;

(iv) pay or caused to be paid, on behalf of the applicable borrower, the amount specified in each payoff letter delivered pursuant to Section 2.02(d) (including any amount required to be paid in connection with the termination of any related interest rate swap agreement), by wire transfer of immediately available funds to the account or accounts of such Person set forth in such payoff letter; and

(v) deliver to Buyer a certification, signed by Seller under penalties of perjury, that satisfies the requirements of Section 1.1445 2(b)(2) of the U.S. Treasury Regulations and confirms that such Seller is not a “foreign person” as defined in Section 1445 of the Code.

(c) At the Initial Closing, Buyer shall:

(i) pay to Seller an amount equal to the Initial Purchase Price, by wire transfer of immediately available funds to one or more accounts designated in writing by Seller prior to Closing (it being understood that Seller may direct Buyer to use all or a portion of such Initial Purchase Price to repay all or a portion of the indebtedness listed in Section 2.02(b) of the Seller Disclosure Schedules in fulfillment of Seller’s obligations pursuant to Section 2.02(b)(iv); and

(ii) deliver to Seller a duly executed counterpart to the Employee Services Agreement.

(d) No later than the Business Day prior to the Initial Closing, Seller shall deliver executed payoff letters from the holders of the indebtedness listed in Section 2.02(b) of the Seller Disclosure Schedules (i) reflecting the amounts required in order to pay in full all obligations arising under, and owing in connection with, such indebtedness as of the Initial Closing and (ii) providing that, upon payment in full of the amounts indicated, all Liens granted in connection with such indebtedness shall terminate and be of no further force and effect.

Section 2.03. *Florida Closing.* (a) The closing (the “**Florida Closing**”) of the purchase and sale of all of the issued and outstanding equity interests of Ni Florida shall take place at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, as soon as possible, but in no event later than the third Business Day after satisfaction or, to the extent legally permissible, waiver by the party entitled to the benefit of, each of the conditions set forth in Section 10.01 (other than those conditions that, by their terms, are to be satisfied or waived at the Florida Closing, but subject to the satisfaction or waiver of those conditions at the Florida Closing) or at such other time or place as the Parties may mutually agree.

(b) At the Florida Closing:

(i) Seller shall deliver to Buyer a duly executed Assignment and Assumption Agreement, in the form attached hereto as Exhibit D, transferring all of the issued and outstanding membership interests of Ni Florida; and

(ii) Buyer shall pay to Seller an amount equal to the Ni Florida Purchase Price, by wire transfer of immediately available funds to an account designated in writing by Seller prior to the Florida Closing; and

(iii) Seller shall deliver to Buyer a certification, signed by Seller under penalties of perjury, that satisfies the requirements of Section 1.1445 2(b)(2) of

the U.S. Treasury Regulations and confirms that such Seller is not a “foreign person” as defined in Section 1445 of the Code.

Section 2.04. *Texas Closing.* (a) The closing (the “**Texas Closing**”) of the purchase and sale of all of the issued and outstanding equity interests of Ni Texas shall take place at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, as soon as possible, but in no event later than the third Business Day after satisfaction or, to the extent legally permissible, waiver by the party entitled to the benefit of, each of the conditions set forth in Section 10.02 (other than those conditions that, by their terms, are to be satisfied or waived at the Texas Closing, but subject to the satisfaction or waiver of those conditions at the Texas Closing) or at such other time or place as the Parties may mutually agree.

(b) At the Texas Closing:

(i) Seller shall deliver to Buyer a duly executed Assignment and Assumption Agreement, in the form attached hereto as Exhibit E, transferring all of the issued and outstanding membership interests of Ni Texas;

(ii) Buyer shall pay to Seller an amount equal to the Ni Texas Purchase Price, by wire transfer of immediately available funds to an account designated in writing by Seller prior to the Texas Closing; and

(iii) Seller shall deliver to Buyer a certification, signed by Seller under penalties of perjury, that satisfies the requirements of Section 1.1445-2(b)(2) of the U.S. Treasury Regulations and confirms that such Seller is not a “foreign person” as defined in Section 1445 of the Code.

Section 2.05. *Closing Balance Sheets.* (a) As promptly as practicable, but no later than 60 days, after the Initial Closing Date, Buyer shall prepare and deliver to Seller a statement (the “**SC Closing Statement**”) setting forth Buyer’s calculation of SC Closing Working Capital, which SC Closing Statement shall be substantially in the form attached as Exhibit F hereto (with only those line items set forth therein) and prepared in accordance with the Accounting Policies. “**SC Closing Working Capital**” means the excess or deficit as of the Initial Closing of consolidated current assets over consolidated current liabilities of the Ni South Carolina Companies and Ni America and their respective Company Subsidiaries (reflecting, for the avoidance of doubt, only those line items set forth on Exhibit F), excluding the effect (including the Tax effect) of any act, event or transaction after the Initial Closing. If in connection with the preparation of the SC Closing Statement or the calculation of SC Closing Working Capital, any errors or omissions are discovered with respect to any item that affects the amount of consolidated working capital (as adjusted) on the Balance Sheet, then (solely for purposes of this Article 2) the Balance Sheet, SC Closing Statement and SC Base Working Capital shall be appropriately adjusted to correct for the effect of such errors or omissions so that the SC Closing Statement, SC Base Working Capital and SC Closing Working Capital reflect only the passage of time with respect to any such item. All the adjustments to be made in the preceding sentence shall be made in accordance with the Accounting Policies.

(b) As promptly as practicable, but no later than 60 days, after the later to occur of the Florida Closing and the Texas Closing (or, if a termination occurs pursuant to Section 12.02 or 12.03, the later to occur of the Florida Closing (in the case of a termination pursuant to Section 12.03) and such termination or the later to occur of the Texas Closing (in the case of a termination pursuant to Section 12.02) and such termination), Buyer shall prepare and deliver to Seller a statement (together, the “**FL/TX Closing Statement**”) setting forth Buyer’s calculation of FL/TX Closing Working Capital, which FL/TX Closing Statement shall be substantially in the form attached as Exhibit F hereto (with only those line items set forth therein) and prepared in accordance with the Accounting Policies. “**FL/TX Closing Working Capital**” means the excess or deficit as of the Florida Closing and the Texas Closing, as applicable, of consolidated current assets over consolidated current liabilities of Ni Florida and Ni Texas and their respective Company Subsidiaries (reflecting, for the avoidance of doubt, only those line items set forth on Exhibit F), excluding the effect (including the Tax effect) of any act, event or transaction after the Florida Closing (in the case of Ni Florida and its Company Subsidiaries) and/or the Texas Closing (in the case of Ni Texas and its Company Subsidiaries). If in connection with the preparation of the FL/TX Closing Statement or the calculation of FL/TX Closing Working Capital, any errors or omissions are discovered with respect to any item that affects the amount of consolidated working capital (as adjusted) on the Balance Sheet, then (solely for purposes of this Article 2) the Balance Sheet, FL/TX Closing Statement and FL/TX Base Working Capital shall be appropriately adjusted to correct for the effect of such errors or omissions so that the FL/TX Closing Statement, FL/TX Base Working Capital and FL/TX Closing Working Capital reflect only the passage of time with respect to any such item. All of the adjustments to be made in the preceding sentence shall be made in accordance with the Accounting Policies. Notwithstanding the foregoing if a termination occurs pursuant to Section 12.02 then the FL/TX Closing Statement shall be prepared, and FL/TX Closing Working Capital shall be calculated, without regard to Ni Florida and its Company Subsidiaries, and if a termination occurs pursuant to Section 12.03, then the FL/TX Closing Statement shall be prepared, and FL/TX Closing Working Capital shall be calculated, without regard to Ni Texas and its Company Subsidiaries.

(c) If Seller disagrees with Buyer’s calculation of SC Closing Working Capital delivered pursuant to Section 2.05(a) or FL/TX Closing Working Capital delivered pursuant to Section 2.05(b), Seller may, within 60 days after delivery of the documents referred to in Section 2.05(a) or Section 2.05(b) respectively, deliver a notice to Buyer which specifies Seller’s calculation of SC Closing Working Capital or FL/TX Closing Working Capital, as applicable, and, in reasonable detail, Seller’s grounds for such disagreement. Any such notice of disagreement shall specify those items or amounts as to which Seller disagrees, and Seller shall be deemed to have agreed with all other items and amounts contained in the SC Closing Statement or FL/TX Closing Statement, as applicable, and the calculation of SC Closing Working Capital or FL/TX Closing Working Capital delivered pursuant to Section 2.05(a) or Section 2.05(b) respectively.

(d) If a notice of disagreement shall be duly delivered pursuant to Section 2.05(c), Buyer and Seller shall, during the 15 days following such delivery, use their

commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine the amount of SC Closing Working Capital or FL/TX Closing Working Capital, as applicable. If Buyer and Seller are unable to reach such agreement during such period, they shall promptly thereafter cause independent accountants of nationally recognized standing reasonably satisfactory to Buyer and Seller, promptly to review this Agreement and the disputed items or amounts for the purpose of calculating SC Closing Working Capital or FL/TX Closing Working Capital. In making such calculation, such independent accountants shall consider only those items or amounts as to which Buyer and Seller have failed to reach agreement. Such independent accountants shall deliver to Buyer and Seller, as promptly as practicable, a report setting forth such calculations. Such report shall be final and binding upon Buyer and Seller. The cost of such review and report shall be borne equally by Buyer and Seller.

(e) Buyer and Seller agree that they will, and agree to cause their respective independent accountants and each Company and Company Subsidiary to, cooperate and assist in the preparation of the SC Closing Statement and the FL/TX Closing Statement and the calculation of SC Closing Working Capital and FL/TX Closing Working Capital and in the conduct of the reviews referred to in this Section 2.05, including making available to the extent necessary books, records, work papers and personnel.

(f) For the avoidance of doubt, the calculation of SC Closing Working Capital and FL/TX Closing Working Capital to be made pursuant to this Section 2.05, and the corresponding purchase price adjustment to be made pursuant to Section 2.06 are only meant to reflect any difference, as of the applicable Closing Date, between SC Closing Working Capital or FL/TX Closing Working Capital, as applicable, and SC Base Working Capital or FL/TX Base Working Capital, as applicable. Except as contemplated by the penultimate sentence of Section 2.05(a) or the third-to-last sentence of Section 2.05(b), neither this Section 2.05 nor Section 2.06 is intended to be used to adjust for errors or omissions that may be found with respect to the Balance Sheet or any inconsistencies between the Balance Sheet or the Accounting Policies, on the one hand, and GAAP, on the other, for which Article 11 shall be the sole and exclusive remedy.

Section 2.06. *Adjustment of Purchase Price.* (a) If SC Final Working Capital is less than SC Base Working Capital, the Initial Purchase Price shall be reduced dollar for dollar by the amount by which SC Final Working Capital is less than SC Base Working Capital, with payment of such difference to be made by Seller to Buyer in accordance with Section 2.06(d). If FL/TX Final Working Capital is less than FL/TX Base Working Capital, the Florida Purchase Price and/or Texas Purchase Price, as applicable, shall be reduced dollar for dollar by the amount by which FL/TX Final Working Capital is less than FL/TX Base Working Capital, with payment of such difference to be made by Seller to Buyer in accordance with Section 2.06(d).

(b) If SC Final Working Capital is greater than SC Base Working Capital, the Initial Purchase Price shall be increased dollar for dollar by the amount by which SC Final Working Capital is greater than SC Base Working Capital, with payment of such difference to be made by Buyer to Seller in accordance with Section 2.06(d). If FL/TX Final Working Capital is greater than FL/TX Base Working Capital, the Florida Purchase

Price and/or Texas Purchase Price, as applicable, shall be increased dollar for dollar by the amount by which FL/TX Final Working Capital is greater than FL/TX Base Working Capital, with payment of such difference to be made by Buyer to Seller in accordance with Section 2.06(d).

(c) “**SC Base Working Capital**” means [REDACTED]. “**FL/TX Base Working Capital**” means \$100,000 (or if a termination occurs pursuant to Section 12.02 \$100,000 and if a termination occurs pursuant to Section 12.03 \$0.00). “**SC Final Working Capital**” and “**FL/TX Final Working Capital**” means the SC Closing Working Capital or FL/TX Closing Working Capital, respectively, (i) as shown in Buyer’s calculation delivered pursuant to Section 2.05(a) or Section 2.05(b) as applicable, if no notice of disagreement with respect thereto is duly delivered pursuant to Section 2.05(c) or (ii) if such a notice of disagreement is duly delivered, (A) as agreed by Buyer and Seller pursuant to Section 2.05(d) or (B) in the absence of such agreement, as shown in the independent accountant’s calculation delivered pursuant to Section 2.05(d) *provided that* in no event shall SC Final Working Capital or FL/TX Closing Working Capital be more than Seller’s calculation of SC Closing Working Capital or FL/TX Closing Working Capital, respectively, delivered pursuant to Section 2.05(c) or less than Buyer’s calculation of SC Closing Working Capital delivered pursuant to Section 2.05(a) or FL/TX Closing Working Capital delivered pursuant to Section 2.05(b) respectively.

