



**AMENDED OPERATING AND PROPANE
AIR SALES SUPPLY AGREEMENT**

This Amended Operating and Propane Air Sales Supply Agreement (“Amended Supply Agreement”) dated as of March 21, 2014, is between New Hampshire Gas Corporation (the “Buyer”), on the one hand, and Keene Propane Corporation (formerly known as Keene Gas Corporation) (the “Seller”), on the other hand.

RECITALS

A. Buyer and Seller are the parties to an Asset Purchase Agreement dated April 30, 1998, attached hereto as Appendix A (the “Asset Purchase Agreement”) and the Operating and Propane Air Sales Supply Agreement dated November 1, 1998, attached hereto as Appendix B (the “Supply Agreement”).

B. Buyer and Seller, and New York State Electric & Gas Corp. (“NYSEG”), are parties to a Settlement Agreement with Mutual Releases (the “Settlement Agreement”), which they are entering into at the same time that Buyer and Seller are entering into this Amended Supply Agreement.

C. It is a condition of the Settlement Agreement that Buyer and Seller enter into this Amended Supply Agreement, and in accordance therewith, Buyer and Seller wish to amend the Supply Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

Definitions: Except for those terms separately defined in this Amended Operating and Propane Air Sales Supply Agreement, capitalized terms used herein shall have the meaning ascribed to such terms in the Supply Agreement or the Asset Purchase Agreement.

1. Paragraph 1 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Seller’s Duties and Responsibilities. Seller shall maintain its corporate existence in good standing, shall retain ownership of the Property (except as permitted under paragraphs 19 and 21 hereof), keep the Property free and clear of any liens or encumbrances that would affect Buyer’s use and occupancy of the Property or limit the exercise of any of Buyer’s rights under this Amended Supply Agreement, and shall make the Property and all structures and equipment therein fully available to Buyer (including, but not limited to, paying any and all taxes assessed on the Property, and maintaining commercially reasonable and adequate property, casualty and liability insurance on the Property (subject to reimbursement by the Buyer pursuant to paragraph 4 hereof)), so that Buyer may operate such structures and equipment for the purpose of storing, manufacturing

and delivering a supply of propane air at the property line of the Property in such volumes as Buyer shall deem necessary; provided, however, that Seller shall not be required to replace, repair or maintain any of the buildings or structures on the Property, including, for example, maintenance, repairs or reconstruction of buildings, or portions thereof, due to damage thereto or deterioration thereof.

2. Paragraph 2 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Buyer's Duties and Responsibilities. Buyer shall be solely responsible for the use, operation and maintenance of the Property, including all structures and equipment therein, for the purpose of storing, manufacturing and delivering a supply of propane air at the property line of the Property in such volumes and meeting such quality specifications and pressures as Buyer shall deem necessary and appropriate. Such responsibilities shall include but not be limited to: purchasing and storing propane, manufacturing propane air, operating the Property, maintaining and repairing the structures, tanks and all equipment located on the Property that are otherwise necessary for Buyer's purposes, ensuring that adequate staff is employed or contracted for by Buyer and is and will be available to reliably operate the Property in a good, workmanlike and safe manner and to handle any emergencies that may arise, and to deliver the propane air to Buyer in accordance with any then applicable requirements and rules of the New Hampshire Public Utilities Commission (the "Commission").

3. Paragraph 3 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Payment. Pursuant to the Settlement Agreement, Buyer has pre-paid in full the agreed consideration to be paid by Buyer to Seller for the use of the Property (including all structures and equipment thereon) for the initial 12-year term of this Amended Supply Agreement as set forth in paragraph 5 below. In addition, by virtue of such Payment, the Buyer shall, during the Initial Term or any renewal Term, have the option to purchase at Net Book Value (defined in paragraph 245(e)) any and all trade fixtures and equipment on the Property that existed on the Property as of November 1, 1998 and had or has been used in the storage, production or delivery of propane air or in the operation of the plant (but not including the buildings on or the land comprising the Property) ("Seller's Property"). The purchase option may be exercised by the Buyer in accordance with paragraph 5(e) hereof.

4. Paragraph 4 of the Supply Agreement, entitled "Seller's Costs," is hereby amended and retitled and replaced in its entirety by the following text:

Costs. During the initial 12-year term of this Amended Supply Agreement, and any extension thereof as provided in paragraph 5 below, Buyer shall pay, directly to the vendor or other payee, any and all costs associated with Buyer's use, operation and maintenance of the Property (including all structures and equipment

therein), and any additions made by the Buyer to the plant located on the Property. Such costs shall include but not be limited to: the actual costs of purchasing propane and any transportation costs to the Property; costs associated with obtaining and/or maintaining all necessary licenses, permits or other regulatory or legal authorizations necessary to enable Buyer to operate the Property so as to deliver propane air to Buyer at the property line of the Property; costs of retaining or contracting for operating personnel; repair, upkeep and maintenance costs on the Property or on the equipment on the Property, as may be necessary for Buyer to operate the Property and provide a safe and reliable supply of propane air to Buyer in such volume as Buyer shall deem necessary; and all other minor or incidental operating costs (hereinafter collectively referred to as "Costs"). On or before the Effective Date of this Amended Supply Agreement, Buyer shall cause to be cancelled any credit cards in the name of or payable by Seller that have been issued to any of Buyer's employees. Seller shall procure and maintain insurance for property loss and casualty, and general liability, in such amounts and limits as are adequate to insure against such risks, and Seller shall pay when due any and all taxes on the Property, equipment or operation; provided, however, that Buyer shall, upon presentation of the invoice(s) therefor, reimburse the Seller for any such insurance premiums and taxes (but not including income taxes). Costs, notwithstanding the other provisions of this Amended Supply Agreement, shall not include the cost of maintaining the corporate existence of KPC or preparing and filing KPC's federal or state tax returns or other corporate filings, the cost of Seller's personnel (if any), or the costs of any investigation, clean up, or remediation of any Hazardous Substance(s) currently on, adjacent to or off of the Property for which Seller is or may become liable as provided in paragraph 11 below.

5. Paragraph 5 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Term.

(a) Initial Term. This Amended Supply Agreement shall have an effective date as the date of the Closing of the Settlement Agreement (the "Effective Date") and shall continue for a term of twelve (12) years from the Effective Date (the "Initial Term").

(b) Optional additional terms. The Initial Term may be extended, at Buyer's option, for not more than three additional one-year terms ("Year 13," "Year 14," and "Year 15"). If Buyer wishes to exercise such option for any such one-year term, Buyer shall give Seller prior written notice thereof at least 90 days before the expiration of the Initial Term (for Year 13) or of the additional one-year term then in effect (for Year 14 or Year 15). Buyer shall pay Seller an annual compensation for such optional years in the following amounts: (a) \$71,300 for Year 13, (b) \$73,400 for Year 14, and (c) \$75,600 for Year 15. Such annual compensation shall be payable in four equal installments, each such installment payable on the first business day of the three-month period to which it applies.

(c) Early termination. Buyer shall have the right to terminate this Amended Supply Agreement at any time prior to the expiration of the Initial Term or of any additional one-year term, upon giving Seller 90 days' prior written notice thereof; provided, however, that such early termination shall not entitle Buyer to the return of any payments made by it to Seller prior to the giving of such notice; and provided further that Buyer shall retain its rights to remove Buyer's Property and exercise its option to purchase Seller's Property pursuant to subparagraphs 5(d) and (e) below.

(d) Vacating the Property, removal of Buyer's Property. Upon termination of the Initial Term or any renewal Term of this Amended Supply Agreement, Buyer shall vacate the Property and, upon or prior to vacating the property, Buyer shall remove, at its sole cost, (i) any and all non-permanent and removable fixtures, furnishings and equipment installed by the Buyer before the Effective Date, and (ii) any and all buildings, structures, fixtures, furnishings and equipment installed by the Buyer after the Effective Date (collectively, "Buyer's Property") provided, however, that "Buyer's Property" shall not include fixtures, furnishings, equipment or other materials included or utilized by Buyer solely for the purpose of maintaining or repairing the Property or Seller's Property. Buyer shall repair any damage occasioned by such removal and shall restore the Property to its condition as at the effective date of this Amendment, reasonable wear and tear, taking by eminent domain, and damage due to fire or other casualty insured against and the Seller's obligations excepted.

(e) Option to purchase Seller's Property. During the Initial Term and any renewal Term of this Agreement, Buyer shall have the option to purchase (at the Net Book Value thereof) all, or less than all, of Seller's Property as provided herein. Buyer shall, at least ninety (90) days before any such termination, notify the Seller in writing of the items of Seller's Property it wishes to purchase. Within ten (10) days of receipt of such notice, Seller shall provide the Buyer with a calculation of the Net Book Value of such Seller's Property, together with reasonable documentation of such calculation, in order to allow Buyer to verify Seller's calculation of the Net Book Value. Buyer shall, within ten (10) days of receipt of such calculation, provide notice of its acceptance or rejection thereof. If Buyer rejects Seller's calculation, it shall include its own calculation of Net Book Value in the rejection notice, and the parties shall negotiate in good faith to reach agreement within ten (10) days of Seller's receipt of Buyer's rejection notice. If the parties are unable to agree on the Net Book Value, then the parties shall promptly select an independent public accounting firm reasonably acceptable to each party, who will calculate the Net Book Value of Seller's Property within thirty (30) days of the date such firm is engaged. Within ten (10) days of such accounting firm's notice of such calculation to the parties, Buyer shall provide Seller with written notice of its acceptance or rejection of the final calculation of the Net Book Value, and upon acceptance deliver the purchase price for such items of Seller's Property. Seller shall deliver such items of Seller's Property free and clear of all liens and encumbrances, and upon payment of the purchase price Seller's Property shall be deemed to be Buyer's Property

and shall be removed by the Buyer in accordance with the terms of subparagraph 5(d) hereof, and not later than the date of termination of this Agreement. For the purposes hereof, "Net Book Value" shall mean the book value of the Seller's Property determined in accordance with generally accepted accounting principles and as shown on the books of Seller.