(d) Any payment pursuant to this Section 2.06 in respect of SC Final Working Capital by Buyer or Seller, as the case may be, shall be made, without duplication, (i) by increasing or decreasing the amount otherwise payable by Buyer to Seller at the Florida Closing pursuant to Section 2.03(b)(ii) (ii) by increasing or decreasing the amount otherwise payable by Buyer to Seller at the Texas Closing pursuant to Section 2.04(b)(ii) or (iii) by wire transfer of immediately available funds at such time as both the Florida Closing and the Texas Closing either occurred (to the extent payment has not been made pursuant to clauses (i) or (ii)) or have been terminated pursuant to Article 12, whichever occurs first after SC Final Working Capital is finally determined pursuant to Section 2.06(c). Any payment pursuant to this Section 2.06 in respect of FL/TX Final Working Capital by Buyer or Seller, as the case may be, shall be made at a mutually convenient time and place, within five Business Days after FL/TX Final Working Capital has been determined, by delivery by Buyer or Seller, as the case may be, by wire transfer of immediately available funds. The amount of any payment to be made pursuant to this Section 2.06 shall bear interest from and including the applicable Closing Date to but excluding the date of payment at a rate per annum equal to the Prime Rate as published in The Wall Street Journal in effect from time to time during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of 365 days and the actual number of days elapsed.

Section 2.07. *Allocation of Purchase Price.* (a) The parties hereby agree that the Initial Purchase Price shall be allocated (i) [REDACTED] to the membership interests of Ni South Carolina LLC and Ni America (the “**Initial LLC Purchase Price**”) and (ii) [REDACTED] to the shares of Ni South Carolina Inc.

(b) As promptly as practicable after determination of SC Final Working Capital or FL/TX Final Working Capital, as the case may be, but not later than 30 days thereafter, Seller shall deliver to Buyer a statement (an “**Allocation Statement**”), allocating the Initial LLC Purchase Price (as adjusted by the amount of the adjustment pursuant to Sections 2.06(a) and 2.06(b) to reflect the determination of SC Final Working Capital that is allocable to the Initial LLC Purchase Price based on the ratio reflected in Section 2.07(a), or the Ni Florida Purchase Price and the Ni Texas Purchase Price (as adjusted pursuant to Sections 2.06(a) and 2.06(b) to reflect the determination of FL/TX Final Working Capital), as the case may be (in each case, plus any liabilities assumed by Buyer in connection with its purchase of the applicable portion of the Equity Interests, to the extent properly taken into account under Section 1060 of the Code) among the relevant Ni LLCs’ Assets in accordance with Section 1060 of the Code. If within 10 days after the delivery of the applicable Allocation Statement Buyer notifies Seller in writing that Buyer objects to the allocation set forth in such Allocation Statement, Buyer and Seller shall use commercially reasonable efforts to resolve such dispute within 20 days. In the event that Buyer and Seller are unable to resolve such dispute within 20 days, Buyer and Seller shall jointly retain an independent accounting firm of national reputation (the “**Accounting Referee**”) to resolve the disputed items (which resolution shall be final and binding on Seller and Buyer). Upon resolution of the disputed items, the allocation reflected on such Allocation Statement shall be adjusted to reflect such resolution. The costs, fees and expenses of the Accounting Referee shall be borne equally by Buyer and Seller. For the avoidance of doubt, if a termination occurs pursuant to Section 12.02, then the allocations described in this Section 2.07(b) shall be made without regard to Ni Florida and its Company Subsidiaries (and the Ni LLC Assets held thereby), and if a termination occurs pursuant to Section 12.03 then the allocations described in this Section 2.07(b) shall be made without regard to Ni Texas and its Company Subsidiaries (and the Ni LLC Assets held thereby).

(c) Each of Seller and Buyer agrees to (i) be bound by the Allocation Statements and (ii) act in accordance with the Allocation Statements in the preparation, filing and audit of any Tax Return (including filing Form 8594 with its federal income Tax Return for the taxable year (or years) that includes the Initial Closing Date, the Florida Closing Date and the Texas Closing Date).

(d) Not later than 30 days prior to the filing of any of their respective Forms 8594 relating to this transaction, each Party shall deliver to the other party a copy of such Form 8594.

(e) In the event that a payment pursuant to Article 11 results in an adjustment to the purchase price for U.S. federal income tax purposes of any Ni LLC Assets, Buyer and Seller agree to allocate such adjustment among the applicable Ni LLC Assets in the manner set forth in this Section 2.07, *mutatis mutandis* (including with respect to the filing of any supplemental Form 8594 to reflect such adjustment).

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Seller Disclosure Schedules, Seller represents and warrants to Buyer that, as of the date hereof, as of the Initial Closing Date and as of the Florida Closing Date (solely with respect to the representations and warranties contained in Section 3.01, Section 3.02, Section 3.05, Section 3.06 and Section 3.07 to the extent relating to Ni Florida and its Subsidiaries) and as of the Texas Closing Date (solely with respect to the representations and warranties contained in Section 3.01, Section 3.02, Section 3.05, Section 3.06 and Section 3.07 to the extent relating to Ni Texas and its Subsidiaries):

Section 3.01. *Corporate Existence and Power.* Seller and each of the Companies is a limited liability company or corporation that is duly formed, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate or other organizational power and authority required to carry on its business as now conducted, except as would not, individually or in the aggregate, materially affect the ability of the Companies to carry on their business as now conducted following the applicable Closing. Each of the Companies is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.02. *Seller Authorization.* The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby are within Seller's powers and have been duly authorized by all necessary action on the part of Seller. Assuming that each Transaction Document constitutes the legal, valid and binding obligation of Buyer, this Agreement constitutes (and upon execution, each of the other Transaction Documents will constitute) a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except to the extent the enforceability thereof may be limited by (a) Applicable Law relating to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws, from time to time in effect affecting generally the enforcement of creditors' rights and remedies and (b) general principles of equity.

Section 3.03. *Governmental Authorization.* The execution, delivery and performance of this Agreement and the other Transaction Documents by Seller and the consummation of the transactions contemplated hereby or thereby require no action by or in respect of, or filing with, any Governmental Authority, other than (i) compliance with any applicable requirements of the HSR Act, (ii) receipt of Florida Regulatory Approval and Texas Regulatory Approval and compliance with any related rules and regulations of the Florida Public Service Commission, the Texas Public Utility Commission or the Texas Commission on Environmental Quality and (iii) any such action or filing as to which the failure to make or obtain would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.04. *Noncontravention.* The execution, delivery and performance of this Agreement and the other Transaction Documents by Seller and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate the applicable organizational or governing documents of Seller or any Company or Company Subsidiary, (b) assuming compliance with the matters referenced in Section 3.03, violate any Applicable Law, (c) assuming compliance with the matters referenced in Section 3.03, require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Seller or any Company or Company Subsidiary or to a loss of any benefit to which Seller or any Company or Company Subsidiary is entitled under any provision of any agreement or other instrument binding upon such Seller, Company or Company Subsidiary or (d) result in the creation or imposition of any Lien on any of the Equity Interests or on any asset of any Company or Company Subsidiary, except for any Permitted Liens, with such exceptions as would not, in the case of each of clauses (b) through (d), have a Material Adverse Effect, whether individually or in the aggregate.

Section 3.05. *Capitalization.* Section 3.05 of the Seller Disclosure Schedules sets forth, as of the date hereof, a true and correct list of the authorized, issued and outstanding shares of capital stock of Ni South Carolina Inc. and the authorized, issued and outstanding membership interests of each of the Ni LLCs. Except as set forth in Section 3.05 of the Seller Disclosure Schedules, there are no issued or outstanding (a) shares, membership interests or other equity or voting interests of any Company (including, for the avoidance of doubt, the Equity Interests) or (b) options, warrants, convertible or exchangeable securities, subscriptions, preemptive rights, stock appreciation rights, phantom stock, profit participation rights, calls or commitments of any character whatsoever, relating to the shares, membership interests or other equity or voting interests of any Company, to which Seller or such Company is a party or bound (the foregoing, collectively, "**Company Securities**"). All the Equity Interests are duly authorized and validly issued. There are no outstanding obligations of any Company or Company Subsidiary to repurchase, redeem or otherwise acquire any Company Securities. Except for the issued and outstanding shares of capital stock of Ni South Carolina Inc., none of the Equity Interests are represented by any certificates or similar documents.

Section 3.06. *Ownership of Equity Interests.* Seller is the record and beneficial owner of the Equity Interests, free and clear of any Lien, and will transfer and deliver to Buyer, on the applicable Closing Date, valid title to such Equity Interests free and clear of any Lien (including after giving effect to the applicable Closing).

Section 3.07. *Subsidiaries.* (a) Section 3.07(a) of the Seller Disclosure Schedules sets forth, as of the date hereof, the name and jurisdiction of organization of each Company Subsidiary. Each Company Subsidiary is a business entity that is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all organizational powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now

conducted, except for those licenses, authorizations, consents and approvals the absence of which would not, individually or in the aggregate, have a Material Adverse Effect.

(b) All the outstanding shares, membership interests or other voting or equity interests of each Company Subsidiary are owned by a Company, directly or indirectly, free and clear of any Lien. Except for the securities contemplated by the previous sentence, there are no issued or outstanding (i) shares, membership interests or other equity or voting interests of any Company Subsidiary or (ii) options, warrants, convertible or exchangeable securities, subscriptions, preemptive rights, stock appreciation rights, phantom stock, profit participation rights, calls or commitments of any character whatsoever, relating to the shares, membership interests or other equity or voting interests of any Company Subsidiary, to which a Company or such Company Subsidiary is a party or bound (the foregoing, collectively, "**Company Subsidiary Securities**"). There are no outstanding obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any outstanding Company Subsidiary Securities.

Section 3.08. *Financial Statements.* (a) The audited consolidated balance sheet of Seller and its Subsidiaries as of December 31, 2013 and the related audited consolidated statements of income and cash flows of Seller and its Subsidiaries for the year ended December 31, 2013 fairly present, in conformity with GAAP applied on a consistent basis (except as may be indicated in the notes thereto), the consolidated financial position of Seller and its Subsidiaries as of December 31, 2013 and their consolidated results of operations and cash flows for the fiscal year then ended.

(b) The audited combined balance sheet of the Borrowing Group as of December 31, 2013 and the related combined statements of income and cash flows of the Borrowing Group for the year ended December 31, 2013 fairly present, in conformity with GAAP applied on a consistent basis (except as may be indicated in the notes thereto), the combined financial position of the Borrowing Group as of December 31, 2013 and their combined results of operations and cash flows for the fiscal year then ended.

(c) The unaudited consolidated balance sheet of Seller and its Subsidiaries as of December 31, 2014 and the related unaudited consolidated statements of income and cash flows of Seller and its Subsidiaries for the year ended December 31, 2014 were prepared in good faith from the books and records of Seller and its Subsidiaries in a manner consistent with the past practice of Seller with respect to the preparation of interim financial statements for Seller and its Subsidiaries.

Section 3.09. *Absence of Certain Changes.* Since the Balance Sheet Date, (a) the business of the Companies and the Company Subsidiaries has been conducted in the ordinary course consistent with past practices, (b) there has not been any event, occurrence or development which, individually or in the aggregate, has had a Material Adverse Effect and (c) none of the events or circumstances described in Section 5.01(a) through Section 5.01(o) (other than Section 5.01(d)) have occurred since the Balance Sheet Date with respect to a Company or Company Subsidiary.

Section 3.10. *No Undisclosed Material Liabilities.* There are no liabilities of any Company or any Company Subsidiary of any kind, other than:

- (a) liabilities provided for in the Balance Sheet;
- (b) liabilities not required under GAAP to be shown on the Balance Sheet for reasons other than the contingent nature thereof or the difficulty of determining the amount thereof;
- (c) liabilities disclosed in, related to or arising under any agreements, instruments or other matters disclosed in this Agreement or the Seller Disclosure Schedules;
- (d) liabilities incurred in the ordinary course of business since the Balance Sheet Date; and
- (e) other undisclosed liabilities which, individually or in the aggregate, would not reasonably be expected to be material to the Companies and the Company Subsidiaries, taken as a whole.