(f) Certain responsibilities upon Termination. Before vacating the Property, Buyer shall (i) disconnect any and all pipes, pipelines and other equipment located on the Property from the pipeline distribution system that begins at the Property line and serves (or served) the City of Keene, NH and (ii) cause all tanks, pipes and equipment utilized by the Buyer in connection with its activities on the Property to be emptied of gas and gas vapors. Buyer shall be solely responsible for any liability arising out of any release of contaminants occasioned by Buyer's efforts pursuant to (i) and (ii) of this paragraph. So long as Buyer has performed these tasks, Buyer shall not be required to remove any of Seller's Property that Buyer did not opt to purchase under paragraph 5(e).

6. Paragraph 6 of the Supply Agreement is hereby deleted.

7. Paragraph 7 of the Supply Agreement is hereby deleted.

8. Paragraph 8 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Delivery Point. The Delivery Point shall be a point at the connection point(s) between the facilities on the Property into the Distribution System at the property line of the Property.

9. Paragraph 9 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Quality Specifications and Pressures. Buyer shall be solely responsible for the quality specifications and pressures of the propane air that is delivered to Buyer at the property line of the Property.

10. Paragraph 10 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Rights Upon Default. If either party shall default in its obligations to the other hereunder, both parties shall have all rights and remedies available at law or in equity. Without limiting the generality of the foregoing, Buyer shall, notwithstanding any breach hereof by Seller, have the continuing right to occupy and use the Property and Seller's Property, and shall retain any and all other rights hereunder, during the Term of this Amended Supply Agreement.

11. Paragraph 11 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Indemnities by the Seller. The Seller will indemnify, defend and hold harmless the Buyer from and against all liabilities, losses, claims, demands and damages, including reasonable attorneys' fees (collectively, "Claims") arising out of or related to (i) any Excluded Liabilities, or (ii) any environmental liabilities whatsoever in any way associated with the Property or environmental liabilities not on the Property that are shown to have derived therefrom, provided that such liabilities shall have been related to, or arisen out of, or shall have been imposed by reason of any activities related to the manufacture of gas on the Property or activities that occurred at the Property on or before November 1, 1998. Notwithstanding the foregoing, the Seller shall not be responsible for indemnification pursuant to this paragraph 11 to the extent that the costs, expenses, damages, and injuries arising out of such Claims have been caused by Buyer or any person acting for the Buyer or for whom Buyer is responsible.

12. Paragraph 12 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Indemnities by the Buyer. The Buyer will indemnify, defend and hold harmless the Seller from and against all Claims arising out of or related to (i) any Assumed Liabilities, (ii) Buyer's operation of the Distribution System and of the plant and equipment located on the Property, (iii) any environmental liabilities whatsoever in any way associated with the Property or environmental liabilities not on the Property that are shown to have derived therefrom, provided that such liabilities shall have been imposed by reason of Buyer's activities on the Property since November 1, 1998, and (iv) costs associated with damages or injuries (including death) to persons or property caused by or relating to Buyer's operation of the Property or the delivery of propane air to or from the Property, including attorney's fees and costs in defending any such claims or actions. Notwithstanding the foregoing, the Buyer shall not be responsible for indemnification pursuant to this paragraph 12 to the extent that the costs, expenses, damages, and injuries arising out of such Claims have been caused by Seller or any person acting for the Seller or for whom Seller is responsible.

13. Paragraph 13 of the Supply Agreement is hereby deleted.

14. Paragraph 14 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Notices. Except as herein otherwise provided, any notice or other communication provided for in this Amended Supply Agreement, or any notice which either party may desire to give the other, shall be in writing and shall be considered as duly delivered when mailed either by registered or certified mail or by overnight mail (using an established service with tracking capabilities such as Federal Express) to the Post Office address of the receiving party as set forth below or at such other address as either party shall designate by written notice as provided herein. Notwithstanding any other provision hereof, any notice changing the address of a

party, for purposes of this Amended Supply Agreement, shall be considered duly delivered when received by the addressee. Notice shall be made as follows:

If to the Buyer, to:

New Hampshire Gas Corporation
Attn: Stephen Rokes
80 Pearl Street
Keene, New Hampshire 03431

New York State Electric & Gas Corporation
Attn: Mark V. Dolan, Deputy General Counsel
18 Link Drive
Binghamton, New York 13902
Phone: 607-762-7743
Email: Mark.Dolan@iberdrolausa.com

If to the Seller, to:

Nancy E. Sheldon
General Manager, Keene Propane Corporation
262 Central Park West
New York, NY 10024

15. Paragraph 15 of the Supply Agreement is hereby deleted.
16. Paragraph 16 of the Supply Agreement is not amended and remains in effect.
17. Paragraph 17 of the Supply Agreement is not amended and remains in effect.
18. Paragraph 18 of the Supply Agreement is not amended and remains in effect.
19. Paragraph 19 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Assignment. This Amended Supply Agreement shall be binding upon the successors and assigns of the Buyer and Seller. No assignment of this Amended Supply Agreement shall be valid without the prior written consent of the parties hereto, provided, however, that (a) Buyer may assign this Amended Supply Agreement to any affiliate or in the context of any merger, consolidation or reorganization, and (b) Seller may assign this Amended Supply Agreement in accordance with the right of first refusal as set forth in paragraph 21 below. Any assignment in derogation of these provisions shall be void.

20. Paragraph 20 of the Supply Agreement is hereby amended and replaced in its entirety by the following text:

Capitalized Terms. Except as otherwise set forth herein, capitalized terms shall have the same meanings as ascribed to them in the Supply Agreement and in the Asset Purchase Agreement referred to in the Supply Agreement.

21. A new paragraph 21 is added to this Amended Supply Agreement, as follows:

Right of First Refusal. At any time during the term of this Amended Supply Agreement, Seller shall have the right to sell or assign its title to and interest in the Property, but only in accordance with Buyer's right of first refusal as provided herein. In the event that Seller accepts an offer to convey its interest in the Property to a third person, Seller shall give notice to Buyer of such offer. The notice shall be in writing and shall include a copy of the accepted offer which shall, among other things, set forth the price at which Seller intends to convey its interest and all other material terms of the proposed purchase. Buyer shall have the right, within 30 days following its receipt of such notice, to purchase Seller's title to and interest in the Property at not less than the price stated in the notice. Following the expiration of such 30-day period, Seller shall have the right to convey its title to and interest in the Property at a price not less than the amount stated in the notice. The buyer of such interest will acquire, along with title to the Property, all of Seller's rights and obligations under this Amended Supply Agreement. Following such sale, such buyer's interest in the Property shall be subject to all of Buyer's rights under this Amended Supply Agreement, including but not limited to Buyer's right to continue to use the Property until the termination of this Amended Supply Agreement. Notwithstanding the foregoing, if the Seller fails to close on the sale, conveyance, or transfer of the Property within one hundred twenty days (120) days of the expiration of the thirty (30) day notice period set forth above, and thereafter again desires to sell, convey, or transfer the Property during the term of this Right of First Refusal; or if Seller desires to change the terms of such sale, conveyance, or transfer of the Property or the identity of the prospective buyer, in each such case it will again serve notice upon Buyer in accordance with the terms of this paragraph 21, and comply again with the process set forth herein.

22. A new paragraph 22 is added to this Amended Supply Agreement, as follows:

Recording of Notice. Buyer shall be permitted to record in the Cheshire County Registry of Deeds a Notice of this Agreement, substantially in the form attached hereto as Appendix C, giving notice of Buyer's rights to occupy and use the Property, and Buyer's right of first refusal pursuant to paragraph 21 hereof, and Seller shall provide all reasonable cooperation to ensure the recording of such notice.

IN WITNESS WHEREOF, the undersigned have executed this Amended Supply Agreement as of the date first written above.

NEW HAMPSHIRE GAS CORPORATION

By: _____
Kevin E. Walker
President

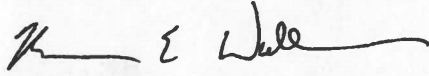
By: _____
Teresa Bradford
Vice President and Controller
Cayuga Energy, Inc. (Control)

KEENE PROPANE CORPORATION

By: _____
Paul B. Sheldon
President

IN WITNESS WHEREOF, the undersigned have executed this Amended Supply Agreement as of the date first written above.

NEW HAMPSHIRE GAS CORPORATION

By: 

Kevin E. Walker
President

By: _____
Teresa Bradford
Vice President and Controller
Cayuga Energy, Inc. (Control)

KEENE PROPANE CORPORATION

By: _____
Paul B. Sheldon
President

IN WITNESS WHEREOF, the undersigned have executed this Amended Supply Agreement as of the date first written above.