Section 3.11. *Material Contracts.* (a) As of the date hereof, none of the Companies or the Company Subsidiaries are a party to or bound by:

- (i) any contract with respect to the formation, creation, operation, management or control of any joint venture, strategic partnership or similar arrangement;
- (ii) any agreement providing for (or that would reasonably be expected to require) aggregate payments to or from any Company or Company Subsidiary of more than \$200,000 in any 12-month period;
- (iii) any agreement relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset), except any such agreement (A) with an aggregate outstanding principal amount not exceeding \$200,000, (B) entered into subsequent to the date of this Agreement in the ordinary course of business consistent with past practice, (C) between any Company or Company Subsidiary (other than Ni Florida and Ni Texas), on the one hand, and any other Company or Company Subsidiary (other than Ni Florida and Ni Texas), on the other hand or (D) that will be terminated and of no further force and effect at or prior to the Initial Closing;
- (iv) any agreement relating to the acquisition or disposition (by merger, sale of stock or otherwise) of any assets or capital stock or other equity interests of a Company, a Company Subsidiary or another Person, except any such agreement that would not reasonably be expected to impose material obligations on the Company or any Company Subsidiary after the Initial Closing;

(v) any agreement containing covenants that limit in any material respect the freedom of any Company or any of its respective Affiliates to compete in any line of business or with any Person or in any geographical area;

(vi) any agreement with Seller or any of its Affiliates (other than the Companies and the Company Subsidiaries) or any director or officer of Seller or such Affiliates, except any such agreement that is related to such Person's employment with, compensation or benefits from or role as a director of, any Company or Company Subsidiary or that will be terminated at or prior to the Initial Closing;

(vii) any material agreement with any Governmental Authority in its capacity as such (other than Permits);

(viii) any agreement providing for, or relating to, the provision of water or the processing or treatment of sewage or wastewater (A) to any of the Companies or Company Subsidiaries or (B) by any of the Companies or Company Subsidiaries to non-residential customers at a rate other than the scheduled rate of the applicable Company or Company Subsidiary or with service or other material terms outside the ordinary course of business of the applicable Company or Company Subsidiary;

(ix) any agreement with respect to the Equity Interests that will not be terminated at or prior to the applicable Closing; or

(x) any agreement that requires a Company or Company Subsidiary to purchase its total requirements of any product or service from a third party or that contains a "take or pay" provision.

(b) Except as would not have a Material Adverse Effect, (i) each agreement, contract, plan, lease, arrangement or commitment required to be disclosed pursuant to this Section is a valid and binding agreement of a Company or Company Subsidiary, as the case may be, and, assuming such agreement, contract, plan, lease, arrangement or commitment is legal, valid and binding against the counterparty thereto, is in full force and effect, except to the extent the enforceability thereof may be limited by (A) Applicable Law relating to bankruptcy insolvency, fraudulent conveyance, reorganization, moratorium or similar laws, from time to time in effect affecting generally the enforcement of creditors' rights and remedies and (B) general principles of equity and (ii) none of the Companies or the Company Subsidiaries or, to the knowledge of Seller, any other party thereto is in default or breach in any respect under the terms of any such agreement, contract, plan, lease, arrangement or commitment.

Section 3.12. *Litigation.* As of the date hereof, there is no action, suit, investigation or proceeding (including eminent domain proceedings) pending against, or to the knowledge of Seller, threatened against or affecting, any Company or any Company Subsidiary or any of their respective properties before any arbitrator or Governmental Authority that, individually or in the aggregate, would be reasonably likely

to have a Material Adverse Effect or in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement. No Company or Company Subsidiary is the named subject of any order of a Governmental Authority.

Section 3.13. *Compliance with Laws; Permits.* Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Company and Company Subsidiary (a) is in compliance with Applicable Law and (b) has all permits, licenses, authorizations, consents and approvals from or of, and has made all filings, applications and registrations with, all Governmental Authorities required to carry on its business as now conducted (collectively, “**Permits**”), and all such Permits are in full force and effect and have not been violated by such Person in any respect, and, as of the date hereof, no suspension, cancellation or revocation of any such Permit is pending or, to the knowledge of Seller, threatened against such Person. Section 3.13 of the Seller Disclosure Schedules lists all material Permits (other than construction Permits) currently held by any of the Companies or their respective Subsidiaries and all written notices received since January 1, 2013 from any Governmental Authority asserting any material violation or potential material violation of any material Permit that has not been resolved prior to the date hereof. Each wastewater utility annual report filed by any Company or Company Subsidiary with a Governmental Authority since January 1, 2013, as amended prior to the date hereof, was accurate in all material respects at the time of its filing or amendment, as applicable.

Section 3.14. *Properties.* The Companies and the Company Subsidiaries have good title to, or in the case of leased property and assets, have valid leasehold interests in, all property and assets (whether real, personal, tangible or intangible) reflected on the Balance Sheet or owned or leased by a Company or Company Subsidiary on the Balance Sheet Date or acquired after the Balance Sheet Date, except for properties and assets sold since the Balance Sheet Date in the ordinary course of business or where the failure to have such good title or valid leasehold interests would not, individually or in the aggregate, have a Material Adverse Effect. None of such property or assets is subject to any Lien, except:

- (a) Liens disclosed on Section 3.14 of the Seller Disclosure Schedules;
- (b) Liens disclosed on the Balance Sheet or securing liabilities reflected on the Balance Sheet;
- (c) Liens for Taxes that are not yet due or (as disclosed in Section 3.14 of the Seller Disclosure Schedules) are being contested in good faith;
- (d) mechanic’s, materialman’s, carrier’s, repairer’s and other similar Liens arising or incurred in the ordinary course of business or that are not yet due and payable or are being contested in good faith (which contested Liens are listed in Section 3.14 of the Seller Disclosure Schedules);

(e) Liens incurred in the ordinary course of business since the Balance Sheet Date;

(f) Liens that will be discharged on or prior to the Initial Closing Date (in the case of Liens affecting property or assets held by the Ni South Carolina Companies, Ni America or their respective Subsidiaries), the Florida Closing Date (in the case of Liens affecting property or assets held by Ni Florida or its Subsidiaries) or the Texas Closing Date (in the case of Liens affecting property or assets held by Ni Texas or its Subsidiaries);

(g) Liens disclosed on the title insurance policies made available to Buyer; or

(h) other Liens which would not, individually or in the aggregate, have a Material Adverse Effect (paragraphs (a)-(h) of this Section 3.14 are, collectively, the “**Permitted Liens**”).

Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the properties and assets of the Companies and the Company Subsidiaries that are necessary for the conduct of their business as currently conducted are in reasonably good operating condition (reasonable wear and tear excepted and except for any deficiencies to the extent such deficiencies would be addressed by work to be completed in connection with any capital expenditures by any Company or Company Subsidiary in the ordinary course of business consistent with past practice). Other than the Equity Interests, cash and cash equivalents, insurance policies, and accounting, tax, valuation and advisory services, Seller has no assets that are necessary to or used in the businesses of the Companies and the Company Subsidiaries. Each Company and Company Subsidiary owns its books and records (excluding any books and records maintained by Seller or any of its Affiliates relating to Seller’s ownership in the Companies).

Section 3.15. *Intellectual Property.* (a) Section 3.15(a) of the Seller Disclosure Schedules contains a list of all material registrations and applications for registration for Intellectual Property Rights owned by any Company or Company Subsidiary.

(b) To the knowledge of Seller, (i) no Intellectual Property Right owned by any Company or any Company Subsidiary is being infringed or misappropriated by any third party and (ii) neither any Company nor any Company Subsidiary (and no third party is claiming that any Company or Company Subsidiary) is infringing or misappropriating any valid and enforceable Intellectual Property Right owned by any third party, except in the case of clause (i) and (ii) for any infringement or misappropriation which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.16. *Insurance Coverage.* Seller has made available to Buyer a list of, and true and complete copies of, all insurance policies and fidelity bonds relating to the assets, business, operations, employees, officers or directors of the Companies and the Company Subsidiaries. All such policies and bonds are in full force and effect, and all

premiums due on such policies and bonds have been paid. Section 3.16 of the Seller Disclosure Schedules lists all material claims made since January 1, 2013, or that are currently pending, under any of such policies or bonds. There are no material claims by any Company or Company Subsidiary pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights.

Section 3.17. *Individual Service Providers.* Section 3.17 of the Seller Disclosure Schedules sets forth a true and complete list of the names, titles, annual base compensation and most recent annual bonus received by each (a) employee of any Company or Company Subsidiary and (b) individual independent contractor of any Company or Company Subsidiary whose annual compensation exceeds \$150,000. Section 3.17 of the Seller Disclosure Schedules lists all employment, severance and individual independent contractor or consultant agreements to which a Company or Company Subsidiary is subject.

Section 3.18. *Employee Benefit Plans.* (a) Section 3.18 of the Seller Disclosure Schedules sets forth a true and complete list of each material Service Provider Plan. Seller has provided Buyer with complete copies of the plan documents for each material Service Provider Plan, and all amendments thereto, and has made available to Buyer all other material documents related to each Service Provider Plan for the most recently completed plan year, including any insurance policies for each Service Provider Plan, summary plan descriptions and the most recent annual report, if applicable, prepared in connection therewith.

(b) None of the Companies or the Company Subsidiaries or any of their respective predecessors sponsors, maintains or contributes to, or has in the past five years sponsored, maintained or contributed to, any plan subject to Title IV of ERISA.

(c) None of the Companies or the Company Subsidiaries or any of their respective predecessors contributes to, or has in the past five years contributed to, any multiemployer plan, as defined in Section 3(37) of ERISA, or any multiple employer welfare arrangement, as defined in Section 3(40) of ERISA.

(d) Each Service Provider Plan has been maintained in compliance with its terms and Applicable Law in all material respects. The Company SIMPLE IRA complies with Section 408(p) of the Code in all material respects. No events have occurred with respect to any Service Provider Plan that could result in the payment or assessment by or against the Companies or the Company Subsidiaries of any excise tax under the Code, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) None of the Companies or the Company Subsidiaries have any liability in respect of post-retirement medical, dental or life insurance benefits for individual service providers (other than coverage mandated under Applicable Law, including the Consolidated Omnibus Budget Reconciliation Act of 1985).

(f) No action, suit, investigation, audit, proceeding or claim (other than routine claims for benefits) is pending against or involves or, to Seller's knowledge, is threatened against or threatened to involve, any Service Provider Plan before any Governmental Authority, including the Internal Revenue Service, the Department of Labor or the Pension Guaranty Benefit Corporation, which, individually or in the aggregate, if determined or resolved adversely in accordance with the plaintiff's demands, could reasonably be expected to have a Material Adverse Effect.

(g) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all of the Companies and the Company Subsidiaries are in compliance with all Applicable Laws relating to employment and employment practices and terms and conditions of employment relating to the individual service providers. None of the Companies or the Company Subsidiaries are a party to or subject to, or are currently negotiating in connection with entering into, any collective bargaining agreement applicable to any individual service providers. There is no labor strike, slowdown or stoppage pending or, to Seller's knowledge, threatened against or affecting any Company or any Company Subsidiary, except for such actions and events that have not had and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(h) Neither the execution of this Agreement or the other Transaction Documents nor the consummation of the transactions contemplated hereby or thereby (either alone or together with any other event) will entitle any individual service provider to any payment or benefit or accelerate the time of payment or vesting of any compensation or benefits, in either case under any Service Provider Plan.

Section 3.19. *Regulation as a Utility.* Section 3.19 of the Seller Disclosure Schedules sets forth each Company and Company Subsidiary which is regulated as a public utility or a retail public utility, and the jurisdiction in which it is regulated.

Section 3.20. *Environmental Matters.* (a) To the knowledge of Seller:

(i) (A) no written notice, order, request for information, complaint or penalty has been received since January 1, 2012 by Seller or any Company or Company Subsidiary and (B) there are no judicial, administrative or other actions, suits or proceedings pending or threatened, in the case of each of clauses (A) and (B) which allege a material violation or potential violation by or material liability of any Company or Company Subsidiary of or under any Environmental Law;

(ii) each Company and Company Subsidiary has all material environmental permits necessary for its operations to comply with all applicable Environmental Laws and are in material compliance with the terms of such permits and with all other applicable Environmental Laws;

(iii) there are no material quantities of hazardous substances, other than substances used in operations and managed, stored and disposed of in material compliance with all Environmental Laws or substances that would not reasonably

be expected to require any material expense to investigate, remediate or monitor pursuant to Environmental Laws, on any property currently owned or leased by any Company or Company Subsidiary; and

(iv) there has been no written, material environmental audit conducted since January 1, 2012 by any Company or Company Subsidiary of any property currently owned or leased by any Company or Company Subsidiary which has not been made available to Buyer prior to the date hereof.