NEW HAMPSHIRE GAS CORPORATION

By: _____
Kevin E. Walker
President

By: *Teresa Bradford*
Teresa Bradford
Vice President and Controller
Cayuga Energy, Inc. (Control)

KEENE PROPANE CORPORATION

By: _____
Paul B. Sheldon
President

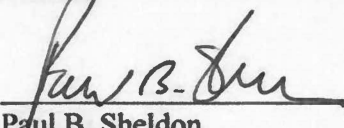
IN WITNESS WHEREOF, the undersigned have executed this Amended Supply Agreement as of the date first written above.

NEW HAMPSHIRE GAS CORPORATION

By: _____
Kevin E. Walker
President

By: _____
Teresa Bradford
Vice President and Controller
Cayuga Energy, Inc. (Control)

KEENE PROPANE CORPORATION

By:  _____
Paul B. Sheldon
President

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated April 30, 1998 is between New York State Electric & Gas Corporation, a New York corporation (the "Buyer"), and Keene Gas Corporation, a New Hampshire corporation (the "Seller").

WITNESSETH:

WHEREAS, the Seller is engaged in the retail propane air business commonly known as "Keene Gas" in the State of New Hampshire whereby Seller purchases propane, manufactures propane air and then distributes that propane air to customers in Keene, New Hampshire (the "Business"); and

WHEREAS, Keene Gas is regulated as a public utility by the New Hampshire Public Utilities Commission (the "Commission"); and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain of Seller's assets, on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Seller will retain its propane air manufacturing operations and property on which the Seller's propane air plant is located and other tanks and equipment, as specified herein which property is located at 207 Emerald Street, Keene, New Hampshire (the "Property") and will agree to sell propane air to Buyer as a part of this Agreement; and

WHEREAS, Buyer will purchase propane air from Seller for an interim period as specified herein.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties hereby agree as follows:

Section 1. Sale of Assets and Assumption or Liabilities.

1.1 **Purchase and Sale of Assets.** Subject to the conditions set forth below, at the Closing referred to in Section 8.1, the Seller will sell and deliver to the Buyer, and the Buyer will purchase from the Seller, all of the Seller's right, title and interest in and to the following assets (collectively, the "Purchased Assets") free and clear of all encumbrances. The parties specifically agree that Buyer is not purchasing substantially all of the assets of the Business, that Buyer is purchasing only certain identified assets specified below and that the assets Buyer is not purchasing from Seller constitute a substantial portion of the assets and value of the Business. The Purchased Assets will include the following:

(a) **Specified Assets.** The specific equipment, vehicles and other assets described in Exhibit "A" hereto, incorporated herein by this reference; and

(b) **Distribution System.** Seller's entire municipal pipeline system which Seller operates as a regulated public utility and which delivers propane air to propane air customers in Keene, New Hampshire, including but not limited to all above and below ground pipelines,

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meters, regulators, governors and all other pipeline appurtenances and other related equipment (and any associated rights-of-way and/or easements) that shall be transferred to Buyer beginning at the property line of Seller's 207 Emerald St., Keene, New Hampshire property (the "Distribution System"); and

(c) Customer Lists and Files. All books, operating records, operating, safety and maintenance manuals, engineering design plans, blue prints and re-built plans, specifications, procedures and similar items of Seller, customer lists and files, copies of billing records, route lists and other books and records relating to the Purchased Assets and the Distribution System; and

(d) Permits and Licenses. To the extent transferable, all permits and licenses related to the construction, operation and maintenance of the Purchased Assets and the Distribution System; and

(e) Contracts. Any and all contracts with Keene propane air customers as set forth on Schedule 1, which contracts shall be assigned to Buyer at the Closing; and

(f) Rights-of-Way. All rights-of-way or easements that are associated exclusively with the Distribution System and which are located entirely off of the Property and all other rights-of-way or easements owned by Seller which are located entirely off of the Property.

(g) All unexpired warranties and guarantees from third parties with respect to any of the Purchase Assets and Distribution System which are transferable.

1.2. Excluded Assets. Notwithstanding Section 1.1, the Purchased Assets shall not include the following (collectively, the "Excluded Assets"):

(a) Cash. Cash and cash equivalents, except as set forth in Sections 1.4(n) and (o) and except as stated in Section 9.1; and

(b) Inventory. All inventory of liquid propane gas or gas vapor located in the bulk or other storage tanks referred to in Section 1.2(g), parts, repair parts, spare parts, regulators, fittings, propane cylinders and appliances held for resale; and

(c) Computer Equipment and Software. The computers, computer peripherals and computer software used in connection with the Business, except that Buyer shall be entitled to concurrent access with Seller for the use of the computers, computer peripherals and computer software used in connection with the Business for the interim period referred to in Section 9.3; and

(d) Trade Name, Telephone Number, Etc. Any trade names including "Keene Gas" or any trade name other than "Keene Gas" relating to the Business, the Seller's main telephone number and post office boxes at which the Seller receives correspondence or remittances from customers, and

(f) Real Estate. Any real estate or interests therein, whether owned or leased, including, but not limited to, Seller's property located at the Property, except that any and all

rights-of-way, easement or other similar interests that apply exclusively to the Distribution System shall be assigned to Buyer at the Closing and such rights-of-way, easements and similar interests are set forth in Schedule 2 ; and

(g) **Tanks.** All customer and bulk propane storage tanks and related equipment and other tanks, dispensers, pumps, vaporizers, meters, regulators, fixtures, fittings and piping, including all tanks and equipment located at or on the Property and any field storage or other propane storage tanks owned or leased by Seller which are located anywhere off of the Property; and

(h) **Buildings.** All buildings or other above or below-ground structures located on the Property; and

(i) **Benefit Plans.** The assets of any employee benefit plan maintained by or for the benefit of the Seller; and

(j) **Insurance.** Any insurance policies; and

(k) **Corporate Records.** The Seller's minute books, stock register and similar corporate records; and

(l) **Hazardous Substances.** Any Hazardous Substance as defined in Section 3.13; and

(m) **Other Assets.** All other assets of the Seller, except those assets specifically set forth in this Agreement or assets which are included in Exhibit "A".

1.3. **Assumption of Liabilities.** The Buyer will assume and become responsible, in the context of this purchase of certain of the assets of Seller, for only such obligations of the Seller where that obligation is explicitly assumed by the Buyer hereunder (the "Assumed Liabilities"). Buyer shall assume, subject to the receipt of all necessary regulatory or other necessary approvals or authorizations for this Agreement, only liabilities which are actually incurred and which arise after the Closing Date and which directly and exclusively relate to operating, maintaining and repairing the Distribution System or to the other Purchased Assets.

1.4 **Excluded Liabilities.** Except in accordance with Section 1.3, the Buyer will not assume or be responsible for any obligation or liability of the Seller, and the Seller will continue to be responsible for all its obligations and liabilities, whether known or unknown, fixed or contingent, liquidated or unliquidated and secured or unsecured, whether arising prior to, at or subsequent to the Closing, whether or not related to the Seller's Business and whether or not disclosed to the Buyer (collectively, the "Excluded Liabilities"). Without limiting the generality of the foregoing, the Excluded Liabilities include any obligations or liabilities of the Seller:

(a) Arising out of or relating to this Agreement or the transactions contemplated hereby;

(b) Constituting indebtedness, including obligations for borrowed money, or any obligations representing the deferred purchase price of any property or the Property or pursuant to any guaranties;

- (c) For federal, state, local or foreign taxes, including any taxes arising out of or resulting from the consummation of the transactions contemplated by this Agreement;
- (d) To any present or former shareholder, officer or director of the Seller or any of its predecessors;
- (e) Arising out of or relating to any actual or alleged breach or failure to perform by the Seller or any of its predecessors under any contract, commitment, arrangement or understanding;
- (f) Relating to any litigation, suit or proceeding pending or threatened against the Seller or which could have been brought prior to the Closing Date and which relate to the Property or the Business;
- (g) Under any Environmental Laws (as defined in Section 3.13), including but not limited to, liabilities or damages associated in any way with the Property or contamination deriving from the Property;
- (h) To any current or former employee of the Seller or any of its predecessors, including obligations for wages, bonuses, employee benefits, fringe benefits, vacation or holiday pay, severance pay or worker's compensation, or under any federal, state, local or foreign law relating to employment; including, but not limited to any obligations or liabilities under the Benefit Plans referred to in paragraph 1.2 (i), any liability to the Pension Benefits Guaranty Corporation, any liability with respect to non-compliance with the notice and benefit continuation requirements of COBRA, any liability with respect to any non-compliance with ERISA or any other applicable law.
- (i) Which have accrued or were incurred by Seller, or which arise out of any event that occurred or state of facts that existed, at or prior to the time of the Closing;
- (j) Relating to any activities or businesses of the Seller other than Keene Gas;
- (k) Obligating the Seller to install storage tanks or propane distribution systems;
- (l) All obligations and liabilities of the Seller under its existing liquid propane tank leases or other leases, including obligations for prepaid rental payments (collectively, "Unearned Tank Rentals");
- (m) Relating to any Excluded Asset;
- (n) All obligations and liabilities that are the responsibility of the Seller with respect to refundable security deposits made by propane air customers in Keene (collectively, "Security Deposit Obligations") and Seller shall be obliged to transfer to Buyer at Closing (or take a deduction from the purchase price payable at Closing) in an amount equal to the amount of funds that Seller holds as Security Deposit Obligations (plus any interest due thereon), as of the date of Closing. Seller shall be obliged to present a Schedule 3 at Closing which shall become a part of

this Agreement and which shall set forth the amount of the Seller's Security Deposit Obligations (plus any interest due thereon) as of the date of the Closing;

(o) All obligations and liabilities that are the responsibility of the Seller with respect to prepayments made by, or credit balances owing to, Keene propane air customers (collectively, "Customer Credits") and Seller shall be obliged to reimburse Buyer at the Closing (or take a deduction from the purchase price payable at Closing) for the pro rata amount of any such prepayments which have been made but for which the propane air customer has not yet been reimbursed in services or supply. Seller shall be obliged to present a Schedule 4 at Closing which shall become a part of this Agreement and which shall set forth the *pro rata* amount of prepayments to Seller for which the customer has not yet been reimbursed in services or supply.