(b) Except as set forth in this Section 3.20, no representations or warranties are being made with respect to matters arising under or relating to Environmental Law or other environmental matters ("**Environmental Matters**").

Section 3.21. *Taxes.* (a) All material Company Returns have been filed when due in accordance with all applicable laws, and, to the knowledge of Seller, all Company Returns that have been filed were true and complete in all material respects. All Taxes shown as due and payable on such Company Returns have been paid. Seller has made available to Buyer complete copies of all material Company Returns filed within the three-year period ending on the date hereof.

(b) There is no claim, audit, action, suit, proceeding or investigation now pending or threatened in writing against or with respect to the Companies or the Company Subsidiaries in respect of any Tax.

(c) No claim has been made by any Taxing Authority in a jurisdiction where any Company and/or Company Subsidiary does not file Tax Returns that any such Company or Company Subsidiary is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction.

(d) None of the Companies or any Company Subsidiary is a party to any understanding or arrangement described in Section 6662(d)(2)(C)(ii) of the Code, or has participated in a "reportable transaction" within the meaning of Treasury Regulations Section 1.6011-4.

(e) No election has been made under Section 301.7701-3 of the U.S. Treasury Regulations or any similar provision of Tax law to treat any Ni LLC as an association taxable as a corporation.

(f) Each material Tax required to have been withheld and paid by or on behalf of any Company or Company Subsidiary in connection with material amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party has been withheld and paid, and the Companies have complied in all material respects with all information reporting and backup withholding provisions of Applicable Law.

(g) No extensions or waivers of statutes of limitations have been given or requested with respect to any material Taxes of any Company or Company Subsidiary.

(h) There is no outstanding power of attorney authorizing anyone to act on behalf of any Company or Company Subsidiary in connection with a Tax liability, Company Return or any proceeding relating to a Tax.

Section 3.22. *Finders' Fees.* Except for RBC Capital Markets, LLC, whose fees and expenses will be paid by Seller, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Seller or any of its Affiliates who might be entitled to any fee or commission from any of the Companies or any of their Subsidiaries in connection with the transactions contemplated by this Agreement or the other Transaction Documents.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that, as of the date hereof and as of the Initial Closing Date:

Section 4.01. *Corporate Existence and Power.* Buyer is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all corporate powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which would not, individually or in the aggregate, materially impair or delay Buyer's ability to consummate the transactions contemplated by this Agreement or the other Transaction Documents.

Section 4.02. *Corporate Authorization.* The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of Buyer and have been duly authorized by all necessary corporate action on the part of Buyer. Assuming the Transaction Documents constitute the legal, valid and binding obligation of Seller and the other parties thereto, this Agreement constitutes (and upon execution, each of the other Transaction Documents will constitute) a legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except to the extent the enforceability thereof may be limited by (i) Applicable Law relating to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws, from time to time in effect affecting generally the enforcement of creditors' rights and remedies and (ii) general principles of equity.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby require no material action by or in respect of, or material filing with, any Governmental Authority other than (i) compliance with any applicable requirements of the HSR Act, (ii) receipt of Florida Regulatory Approval and Texas Regulatory Approval and compliance with any related rules and regulations of the Florida Public Service Commission, the Texas Commission

on Environmental Quality or the Texas Public Utility Commission and (iii) any such action or filing as to which the failure to make or obtain, individually or in the aggregate, would not materially impair or delay Buyer's ability to consummate the transactions contemplated by this Agreement or the other Transaction Documents.

Section 4.04. *Noncontravention.* The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate Buyer's Organizational Documents, (ii) assuming compliance with the matters referred to in Section 4.03, violate any Applicable Law or require any consent or other action by any Person under, constitute a default under or give rise to any right of termination, cancellation or acceleration of any right or obligation of Buyer or to a loss of any benefit to which Buyer is entitled under any provision of any agreement or other instrument binding upon Buyer or (iii) result in the creation or imposition of any material Lien on any asset of Buyer, with such exceptions, in the case of each of clauses (ii) and (iii), as would not reasonably be expected to materially impair or delay Buyer's ability to consummate the transactions contemplated by this Agreement or the other Transaction Documents.

Section 4.05. *Litigation.* There is no action, suit, investigation or proceeding pending against, or to the knowledge of Buyer, threatened against or affecting, Buyer before any arbitrator or Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or delay the transactions contemplated by this Agreement or the other Transaction Documents.

Section 4.06. *Finders' Fees.* Except for Bank of America Merrill Lynch, whose fees and expenses will be paid by Buyer, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Buyer or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or the other Transaction Documents.

Section 4.07. *Financing.* Buyer has, or will have prior to the time of each Closing Date, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of any amounts required to be paid by it hereunder on such date (including any portion of the Aggregate Purchase Price due on such date).

Section 4.08. *Purchase for Investment.* Buyer is purchasing the Equity Interests for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof. Buyer (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Equity Interests and is capable of bearing the economic risks of such investment.

Section 4.09. *Inspections; No Other Representations.* Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of companies such as the Companies and the Company Subsidiaries as

contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Buyer (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Equity Interests and is capable of bearing the economic risks of such investment. Buyer acknowledges that Seller has given Buyer reasonable access to the key employees, documents and facilities of the Companies and the Company Subsidiaries. Buyer will undertake prior to the Initial Closing such further investigation and request such additional documents and information as it deems necessary. Buyer agrees to accept the Equity Interests, the Companies and the Company Subsidiaries in the condition they are in on the Closing Date based upon its own inspection, examination and determination with respect thereto as to all matters, and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to the Seller, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Buyer acknowledges that Seller makes no representation or warranty with respect to (i) any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Companies and the Company Subsidiaries or the future business and operations of the Companies and the Company Subsidiaries or (ii) any other information or documents made available to Buyer or its counsel, accountants or advisors with respect to the Companies or the Company Subsidiaries or their respective businesses or operations, except as expressly set forth in this Agreement.

ARTICLE 5 COVENANTS OF SELLER

Seller agrees that:

Section 5.01. *Conduct of the Company.* From the date hereof until the Initial Closing Date (in the case of the Ni South Carolina Companies, Ni America and their respective Subsidiaries), the Florida Closing Date (in the case of Ni Florida and its Subsidiaries) or the Texas Closing Date (in the case of Ni Texas and its Subsidiaries), except as disclosed on Section 5.01 of the Seller Disclosure Schedules, as expressly contemplated by the Transaction Documents, as required by Applicable Law, good utility practice or similar requirements or with the prior consent of Buyer (which consent shall not be unreasonably withheld, delayed or conditioned), Seller (x) shall cause each Company and Company Subsidiary to conduct its businesses, including with respect to incurring capital expenditures, in the ordinary course consistent with past practice and use reasonable efforts to maintain and preserve the current business and goodwill and relationships with the regulators and others having business relationships of the Companies and their respective Subsidiaries and (y) shall not permit any Company or Company Subsidiary to:

- (a) amend its articles of incorporation, bylaws or other similar organizational documents (whether by merger, consolidation or otherwise);
- (b) split, combine or reclassify any of its equity securities, or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Company Securities or Company Subsidiary Securities;
- (c) (i) issue, deliver or sell, or authorize the issuance, delivery or sale of, any Company Securities or Company Subsidiary Securities, other than the issuance of Company Subsidiary Securities to a Company or Company Subsidiary or (ii) amend any term of any Company Security or any Company Subsidiary Security (in each case, whether by merger, consolidation or otherwise);
- (d) incur any capital expenditures or any obligations or liabilities in respect thereof, other than in connection with any capital expenditure (i) contemplated by the capital expenditure budget provided to Buyer prior to the date hereof or (ii) the making of which would not result in the Companies and the Company Subsidiaries exceeding 100% of the aggregate capital expenditures contemplated by such budget;
- (e) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses, other than (i) pursuant to existing agreements listed in Section 3.11(a)(iv) or Section 5.01(e) of the Seller Disclosure Schedules or (ii) in the ordinary course of business consistent with past practice;
- (f) dispose of (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses, other than (i) pursuant to existing agreements listed in Section 3.11(a)(iv) or Section 5.01 of the Seller Disclosure Schedules or (ii) in the ordinary course of business consistent with past practice;
- (g) other than in connection with actions permitted by Section 5.01(d) or Section 5.01, make any loans, advances or capital contributions to, or investments in, any other Person, other than (i) in the ordinary course of business consistent with past practice or (ii) loans, advances of capital contributions to, or investments in, any Company or Company Subsidiary;
- (h) incur any indebtedness for borrowed money or guarantees thereof to any Person, or forgive, settle or compromise any indebtedness for borrowed money or guarantees from any other Person, other than (i) in the ordinary course of business and in amounts and on terms consistent with past practice, (ii) with respect to indebtedness for borrowed money or guarantees thereof solely between or among any Company and/or Company Subsidiary (excluding Ni Florida, Ni Texas and their respective Subsidiaries) or that will be repaid in full at or prior to the applicable Closing or (iii) with respect to any capital lease that does not provide for aggregate payments in excess of \$75,000;
- (i) (A) enter into, or make any material amendment to, any employment, deferred compensation, severance, retirement or other similar agreement with any

employee, director or officer of any Company or Company Subsidiary or (B) increase the compensation or other benefits payable to any director or officer of any Company or Company Subsidiary pursuant to any severance or retirement plans or policies thereof, in each case, other than (x) as required under the terms of any Service Provider Plan in existence as of the date hereof, (y) as required by Applicable Law or (z) in the ordinary course of business consistent with past practice;

(j) make any changes to its method of accounting, except as required by GAAP or Applicable Law;

(k) make or change any material Tax election or any material method of Tax accounting;

(l) settle or offer to settle any litigation, investigation, arbitration, proceeding or other claim involving or against any Company or Company Subsidiary, other than in the ordinary course of business consistent with past practice or for an immaterial amount;

(m) enter into any contract other than in the ordinary course of business consistent with past practice;

(n) enter into any transaction with an Affiliate; or

(o) agree, resolve or commit to do any of the foregoing;

provided that nothing in this Section 5.01 shall restrict any Company or Company Subsidiary from declaring, setting aside or paying any dividend or other distribution of cash to Seller or any Company or Company Subsidiary, or agreeing or committing to do any of the foregoing.

Section 5.02. *Access to Information.* (a) From the date hereof until the Final Closing Date and subject to Applicable Law, Seller will, or will cause each Company or Company Subsidiary, to (i) give Buyer, its counsel, financial and other advisors, auditors and other authorized representatives who are bound by the Confidentiality Agreement reasonable access to the offices, properties, books and records of Seller or any Company or Company Subsidiary controlled by Seller, (ii) furnish to Buyer, its counsel, financial and other advisors, auditors and other authorized representatives who are bound by the Confidentiality Agreement such financial and operating data and other information relating to Seller or any Company or Company Subsidiary controlled by Seller as such Persons may reasonably request and (iii) instruct its employees, counsel and advisors to cooperate with Buyer in its investigation of the Companies and the Company Subsidiaries.

(b) Any investigation pursuant to Section 5.02(a) shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Seller or any Company or Company Subsidiary controlled by Seller. Notwithstanding anything to the contrary in this Section, without the prior written consent of Seller (which consent shall not be unreasonably withheld), Buyer shall not be entitled to (i) have access to personnel records of Seller or any Company or Company Subsidiary controlled by Seller that relate

to individual performance or evaluation records, medical histories or other information which in Seller's good faith opinion is sensitive or the disclosure of which could subject such Company or Company Subsidiary to risk of liability (including as a result of a breach of a confidentiality obligation) or loss of any attorney-client, work product or any other legal privilege (and Seller shall notify Buyer as to the nature of any such withheld information), (ii) conduct or cause to be conducted any sampling, invasive testing or other invasive investigation of the air, soil, soilgas, surface water, groundwater, building materials or other environmental media of Seller or any Company or Company Subsidiary controlled by Seller or (iii) contact any suppliers to, or customers, distributors, payors, partners, co-investors or securityholders of Seller or any Company or Company Subsidiary controlled by Seller.