1.5 Effect of Transaction and Contingency. The parties understand and agree that this Agreement shall be contingent upon the New Hampshire Public Utilities Commission (the "Commission") approving this Agreement in the form and in accordance with the structure as contemplated herein by the parties, and such Commission approvals shall in all respects be acceptable to Buyer in its sole discretion. The effect and the intent of the parties to the transaction will be to effect a split of Keene Gas Corporation into two separate business entities, a propane air manufacturing and sales operation and propane vapor supply business, which shall be retained, owned and operated by the Seller, and which shall continue to be operated for an interim period to be determined by Buyer, and a regulated propane air distribution business, which shall be owned and operated by Buyer. Buyer will buy the Distribution System and certain specified other assets of the Business and Seller shall retain ownership and responsibility for the Property and for operating the Property and the propane air delivery system and tanks and other equipment located on the Property. Seller shall also be responsible for providing a safe and reliable supply of propane air to Buyer at the property line of the Property. Buyer shall pay Seller's actual cost to operate the Property, in accordance with the Operating Agreement attached as Exhibit B hereto.

1.6 Vapor Line. To the extent approved by all necessary regulatory or other authorities or municipalities having jurisdiction, Seller shall be permitted to keep a propane vapor line in place for Cornerstone Propane, L.P. ("Cornerstone") from a storage tank on the Property and which is connected to the adjacent shopping center (Center at Keene), if Cornerstone will agree to allow Keene Gas to make a reconnection of the mounded storage tank so that storage from the mounded tank may be counted as part of the Commission's peak day supply requirements; *provided, however*, nothing herein shall prevent Buyer from competing to make sales of propane air or other energy supply (except liquid propane, which shall be prohibited) to the adjacent shopping centers.

Section 2. Purchase Price

2.1. Purchase Price. The aggregate consideration to be delivered to the Buyer in consideration of the sale of the Purchased Assets, and in consideration of the related agreements that are attached as Exhibits hereto, will be a total of \$50,000, payable in cash at Closing, as may be adjusted for the amounts as set forth in Sections 1.4(n) and (o) and 3.14 (the "Purchase Price"). Such aggregate consideration will be allocated among the Purchased Assets (including working capital and the Seller's covenant not to compete) as provided in Section 2.2.

2.2 Book Value of Purchased Assets. At the Closing, Seller shall be obligated to present a Schedule 5, which shall be attached to and which shall become a part of this Agreement and which, where possible, shall state the original cost of the Purchased Assets, less accumulated depreciation, amortization and contributions in aid of construction that are applicable to the Purchased Assets, and such information shall be presented, where possible, in appropriate utility plant account groupings. Seller shall give adequately specific descriptions of each of the Purchased Assets listed in Schedule 5.

Section 3. Representations and Warranties of the Seller.

Seller represents and warrants to and for the benefit of the Buyer as follows:

3.1 Organization. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New Hampshire and has all requisite corporate power and authority to own, lease and operate its properties and assets, to conduct the Business as currently conducted or proposed to be conducted and to sell the Purchased Assets to Buyer. Seller is not required to be qualified to do business as a foreign corporation in any jurisdiction.

3.2 Authority. The Seller has all requisite power and authority to execute and deliver this Agreement and to perform the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action on the part of the Seller and, subject to receipt of required regulatory approvals, no other approval on the part of the Seller is necessary for the execution, delivery and performance of this Agreement. This Agreement constitutes the legal, valid and binding obligation of the Seller and is enforceable against the Seller in accordance with its terms.

3.3 No Conflicts. The execution and delivery of this Agreement by the Seller and the consummation of the transactions contemplated hereby (a) do not require the Seller to file any notice with or obtain any consent, approval, authorization or exemption from any person, state, federal or regulatory authority and (b) will not violate any court order, judgment, law, rule or regulation and (c) will not constitute a default or breach under any agreement to which the Seller is a party or by which the Seller, or any of the Purchased Assets may be bound; *provided, however*, the parties understand and agree that this Agreement shall be contingent upon the New Hampshire Public Utility Commission (the "Commission") approving this Agreement in the form and in accordance with the structure as contemplated herein by the parties and shall be contingent upon the acceptability to Buyer, in its sole discretion, of such Commission approvals or any conditions upon Commission approval that the Commission may impose.