Section 5.03. *Restriction on Solicitation of Employees.* For a period of one year after the Initial Closing Date, Seller shall not, nor shall it permit any of its Affiliates to, solicit to hire any management-level employee of any Company or Company Subsidiary as of the Initial Closing Date without the prior written consent of Buyer; *provided, however,* that the foregoing shall not restrict Seller or any of its Affiliates from (a) conducting any general solicitation for employment that does not specifically target any of the management-level employees of the Companies and the Company Subsidiaries (whether directly or through any placement agent or recruiting agency) or (b) soliciting any Person who has ceased to be employed by any Company or Company Subsidiary. Notwithstanding the foregoing, the restrictions of this Section 5.03 shall not apply to any portfolio company of Seller or any of its Affiliates unless (i) such portfolio company has received confidential information concerning the Companies or the Company Subsidiaries or (ii) Seller or such Affiliate has made such portfolio company aware of the existence or expertise of any Person subject to such restrictions for the purpose of causing such portfolio company to solicit such Person.

Section 5.04. *Seller Confidentiality.* Seller agrees following the Initial Closing to hold, and will cause its Affiliates and its and their officers, directors, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of Applicable Law, all confidential documents and information concerning the Companies or the Company Subsidiaries known by it prior to the Final Closing or provided to it pursuant to Section 6.02, except to the extent that such documents or information can be shown to have been (i) in the public domain through no fault of Seller or (ii) lawfully acquired after the applicable Closing by Seller from sources other than Buyer, any of the Companies or any of the Company Subsidiaries. For clarity, the foregoing shall not restrict investor communications by or on behalf of Seller and its Affiliates in the ordinary course of business.

Section 5.05. *Resignations.* To the extent requested by Buyer upon reasonable notice to Seller, Seller shall use its reasonable best efforts to deliver to Buyer the resignation of each individual who is an officer or director or holds a similar position with any Company or Company Subsidiary with each such resignation to be effective as of the Initial Closing, Florida Closing or Texas Closing, as applicable.

Section 5.06. *Holdback.* (i) From the Initial Closing until the earlier to occur of the Florida Closing or Texas Closing, Seller shall retain an amount of cash and cash equivalents in an amount equal to at least \$3,937,500, and (ii) from the earlier to occur of the Florida Closing or the Texas Closing Seller, shall retain an amount of cash and cash equivalents in an amount equal to at least \$7,875,000, in each case until the date that is 15 months after the Initial Closing Date and less any amounts paid by Seller pursuant to Article 11. Thereafter, Seller shall retain an amount of cash and cash equivalents in an amount equal to at least the amount of all pending and unresolved claims for indemnification pursuant to Section 11.02 (*provided* that in no event shall Seller be required to retain more than \$7,875,000). For clarity, Seller shall be permitted to invest all amounts required to be retained by it pursuant to this Section in (i) time deposits, certificates of deposit and bankers' acceptances, (ii) short-term obligations of, or guaranteed by, the United States of America or any state or agency thereof, (iii) commercial paper rated A-1 or P-1 by Standard & Poor's or Moody's Investors Service or their respective successors and (iv) repurchase agreements fully collateralized by obligations described in the foregoing clauses (i)-(iii).

Section 5.07. *Florida Capital Expenditures.*



ARTICLE 6

COVENANTS OF BUYER

Buyer agrees that:

Section 6.01. *Confidentiality.* Any information provided by Seller or its Affiliates or representatives in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby will be subject to the provisions of the Confidentiality Agreement, which shall survive the execution and delivery of this Agreement and shall continue in full force and effect in accordance with its terms. The Parties agree that the obligations in the Confidentiality Agreement shall

terminate (a) with respect to the Ni South Carolina Companies, Ni America and their respective Subsidiaries at the Initial Closing, (b) with respect to Ni Florida and its Subsidiaries at the Florida Closing and (c) with respect to Ni Texas and its Subsidiaries at the Texas Closing.

Section 6.02. *Access.* From and after the Initial Closing Date (in the case of the Ni South Carolina Companies and Ni America), the Florida Closing Date (in the case of Ni Florida) and the Texas Closing Date (in the case of Ni Texas), Buyer shall cause each such Company and its Subsidiaries to preserve and keep the records held by them relating to their respective businesses for a period of seven years from and after the applicable Closing Date (or longer if required by Applicable Law), and from and after the applicable Closing Date, Buyer agrees to cause each such Company and its Subsidiaries to afford promptly to Seller and its Affiliates and its and their counsel, financial advisors, auditors and other authorized representatives reasonable access to their officers, properties, books, records, employees and auditors to the extent necessary for Seller or any of its Affiliates to determine any matter relating to its rights and obligations hereunder or relating to any period ending on or before the applicable Closing Date; *provided* that any such access by Seller or its Affiliates shall not unreasonably interfere with the conduct of the business of Buyer, any Company or any Company Subsidiaries.

Section 6.03. *Waiver of Conflicts Regarding Representation; Non-assertion of Attorney-Client Privilege.* (a) Buyer hereby waives and agrees not to assert, and agrees to cause each Company and Company Subsidiary controlled by Buyer to waive and not to assert, any conflict of interest arising out of or relating to the representation, after the Initial Closing (the “**Post-Closing Representation**”), of Seller or any officer, employee or director of any Company or Company Subsidiary (any such Person, a “**Designated Person**”) in any matter involving this Agreement, the other Transaction Documents or any transactions contemplated hereby or thereby, by any legal counsel currently representing any Company or Company Subsidiary in connection with this Agreement, the other Transaction Documents or any transactions contemplated hereby or thereby (the “**Current Representation**”).

(b) Buyer hereby waives for the benefit of Seller and agrees not to assert, and agrees to cause each Company and Company Subsidiary controlled by Buyer to waive for the benefit of Seller and not to assert, any attorney-client privilege with respect to any communication between any legal counsel and any Designated Person occurring with respect to the Current Representation in connection with any Post-Closing Representation, including in connection with a dispute between such Designated Person and Buyer or any Company or Company Subsidiary, it being the intention of the parties hereto that all such rights to such attorney-client privilege and to control such attorney-client privilege shall be retained by Seller; *provided* that the foregoing waiver shall not extend to any communication not involving this Agreement, the other Transactions Documents or any transactions contemplated hereby or thereby, or to communications with any Person other than the Designated Persons and their advisors.

ARTICLE 7
COVENANTS OF BUYER AND SELLER

Buyer and Seller agree that:

Section 7.01. *Reasonable Best Efforts; Further Assurances.* (a) Subject to the terms and conditions of this Agreement, Buyer and Seller will use their respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Law to consummate the transactions contemplated by the Transaction Documents, including (i) preparing and filing as promptly as practicable with any Governmental Authority all documentation to effect all necessary, proper or advisable filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining as promptly as practicable all consents, approvals, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement or the other Transaction Documents (including the consent of Florida Utility Group Holdings, LLC).

(b) In furtherance and not in limitation of the foregoing, each Party shall provide or cause to be provided to any Governmental Authority information and documents requested by any such Governmental Authority or necessary, proper or advisable to permit consummation of the transactions contemplated by this Agreement or the other Transaction Documents as promptly as possible after the execution of this Agreement including by (i) filing any notification and report form and related material required under the HSR Act with respect to the transactions contemplated hereby as promptly as practicable and in any event within five Business Days after the date hereof, (ii) supplying as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act, (iii) filing promptly (and in any event within 30 days after the date hereof) and prosecuting an application for transfer pursuant to Section 367.071, Florida Statutes and Rule 25-30.037, Florida Administrative Code in order to obtain Florida Regulatory Approval, and providing all information requested by the Florida Public Service Commission in connection with such application and (iv) filing promptly (and in any event within 30 days after the date hereof) any documentation required by the Texas Public Utility Commission (including but not limited to any Sale, Transfer or Merger Application) that is necessary to obtain Texas Regulatory Approval, and providing all information requested by such Commissions in connection with such documentation.

(c) The Parties acknowledge and agree that Buyer's obligations to use its reasonable best efforts as set forth in this Section 7.01 shall include an obligation of Buyer (i) to take and cause its Subsidiaries to take all commercially reasonable actions necessary to avoid or eliminate each and every impediment (reasonably within Buyer's control) under any Applicable Law so as to enable the consummation of the transactions contemplated by this Agreement and the other Transaction Documents to occur as soon as reasonably possible (and in any event, to the extent reasonably possible, no later than the Initial Closing End Date, the Florida Closing End Date or the Texas Closing End

Date, as applicable), including (A) proposing, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of businesses, product lines or assets of Buyer or its Affiliates (including those of any Company or Company Subsidiary), (B) terminating existing relationships, contractual rights or obligations of Buyer or its Affiliates (including those of any Company or Company Subsidiary) (C) otherwise taking or committing to take actions that after the Closing Date would limited Buyer's or its Affiliates' (including any Company's or Company Subsidiary's) freedom of action with respect to, or its ability to retain or exercise rights of ownership or control with respect to, one or more of the businesses, product lines or assets of Buyer or its Affiliates (including any Company or Company Subsidiary), (D) defending any action, suit or proceeding (including by appeal if necessary) that challenges any of the transactions contemplated by this Agreement or the other Transaction Documents or which would otherwise prohibit, materially delay or materially impair the consummation of the transactions contemplated by this Agreement or the other Transaction Documents and (E) seeking to have lifted, vacated or reversed any stay, injunction, temporary restraining order or other restraint entered by any Governmental Authority with respect to this Agreement or the other Transaction Documents or the transactions contemplated hereby or thereby and (ii) to not take any action (including the acquisition by it or any of its Subsidiaries of any interest in any Person that derives revenues from products, services or lines of business similar to the Company's products, services or lines of business) if such action would make it more likely that there would arise any impediments under any Applicable Law that may be asserted by any Governmental Authority to the consummation of the transactions contemplated by this Agreement or the other Transaction Documents as promptly as reasonably practicable. The Parties acknowledge and agree that Seller's obligations to use its reasonable best efforts as set forth in this Section 7.01 shall include the same obligations as Buyer has in clauses (i)(D) and (E) of the immediately preceding sentence.

(d) Each Party shall, and shall cause their respective Subsidiaries to, cooperate reasonably with one another and keep the others generally apprised of material matters relating to or in connection with the taking of such actions and the doing of such other things as are contemplated by this Section 7.01

(e) Each Party shall promptly inform the other Party hereto of any oral communication with, and provide copies of written communications with, any Governmental Authority regarding any transactions contemplated by the Transaction Documents. In furtherance and not in limitation of the foregoing, in connection with the seeking of any action by or in respect of, or the making of any filing with, any Governmental Authority in connection with the transactions contemplated by this Agreement or the other Transaction Documents, the Parties shall (i) consult with one another in advance of any meeting or teleconference with such Governmental Authority, (ii) provide one another with an opportunity to attend or participate in such meeting or teleconference, (iii) afford one another the right to review any written materials to be submitted to such Governmental Authority in advance of the submission thereof, (iv) furnish one another with copies of all written materials received by or on behalf of such party from such Governmental Authority, in each case to the extent permitted by Applicable Law (except, in the case of the foregoing clauses (i) and (ii) in respect of any

meeting or teleconference convened in the ordinary course and not for the purpose of discussing the transactions contemplated by this Agreement or the other Transaction Documents, in the case of the foregoing clause (ii) to the extent such Governmental Authority has requested that one or the other party not attend or participate in any such meeting or teleconference, and in the case of the foregoing clauses (iii) and (iv), to the extent that (x) such written materials contain information that does not relate to the transactions contemplated by the Transaction Documents or (y) confidential treatment has been requested or granted for such written materials). Notwithstanding the foregoing provisions of this Section 7.01, any Party may elect to share with the other Party information that it reasonably considers confidential only on an attorney-to-attorney basis or through any other means reasonably designed to preserve the confidentiality of such information.

(f) If any consent, approval or authorization necessary to preserve any right or benefit under any contract to which any Company or Company Subsidiary is a party is not obtained prior to the applicable Closing, Seller shall, subsequent to the Closing, cooperate with Buyer and the Company or Company Subsidiary in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, Seller shall use its reasonable best efforts to provide the Company or Company Subsidiary with the rights and benefits of the affected contract for the term thereof, and, if Seller provides such rights and benefits, the applicable Company or Company Subsidiary shall assume all obligations and burdens thereunder.

(g) Notwithstanding the foregoing, nothing in this Section 7.01 shall require, or be construed to require, Buyer or any of its Subsidiaries to agree to (i) sell, hold, divest, discontinue or limit before or after any Closing Date, any assets, businesses or interests of Buyer, a Company or any of their respective Subsidiaries or (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in any such case described in clause (i) or (ii) would reasonably be expected to result in a material adverse effect on Buyer, its Subsidiaries, the Companies and the Company Subsidiaries, taken as a whole.

(h) Each of Buyer and Seller shall use its commercially reasonable efforts to obtain prior to the Initial Closing a release from each individual who is a party to an Executive Purchase Agreement with Seller with respect to any and all claims (other than unpaid compensation or reimbursement of expenses) he or she has or may have against Seller, any Company, any Company Subsidiary or any of their respective Affiliates with respect to any facts or circumstances occurring prior to the Initial Closing. For clarity, the Parties acknowledge and agree that no Party shall be obligated to incur any cost, fee or expense pursuant to this Section 7.01(h) and the receipt of any such release shall not be a condition to the obligation of any Party to consummate the Initial Closing, the Florida Closing or the Texas Closing.

(i) Prior to the Initial Closing, Seller shall execute a release in favor of each Company and its Subsidiaries with respect to any and all claims (other than claims arising pursuant to the Employee Services Agreement) that Seller may have against such

Company or its Subsidiaries with respect to any facts or circumstances occurring prior to the applicable Closing (with such release to become effective with respect to such Company and its Subsidiaries as of the applicable Closing).

Section 7.02. *Public Announcements.* Neither Party may issue any press release or make any public statement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party (which consent shall not be unreasonably withheld), except as may be required by Applicable Law or any listing agreement with any national securities exchange, in which case the Party required to publish such press release or public announcement shall allow the other Party a reasonable opportunity to comment on such press release or public statement to the extent practicable.

Section 7.03. *Notices of Certain Events.* Each Party agrees to promptly notify the other Party of:

(a) any notice from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(b) any notice from any Governmental Authority in connection with the transactions contemplated by this Agreement;

(c) any actions, suits, claims, investigations or proceedings commenced relating to, as applicable, (A) Seller, the Company or any Company Subsidiary that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.12 or (B) Buyer that, if pending on the date of this Agreement, would have been required to be disclosed pursuant to Section 4.05; and

(d) any fact, circumstance or event that has resulted in or could reasonably be expected to result in the failure of any of the conditions set forth in Article 9 or 10 to be satisfied.

Section 7.04. *Tax Covenants.* (a) Transfer Taxes. All Transfer Taxes (including any real property Transfer Tax and any similar Tax) incurred in connection with the transactions contemplated by this Agreement shall be borne 50% by Buyer and 50% by Seller. The Party that, in accordance with custom in the applicable State, typically pays such Taxes will pay such Taxes to the applicable Taxing Authority and, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, and the other Party will cooperate with respect thereto as necessary upon reasonable request, and, if required by Applicable Law, the other Party will, and will cause its Affiliates to, join in the execution of any such Tax Returns and other documentation. Upon written notification from the Party that pays Transfer Taxes to a Taxing Authority pursuant to the preceding sentence, the other Party shall promptly pay to such paying Party its share of such Transfer Taxes.

(b) Tax Returns. Seller shall prepare or cause to be prepared and file or cause to be filed all income Tax Returns for Ni South Carolina Inc. and its Subsidiaries that do not include any Post-Closing Tax Period. Seller shall permit Buyer to review each such

Tax Return prior to filing it and shall consider in good faith any timely comments from Buyer with respect thereto. Buyer shall prepare or cause to be prepared and file or cause to be filed all other Company Returns (i) with respect to the Ni South Carolina Companies, Ni America and their respective Subsidiaries, that are required to be filed after the Initial Closing Date, (ii) with respect to Ni Florida and its Subsidiaries, that are required to be filed after the Florida Closing Date and (iii) with respect to Ni Texas and its Subsidiaries, that are required to be filed after the Texas Closing Date. All income Tax Returns for Ni South Carolina Inc. and its Subsidiaries that include any Pre-Closing Tax Period shall be prepared in accordance with past practice to the extent consistent with Applicable Law. Buyer shall permit Seller to review and comment on each Company Return in respect of income Taxes or other material Taxes that relates to a Pre-Closing Tax Period prior to filing it, and Buyer shall reflect all reasonable revisions with respect to items that relate to a Pre-Closing Tax Period reflected on such Company Returns as are requested by Seller.

(c) Tax Contests. Within 15 days of receipt of notice by Buyer or any Company or Company Subsidiary controlled by Buyer of any pending or threatened Tax audit, assessment, litigation or other proceeding that relates either (i) in whole or in part to one or more Pre-Closing Tax Periods of a Company or Company Subsidiary controlled by Buyer or (ii) to a Tax for which Seller may be required to indemnify Buyer under Section 11.02(a)(a "**Tax Contest**"), Buyer shall notify Seller in writing of such Tax Contest. Seller shall have the right to elect to control such Tax Contest at its own expense; provided that Seller shall consult with Buyer upon Buyer's reasonable request for such consultation from time to time with respect to such Tax Contest and Seller shall not, without Buyer's consent (not to be unreasonably withheld, conditioned or delayed), agree to any settlement with respect to any Tax if such settlement would adversely affect a Post-Closing Tax Period. If Seller does not elect to control such Tax Contest, Seller may nonetheless participate in such Tax Contest at its own expense and Buyer shall control such Tax Contest but shall not settle or otherwise agree to a final determination with respect to such Tax Contest without the prior written consent of Seller, such consent not to be unreasonably withheld, conditioned, or delayed.

(d) Cooperation. (i) Buyer and Seller shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the preparation and filing of any Tax Return, any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such Tax Return, audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer and Seller agree (A) to retain all books and records with respect to Tax matters pertinent to any Pre-Closing Tax Period of any Company or Company Subsidiary until the expiration of any applicable statute of limitations, and to abide by all record retention agreements entered into with any Taxing Authority for all periods required by such Taxing Authority, and (B) to use commercially reasonable efforts to provide the other party with at least 30 days' prior written notice before destroying any such books and records, during which period the party receiving the notice can elect to take possession, at its own expense, of such books and records.

(ii) Buyer and Seller further agree, upon request, to use all reasonable efforts to obtain any certificate or other document from any Governmental Authority or customer of any Company or Company Subsidiary or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed with respect to the transactions contemplated hereby.

(e) Computation of Damages. For purposes of determining Damages that relate to a Pre-Closing Tax Period pursuant to Section 11.02(b)(iv) with respect to a Tax payable for a Straddle Tax Period (other than Transfer Taxes allocated pursuant to Section 7.04(a)), the portion of such a Tax that relates to a Pre-Closing Tax Period, (x) in the case of any Taxes other than gross receipts, sales or use Taxes and Taxes based upon or related to income, 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 on and including the Closing Date and the denominator of which is the number of days in the entire Tax period, and (y) in the case of any Tax based upon or related to income and any gross receipts, sales or use Tax, shall be deemed to be the portion of such Tax that would have been payable if the relevant Tax period ended on and included the Closing Date. All determinations necessary to give effect to the allocation set forth in the foregoing clause (y) shall be made in a manner consistent with prior practice of the Companies and the Company Subsidiaries.

(f) Amendment of Tax Returns, etc. Without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned, or delayed), Buyer will not and will not cause or permit any Company or Company Subsidiary to, with respect to any Company or Company Subsidiary, (A) grant an extension of any applicable statute of limitations with respect to any Pre-Closing Tax Period, except in connection with an audit, assessment, litigation, or other proceeding that Buyer controls pursuant to Section 7.04(c) (B) take any action from and after the Initial Closing Date, the Florida Closing Date or the Texas Closing Date (as applicable with respect to the relevant Company or Company Subsidiary) other than in the ordinary course of business, including but not limited to the distribution of any dividend or the effectuation of any redemption, that could give rise to any Tax liability or reduce any Tax asset of Seller in respect of any Pre-Closing Tax Period, (C) make any election or deemed election under Section 338 of the Code in connection with this transaction, or (D) make or change any Tax election, amend any Tax Return or take any Tax position on any Tax Return, take any action, omit to take any action or enter into any transaction, merger or restructuring that results in any increased Tax liability or reduction of any Tax asset of Seller in respect of any Pre-Closing Tax Period.

(g) Tax Refunds and Credits. All refunds and credits of Taxes of the Companies or Company Subsidiaries or with respect to the Ni LLCs' Assets with respect to any Pre-Closing Tax Period or other refunds or credits of Taxes paid by Seller that are received by Buyer or any Company or Company Subsidiary controlled by Buyer shall, to the extent not included in the calculation of SC Closing Working Capital or FL/TX Closing Working Capital (as applicable), be for the account of Seller. Buyer or any Company or Company Subsidiary controlled by Buyer shall pay over the amount of any such refund or credit promptly upon receipt to Seller.

(h) Survival. Notwithstanding anything in this Agreement to the contrary, the covenants and agreements contained in Article 7 shall survive for the full period of all statutes of limitations (giving effect to any waiver, mitigation or extension thereof).

Section 7.05. *CoBank Arrangement*. Notwithstanding anything to the contrary in this Agreement, the Parties hereby agree that any properties (including stock) or amounts received by any Company or Company Subsidiary from time to time pursuant to the Amended and Restated Bylaws of CoBank, ACB, whether received before, at or after the Initial Closing, the Florida Closing or the Texas Closing, but only to the extent attributable to the period preceding the Initial Closing, shall be for the benefit of Seller, and the Parties shall reasonably cooperate to give effect to the foregoing, including by promptly distributing or paying to Seller any properties or amounts received by Seller in connection therewith, assigning to Seller or its designee the right to receive such properties or amounts (such assignment to occur prior to the Initial Closing to the extent reasonably practicable), and enforcing (at Seller's cost and expense) the rights of the Companies and the Company Subsidiaries thereto.

ARTICLE 8

EMPLOYEE BENEFITS

Section 8.01. *Individual Service Providers*. (a) Buyer agrees that it shall, through the Companies and the Company Subsidiaries, continue the employment or other service, as applicable, of all of the individual service providers (collectively, the “**Continuing Service Providers**”) of the Companies and the Company Subsidiaries as of the Initial Closing Date. In addition, Buyer may enter into offer letter agreements relating to certain key Continuing Service Providers' continued employment with the applicable Company or Company Subsidiary, with such letter agreements to be effective as of the Initial Closing Date. Notwithstanding anything to the contrary contained herein, except as set forth in Section 8.01(c), the continuing employment of the Continuing Service Providers who enter into such offer letter agreements will be governed by the terms of such agreements and not by the following provisions of this Article 8.

(b) Until at least the end of the one-year period immediately following the Initial Closing Date, Buyer agrees to provide, or shall cause the Companies and the Company Subsidiaries to provide, each Continuing Service Provider (so long as such Continuing Service Provider remains employed by a Company or Company Subsidiary or their respective Affiliates) with (i) cash compensation that is no less favorable than the cash compensation of each such Continuing Service Provider immediately prior to the applicable Closing Date, (ii) benefits substantially comparable in the aggregate to the benefits provided by the Companies and the Company Subsidiaries to each such Continuing Service Provider immediately prior to the applicable Closing Date and (iii) severance benefits that are no less favorable than the severance benefits set forth on Section 8.01(b) of the Seller Disclosure Schedules.

(c) As soon as practicable after the six-month anniversary of the Initial Closing Date (the “**Bonus Payment Date**”) (and in no event later than 15 days after the Bonus Payment Date), Buyer shall pay, or shall cause one of its Affiliates to pay, each

Eligible Service Provider a lump sum cash payment equal to [REDACTED] of such Eligible Service Provider's annual base salary on the Bonus Payment Date (the "**Bonus Payment**"). For purposes of this Section 8.01(c), "**Eligible Service Provider**" means each Continuing Service Provider (including each such Continuing Service Provider who enters into an offer letter agreement described in Section 8.01(a) that does not otherwise provide for the Bonus Payment) who has an annual base compensation on the Bonus Payment Date equal to at least [REDACTED] and who remains in the employment of Buyer or one of its Affiliates (including a Company or Company Subsidiary) as of the Bonus Payment Date. Notwithstanding the foregoing, if, prior to the Bonus Payment Date, an Eligible Service Provider's employment with Buyer or one of its Affiliates (including a Company or Company Subsidiary) is terminated by Buyer or one of its Affiliates (including a Company or Company Subsidiary) without cause, such Eligible Service Provider shall be entitled to the Bonus Payment on the same basis as if such Eligible Service Provider had remained employed through the Bonus Payment Date. If an Eligible Service Provider is subject to an offer letter agreement described in Section 8.01(a) and such offer letter agreement defines "cause" (or a similar term), then, for purposes of the foregoing sentence, "cause" (or a similar term) shall have the meaning set forth in such offer letter agreement.

Section 8.02. *Buyer Service Provider Plans.* (a) With respect to any employee benefit plan maintained by Buyer or its Affiliates in which any Continuing Service Provider becomes a participant, for purposes of determining eligibility to participate, vesting and benefit accrual (other than benefit accrual under a defined benefit pension plan of Buyer or its Affiliates), each Continuing Service Provider's service with the Companies or Company Subsidiaries (as well as service with any predecessor employer, to the extent service with the predecessor employer is recognized by the Companies or the Company Subsidiaries prior to the Closing Date) shall be treated as service with Buyer and its Affiliates; *provided, however*, that such service need not be recognized to the extent that such recognition would result in any duplication of benefits.

(b) Buyer shall use commercially reasonable efforts to waive, or shall use commercially reasonable efforts to cause its Affiliates to waive, any preexisting conditions, limitations or exclusions, actively-at-work requirements and waiting periods under any welfare benefit plan maintained by Buyer or any of its Affiliates in which Continuing Service Providers (and their eligible dependents) will be eligible to participate from and after the applicable Closing Date, except to the extent that such preexisting conditions, limitations, exclusions, actively-at-work requirements and waiting periods would not have been satisfied or waived under the comparable Service Provider Plan immediately prior to the applicable Closing Date. Buyer shall use commercially reasonable efforts to recognize, or shall use commercially reasonable efforts to cause its Affiliates to recognize, co-payments, deductibles and similar expenses and out-of-pocket maximums incurred by each Continuing Service Provider (and his or her eligible dependents) prior to the applicable Closing Date for purposes of satisfying any analogous deductible and co-payment limitations and out-of-pocket requirements under the relevant welfare benefit plans in which such Continuing Service Provider (and his or her eligible dependents) will be eligible to participate from and after the applicable Closing Date.

Section 8.03. *No Third-Party Beneficiaries.* Without limiting the generality of Section 13.08, no provision of this Article 8, express or implied, (a) is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person (including, without limitation, any Continuing Service Provider and any dependent or beneficiary thereof) other than the Parties hereto and their respective successors and assigns, (b) shall constitute an amendment of, or an undertaking to amend, any Service Provider Plan or any employee benefit plan, program or arrangement maintained by Buyer or its Affiliates or (c) is intended to prevent Buyer or its Affiliates from amending or terminating any Service Provider Plan in accordance with its terms. Nothing in this Article 8 shall create any obligation on the part of Buyer or its Affiliates, as applicable, to continue to employ any Continuing Service Provider for any definite period following the Initial Closing Date.

ARTICLE 9

CONDITIONS TO INITIAL CLOSING

Section 9.01. *Conditions to Obligations of Buyer and Seller.* The obligations of the Parties to consummate the Initial Closing are subject to the satisfaction of the following conditions:

- (a) Any applicable waiting period under the HSR Act relating to the transactions contemplated hereby shall have expired or been terminated; and
- (b) No provision of Applicable Law, and no judgment, injunction, order or decree shall have been issued by a court of competent jurisdiction that, shall prohibit the consummation of the Initial Closing (it being understood that neither the approval of the PSC nor any other filing with, consent of or other action by or in respect of the PSC shall be a condition to any party's obligation to consummate the Initial Closing, Florida Closing or Texas Closing).

Section 9.02. *Conditions to Obligation of Buyer.* The obligation of Buyer to consummate the Initial Closing is subject to the satisfaction of the following further conditions:

- (a) Seller shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Initial Closing Date;
- (b) (i) the representations and warranties of Seller contained in Section 3.01, Section 3.02, Section 3.05, Section 3.06 and Section 3.07 shall, to the extent qualified by materiality or Material Adverse Effect or similar qualifications, be true and correct and, to the extent not so qualified, be true and correct in all material respects, in each case at and as of the Initial Closing Date, as if made at and as of such date (except for any such representations and warranties that are made as of a specific date or time, which representations and warranties shall be true and correct at and as of such specific date and time); and (ii) the other representations and warranties of Seller contained in this Agreement (disregarding all materiality and Material Adverse Effect or similar qualifications contained herein) shall be true and correct at and as of the Initial Closing

Date, as if made at and as of such date (except for any such representations and warranties that are made as of a specific date or time, which representations and warranties shall be true and correct at and as of such specific date or time) with only such exceptions as would not, individually or in the aggregate, have a Material Adverse Effect;

(c) no damage or destruction to any property of a Company or Company Subsidiary shall have occurred since the date hereof, except for any such damage or destruction that has not resulted in a Material Adverse Effect; and

(d) Buyer shall have received a certificate signed by an authorized representative of Seller to the foregoing effect with respect to the obligations to be performed, and the representations and warranties made, by Seller.

Section 9.03. *Conditions to Obligation of Seller.* The obligation of Seller to consummate the Initial Closing is subject to the satisfaction of the following further conditions:

(a) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Initial Closing Date;

(b) the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects (disregarding all materiality or similar qualifications contained herein) at and as of the Initial Closing Date, as if made at and as of such date (except for any such representations and warranties that are made as of a specific date or time, which representations and warranties shall be true and correct at and as of such specific date or time); and

(c) Seller shall have received a certificate signed by an authorized representative of Buyer to the foregoing effect with respect to the obligations to be performed, and the representations and warranties made, by Buyer.

Section 9.04. *Frustration of Closing Conditions.* No Party may rely on the failure of any condition set forth in Section 9.01, Section 9.02 or Section 9.03, as the case may be, to be satisfied to excuse such Party's obligation to effect the Initial Closing if such failure was caused by such Party's breach of this Agreement.

ARTICLE 10

CONDITIONS TO FLORIDA CLOSING AND TEXAS CLOSING

Section 10.01. *Conditions to Florida Closing.* The obligations of the Parties to consummate the Florida Closing are subject to the satisfaction of the following conditions:

(a) Receipt of Florida Regulatory Approval (including approval of any application for transfer) from the Florida Public Service Commission;

(b) No provision of Applicable Law, and no judgment, injunction, order or decree shall have been issued by a court of competent jurisdiction that, shall prohibit the consummation of the Florida Closing;

(c) The representations and warranties of Seller contained in Section 3.01, Section 3.02, Section 3.05, Section 3.06 and Section 3.07 to the extent relating to Ni Florida and its Subsidiaries shall, to the extent qualified by materiality or Material Adverse Effect or similar qualifications, be true and correct and, to the extent not so qualified, be true and correct in all material respects, in each case at and as of the Florida Closing Date, as if made at and as of such date (except for any such representations and warranties that are made as of a specific date or time, which representations and warranties shall be true and correct or true and correct in all material respects, as applicable, at and as of such specific date or time);

(d) Buyer shall have received a certificate signed by an authorized representative of Seller to the foregoing effect with respect to the representations and warranties made by Seller; and

(e) The Initial Closing shall have been consummated, and each of the Parties shall have performed in all material respects all of its obligations required to be performed under Section 2.02 in connection therewith.

Section 10.02. *Conditions to Texas Closing.* The obligations of the Parties to consummate the Texas Closing are subject to the satisfaction of the following further conditions:

(a) Receipt of Texas Regulatory Approval (including approval of any Sale, Transfer or Merger Application) from the Texas Commission on Environmental Quality or the Public Utility Commission, as applicable;

(b) No provision of Applicable Law, and no judgment, injunction, order or decree shall have been issued by a court of competent jurisdiction that, shall prohibit the consummation of the Texas Closing;

(c) The representations and warranties of Seller contained in Section 3.01, Section 3.02, Section 3.05, Section 3.06 and Section 3.07 to the extent relating to Ni Texas and its Subsidiaries shall be, to the extent qualified by materiality or Material Adverse Effect or similar qualifications, true and correct and, to the extent not so qualified, be true and correct in all material respects, in each case at and as of the Texas Closing Date, as if made at and as of such date (except for any such representations and warranties that are made as of a specific date or time, which representations and warranties shall be true and correct or true and correct in all material respects, as applicable, at and as of such specific date or time);

(d) Buyer shall have received a certificate signed by an authorized representative of Seller to the foregoing effect with respect to the representations and warranties made by Seller; and

(e) The Initial Closing shall have been consummated, and each of the Parties shall have performed in all material respects all of its obligations required to be performed under Section 2.02 in connection therewith.

Section 10.03. *Frustration of Closing Conditions.* No Party may rely on the failure of any condition set forth in Section 10.01 or Section 10.02 to be satisfied to excuse such Party's obligation to effect the Florida Closing or the Texas Closing, respectively, if such failure was caused by such Party's breach of this Agreement.

ARTICLE 11

SURVIVAL; INDEMNIFICATION

Section 11.01. *Survival.* The representations and warranties of the Parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Initial Closing until the date that is 15 months following the Initial Closing Date, except that the representations and warranties in Section 3.01, Section 3.02, Section 3.05, Section 3.06, Section 3.07, Section 4.01, Section 4.02, Section 4.06 and Section 4.09 (the "**Fundamental Representations**") shall survive the Initial Closing indefinitely. All covenants and agreements of the Parties contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Initial Closing indefinitely or for the period explicitly specified therein. Notwithstanding the preceding sentences, (a) any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time and (b) nothing in this Section 11.01 will limit any rights a Party may have to bring claims for breach grounded in actual fraud.

Section 11.02. *Indemnification.* (a) Subject to the limitations set forth in this Section 11.02(a), from and after the Initial Closing, Seller hereby agrees to indemnify Buyer and its Affiliates (collectively, the "**Buyer Indemnified Persons**") against, and to hold each of them harmless from, any and all damages, losses, costs and expenses ((x) including reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any indemnification claim, but (y) excluding (1) special, consequential, punitive, exemplary, incidental, indirect or speculative damages, (2) lost prospective economic advantage and lost business opportunity and (3) any damages calculated by taking into account any multiple of earnings, book value, cash flow or other similar measure (other than, in each case in this clause (y), any such damages or losses actually paid to a third party in respect of a Third-Party Claim)) (collectively, "**Damages**") to the extent actually suffered by any Buyer Indemnified Persons and arising out of: (i) any misrepresentation or breach of warranty made by Seller in this Agreement or any certificate delivered by Seller pursuant hereto or (ii) any breach of covenant or agreement made or to be performed by Seller pursuant to this Agreement.

(b) With respect to indemnification by Seller pursuant to Section 11.02(a)(i) (i) Seller shall not be liable for any individual matter (or series of related matters) unless the Damages with respect thereto exceed [REDACTED] (and in such event, subject to the other provisions of this paragraph (b), Seller shall be liable for all such Damages from the first dollar), (ii) Seller shall not be liable for any Damages in respect of any matter unless and until the aggregate amount of all Damages subject to indemnification (absent this clause (ii) by Seller (disregarding any Damages for which Seller is not liable pursuant to the foregoing clause (i) exceeds [REDACTED] and then only to the extent of such excess, (iii) Seller's maximum aggregate liability shall be limited to [REDACTED] and (iv) in the case of indemnification claims relating to a breach of the representations and warranties set forth in Section 3.21, Seller shall be liable only for Damages that relate to a Pre-Closing Tax Period. The limitations set forth in (x) the foregoing clauses (i) (iii) shall not apply with respect to any breach of a Fundamental Representation or a claim of breach grounded in actual fraud and (y) the foregoing clauses (i) and (ii) shall not apply with respect to any breach of Section 3.21.

(c) Subject to the limitations set forth in this Article 11, from and after the Initial Closing, Buyer hereby agrees to indemnify Seller and its Affiliates (collectively, the "**Seller Indemnified Persons**") against, and to hold each of them harmless from, any and all Damages to the extent actually suffered by the Seller Indemnified Persons and arising out of: (i) any misrepresentation or breach of warranty made by Buyer in this Agreement or any certificate delivered by Buyer pursuant hereto or (ii) any breach of covenant or agreement made or to be performed by Buyer pursuant to this Agreement.

(d) With respect to indemnification by Buyer pursuant to Section 11.02(c) (i) Buyer shall not be liable for any individual matter (or series of related matters) unless the Damages with respect thereto exceed [REDACTED] (and in such event, subject to the other provisions of this paragraph (d), Buyer shall be liable for all such Damages from the first dollar), (ii) Buyer shall not be liable for any Damages in respect of any matter unless and until the aggregate amount of all Damages subject to indemnification (absent this clause (ii) by Buyer (disregarding any Damages for which Buyer is not liable pursuant to the foregoing clause (i) exceeds [REDACTED] and then only to the extent of such excess, and (iii) Buyer's maximum aggregate liability shall be limited to [REDACTED]. The limitations set forth in the foregoing clauses (i) (iii) shall not apply with respect to any breach of a Fundamental Representation or a claim of breach grounded in actual fraud.

(e) For purposes of this Article 11, any inaccuracy in or breach of any representation or warranty shall for purposes of determining the amount of Damages with respect thereto (but not for purposes of determining whether there has been a misrepresentation or breach of representation or warranty) be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty (except for the use of the term "Material" in the term "Material Contract" and with respect to the representations and warranties set forth in Section 3.08 clause (b) of Section 3.09 Section 3.10(e) Section 3.11(a) and the penultimate sentence of Section 3.13).

Section 11.03. *Third-Party Claim Procedures.* (a) The party seeking indemnification under Section 11.02 (the “**Indemnified Party**”) agrees to give prompt notice in writing to the party against whom indemnity is to be sought (the “**Indemnifying Party**”) of the assertion of any claim or the commencement of any suit, action or proceeding by any third party (“**Third-Party Claim**”) in respect of which indemnity may be sought under such Section. Such notice shall set forth in reasonable detail the facts and circumstances of such Third-Party Claim and the basis for indemnification in respect thereof (taking into account the information then available to the Indemnified Party). The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have actually prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Third-Party Claim, and, if it is reasonably expected that the Indemnifying Party (as opposed to the Indemnified Party) will bear the majority of the Damages with respect to such Third-Party Claim (after taking into account the application of Section 11.02(b) or Section 11.02(d) as applicable), subject to the limitations set forth in this Section, shall be entitled to control and appoint lead counsel of its choice for such defense, in each case at its own expense.

(c) If the Indemnifying Party shall assume the control of the defense of any Third-Party Claim in accordance with the provisions of this Section 11.03, (i) the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, delayed or conditioned) before entering into any settlement of such Third-Party Claim, if the settlement does not release the Indemnified Party and its Affiliates from all liabilities and obligations with respect to such Third-Party Claim or the settlement imposes injunctive or other equitable relief on the Indemnified Party or any of its Affiliates and (ii) the Indemnified Party shall be entitled to participate in the defense of any Third-Party Claim and to employ separate counsel of its choice and its own expense for such purpose; *provided, however*, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of one counsel to the Indemnified Party. The Indemnified Party shall not settle any Third-Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, delayed or conditioned).

(d) Each party shall cooperate, and cause its respective Affiliates to cooperate, in the defense or prosecution of any Third-Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

(e) Notwithstanding anything to the contrary in this Article 11, the procedures with respect to claims relating to Taxes shall be governed solely by Section 7.04(c)

Section 11.04. *Direct Claim Procedures.* In the event an Indemnified Party has a claim for indemnity under Section 11.02 against an Indemnifying Party that does not involve a Third-Party Claim, the Indemnified Party agrees to give prompt notice in writing of such claim to the Indemnifying Party. Such notice shall set forth in reasonable detail the facts and circumstances of such claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have actually prejudiced the Indemnifying Party. If the Indemnifying Party has timely disputed its indemnity obligation for any Damages with respect to such claim, the parties shall proceed in good faith to negotiate a resolution of such dispute, and if not resolved through negotiations, such dispute shall be resolved by litigation in an appropriate court of jurisdiction determined pursuant to Section 13.06.

Section 11.05. *Calculation of Damages.* (a) The amount of any Damages payable under Section 11.02 by the Indemnifying Party shall be net of any (i) amounts recovered by the Indemnified Party under applicable insurance policies or from any other Person alleged to be responsible therefor, and (ii) Tax benefit (net of Tax liability) realized by the Indemnified Party arising from the incurrence or payment of any such Damages. In computing the amount of any such Tax benefit, the Indemnified Party shall be deemed to fully utilize, at the highest marginal tax rate then in effect, all Tax items arising from the incurrence or payment of any indemnified Damages. If the Indemnified Party receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Damages, subsequent to an indemnification payment by the Indemnifying Party, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made up to the amount received by the Indemnified Party, net of any expenses incurred by such Indemnified Party in collecting such amount.

(b) The Indemnifying Party shall not be liable under Section 11.02 for any Damages relating to any matter to the extent that (i) such Damages have been accrued or reserved for in the Balance Sheet, (ii) the Indemnified Party has recovered for such Damages under another provision of this Agreement (including Section 2.05 or Section 2.06), or (iii) such matter represents possible or potential Damages and not Damages actually suffered.

(c) Notwithstanding any other provision of this Agreement to the contrary, if on the applicable Closing Date the Indemnified Party actually knows of any information that would cause the applicable representations and warranties made by the Indemnifying Party to be inaccurate as of the date made, the Indemnified Party shall have no right or remedy after the Closing with respect to such inaccuracy and shall be deemed to have waived its rights to indemnification hereunder in respect thereof.

(d) Notwithstanding any other provision of this Agreement to the contrary, the Indemnifying Party shall not be liable under Section 11.02 for any Damages relating to Environmental Matters to the extent such Damages: (i) arise out of any sampling, testing or other invasive investigation after the applicable Closing of the air, soil, soilgas, surface water, groundwater, building materials or other environmental media unless such

sampling, testing or investigation is required by Applicable Law or a Governmental Authority or is necessary to respond to any Third-Party Claim against any Indemnified Party; (ii) result from any material construction, renovation, expansion, demolition, shutdown or closure of any asset, facility or real property on or after the applicable Closing Date unless such construction, renovation, expansion, demolition, shutdown or closure is required by Environmental Law or a Governmental Authority pursuant to applicable Environmental Law; or (iii) exceed those Damages that must be incurred to satisfy, in a reasonably cost-effective manner, the minimum requirements of a Governmental Authority pursuant to applicable Environmental Law, using, to the extent consistent with prevailing industry practices and permitted by Applicable Law, risk-based standards, engineering, use or institutional controls or deed or other restrictions.

(e) Each Indemnified Party must mitigate in accordance with Applicable Law any loss for which such Indemnified Party seeks indemnification under this Agreement, including taking any actions reasonably requested by the Indemnifying Party for such purpose, and no Indemnifying Party shall be liable to any Indemnified Party for any Damages to the extent arising from or aggravated by such Indemnified Party's failure to mitigate. If such Indemnified Party mitigates its Damages after the Indemnifying Party has paid the Indemnified Party under any indemnification provision of this Agreement in respect of such Damages, the Indemnified Party must notify the Indemnifying Party and pay, up to the amount paid by the Indemnifying Party, to the Indemnifying Party the extent of the value of the benefit to the Indemnified Party of that mitigation (less the Indemnified Party's reasonable costs of mitigation) promptly after the benefit is received.

(f) Each Indemnified Party shall use reasonable efforts to collect any amounts available under applicable insurance policies, or from any other Person alleged to be responsible, for any Damages payable under Section 11.02

Section 11.06. *Assignment of Claims.* If the Indemnified Party receives any payment from an Indemnifying Party in respect of any Damages pursuant to Section 11.02 and the Indemnified Party could have recovered all or a part of such Damages from a third party (a "**Potential Contributor**") based on the underlying Claim asserted against the Indemnifying Party, the Indemnified Party shall assign such of its rights to proceed against the Potential Contributor as are necessary to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment.

Section 11.07. *Treatment of Payments.* Each of Buyer and Seller agree to treat, for U.S. federal income tax purposes, any payment pursuant to this Article 11 as an adjustment to the purchase price paid on the applicable Closing Date (as determined for U.S. federal income tax purposes) unless otherwise required by Applicable Law.

Section 11.08. *Waiver of Claims; Exclusive Remedy.* Except as expressly set forth in this Agreement, except for a Party's right to seek and obtain specific performance pursuant to Section 13.13 and except for claims based on actual fraud, each Party (on behalf of itself and its Indemnified Persons) waives any and all rights and claims (whether absolute or contingent, liquidated or unliquidated, known or unknown, determined, determinable or otherwise) it or any of its Indemnified Persons may now or

hereafter have against the other Party or its Affiliates, whether in law or in equity, relating to the Companies, the Company Subsidiaries, the Equity Interests or the transactions contemplated hereby. The rights and claims so waived include claims for contribution or other rights of recovery arising out of or relating to any Environmental Law (whether now or hereinafter in effect), claims for breach of representation or warranty, negligent misrepresentation and all other claims for breach of duty. From and after the applicable Closing, each Party (on behalf of itself and its Indemnified Persons) acknowledges and agrees that the sole and exclusive remedy of its Indemnified Persons against the other Party or its Affiliates for any matter or claim arising out of this Agreement, the subject matter hereof or the transactions contemplated hereby (including any claim for breach of contract, misrepresentation or breach of warranty and breach of covenant or other agreement, but excluding the Party's right to seek and obtain specific performance pursuant to Section 13.13 and claims for actual fraud) shall be as provided by this Article 11.

ARTICLE 12 TERMINATION

Section 12.01. *Grounds for Termination of the Agreement.* This Agreement may be terminated at any time prior to the Initial Closing:

- (a) by mutual written agreement of the Parties;
- (b) by either Party, if the Initial Closing shall not have been consummated on or before September 30, 2015 (the "**Initial Closing End Date**"); *provided* that the right to terminate this Agreement pursuant to this Section 12.01(b) shall not be available to any Party whose breach of any provision of this Agreement results in the failure of the Initial Closing to be consummated by such time; or
- (c) by either Party, if the consummation of the Initial Closing would violate any nonappealable final order, decree or judgment of any Governmental Authority having competent jurisdiction.

The Party desiring to terminate this Agreement pursuant to clause (b) or (c) of this Section 12.01 shall give notice of such termination to the other Party.

Section 12.02. *Grounds for Termination of Florida Transactions.* If the Florida Closing shall not have been consummated on or before September 30, 2016 (the "**Florida Closing End Date**"), either Party may elect to terminate Section 2.03 of the Agreement, at which time Section 2.03 will cease to have any further force and effect, neither Party shall have any further obligation to effect the Florida Closing and all the representations, warranties, covenants and agreements contained in this Agreement or in any certificate or other writing delivered pursuant hereto applicable to any of the Companies or the Company Subsidiaries will be deemed to no longer apply to Ni Florida or any of its Subsidiaries (or, if applicable, will be deemed to no longer require Seller to cause Ni Florida or any of its Subsidiaries to take any action or effect the Florida Closing or the consummation thereof); *provided* that the right to terminate Section 2.03 of the

Agreement pursuant to this Section 12.02 shall not be available to any Party whose breach of any provision of this Agreement results in the failure of the Florida Closing to be consummated by such time. The Party desiring to terminate Section 2.03 of this Agreement pursuant to this Section 12.02 shall give notice of such termination to the other Party. If Buyer elects to terminate pursuant to this Section 12.02, it shall pay to Seller by wire transfer of immediately available funds, concurrently with and as a condition to such termination, [REDACTED]. If Seller elects to terminate pursuant to this Section 12.02, then Buyer shall pay to Seller such amount by wire transfer of immediately available funds within two Business Days of such termination.

Section 12.03. *Grounds For Termination Of Texas Transactions.* If the Texas Closing shall not have been consummated on or before September 30, 2016 (the “**Texas Closing End Date**”), either Party may elect to terminate Section 2.04 of the Agreement, at which time Section 2.04 will cease to have any further force and effect, neither Party shall have any further obligation to effect the Texas Closing and all of the representations, warranties, covenants and agreements contained in this Agreement or in any certificate or other writing delivered pursuant hereto applicable to any of the Companies or the Company Subsidiaries will be deemed to no longer apply to Ni Texas or any of its Subsidiaries (or, if applicable, will be deemed to no longer require Seller to cause Ni Texas or any of its Subsidiaries to take any action or effect the Texas Closing or the consummation thereof); *provided* that the right to terminate Section 2.04 of the Agreement pursuant to this Section 12.03 shall not be available to any Party whose breach of any provision of this Agreement results in the failure of the Texas Closing to be consummated by such time. The Party desiring to terminate Section 2.04 of this Agreement pursuant to this Section 12.03 shall give notice of such termination to the other Party.

Section 12.04. *Effect Of Termination.* Except as otherwise set forth in Article 12, if this Agreement, Section 2.03 or Section 2.04 is terminated as permitted by Article 12 (including a termination pursuant to Section 12.02 or 12.03), such termination shall be without liability of the terminating Party (or any member, stockholder, director, officer, employee, agent, consultant, representative or Affiliate of such Party) to the other Party to this Agreement and, in the case of a termination pursuant to Section 12.02 or Section 12.03, the provisions of Section 5.01, Section 5.02 and Section 5.04 shall cease to apply to Seller with respect to Ni Florida or Ni Texas, respectively; *provided* that if such termination shall result from the (i) willful failure of a Party to fulfill a condition to the performance of the obligations of the other Party or (ii) failure of a Party to perform a covenant of or willful breach of a Party’s representations and warranties in this Agreement, such Party shall be fully liable for any and all Damages incurred or suffered by the other Party as a result of such failure or breach. The provisions of this Section 12.04 and the provisions of Sections 6.01 (Confidentiality), 7.02 (Public Announcements), 13.03 (Expenses), 13.05 (Governing Law), 13.06 (Jurisdiction) and 13.07 (Waiver of Jury Trial) shall survive any termination of this Agreement pursuant to this Section 12.01.