3.4 Absence of Undisclosed Liabilities. The Seller has no material liabilities (whether known or unknown, fixed or contingent, liquidated or unliquidated or secured or unsecured) that would be required by generally accepted accounting principles to be reflected on a balance sheet prepared as of the date hereof.

3.5 Absence of Certain Changes. The Business has been conducted only in the ordinary course during the year previous to the date of this Agreement and the Business has not experienced any change which, individually or in the aggregate, has had or may have a material adverse effect on the Purchased Assets or the operations, affairs or financial condition of the

Business (a "Material Adverse Effect"), except the ongoing Commission proceedings concerning Iberdrola / EnergyNorth Keene Gas which are hereby acknowledged by Buyer; and the Seller has not taken or committed to take any of the actions referred to in Section 5.1 with respect to the Business. Attachment 1 Page 71 of 134

3.6 Title. The Seller states and affirms that it has good and marketable title to the Purchased Assets, free and clear of all liens and encumbrances. At the time of the Closing, none of the vehicles or the other Purchased Assets set forth on Exhibit "A" will be subject to any leases, liens or other encumbrances and there shall be no liens or encumbrances of any kind on the Distribution System.

3.7 Facilities and Equipment. None of the Purchased Assets are in material violation of any applicable legal requirement. The machinery, vehicles, pipes and other equipment included in the Purchased Assets have been well maintained and are in good operating condition and repair, normal wear and tear excepted.

3.8 Propane Tanks. The amount of the Seller's inventory of propane air shall be sufficient at the Closing and at all times thereafter to enable Seller to make deliveries of propane air to Buyer in sufficient quantity to provide for the requirements, including the peak day requirements, of all Keene propane air customers until such time as Buyer finds and has made operational its alternate energy supply source off of the Property to provide propane, propane air, natural gas and/or another energy supply to Buyer's customers. Seller covenants that it will grant no right to any third party beyond any rights such third parties may already have as of the date of a Memorandum of Understanding between the parties and dated February 25, 1998, in and to any of the tanks or any portion of the tanks located on the Property until such time as the Property is no longer needed to provide propane air to Buyer for Buyer's customers. Seller further covenants that the tanks and other equipment on the Property are sufficient to enable Seller to operate the Property and to make deliveries of propane air to Buyer in sufficient quantity to provide for the requirements, including the peak requirements, of all current customers of Seller.

3.9 Contracts and Leases. The Seller is not in default under any lease, contract or other agreement relating to the Business.

3.10 Customer List. The Seller will deliver to the Buyer a copy of both its active and any inactive customer lists within thirty (30) days of the date first set forth above. The customer lists shall accurately set forth, separately, the active and inactive customers of the Business that would be served by Buyer through the Distribution System. Seller states and affirms that no customer whose individual account represented more than five percent of the gross sales of the Business during the 12 month period ended February 28, 1997 has given the Seller notice of intention to terminate the Seller as such customer's primary supplier of propane air or of reducing its propane purchase obligations by 50% or more. A list of each customer whose annual purchases constitute more than five percent of the gross sales of the Business for the last fiscal year is set forth on Schedule 6.

3.11 Compliance with Law: Permits and Licenses. The Purchased Assets and the operation of the Business are in compliance with all applicable laws, regulations and ordinances, including all laws and regulations concerning labor and employment but subject, in the case of Environmental Laws and tax matters, to the specific provisions of Sections 3.13 and 3.14, respectively. The Seller holds the permits and licenses set forth on Schedule 7 with respect to the

Business, which are all of the permits and licenses required to conduct the Business, other than those permits and licenses the absence of which in the aggregate will not have any Material Adverse Effect on the Business. Seller covenants that it shall be required to have all necessary permits, licenses and authorizations in place to operate in the manner as set forth in this Agreement at Closing and thereafter and that Seller shall be diligent in keeping all necessary permits, licenses and authorizations in place so that Seller will be able to continue to supply propane air to Buyer at the property line of the Property until such time as Buyer has made arrangements for an alternative energy supply for Buyer's customers.

3.12 **Litigation.** Except as set forth on Schedule 8, there is no action, suit, proceeding or investigation in any court or before any arbitrator or government agency pending or, to the knowledge of the Seller, threatened against the Seller or any of its properties or the Business or the Purchased Assets. Seller shall have the responsibility to advise Buyer concerning any changes in the substance of Schedule 8 that may occur between the date of this Agreement and the Closing.

3.13 **Environmental Matters.**

(a) For purposes of this Agreement "Environmental Laws" means all federal, state and local statutes, laws, rules, regulations, orders and regulatory interpretations which relate to or deal with pollution or protection of human health or the environment, including but not limited to laws relating to emissions, discharges, spills, releases or threatened releases of Hazardous Substances, the use, treatment, storage, disposal, handling or manufacturing, transporting or shipping of Hazardous Substances, including but not limited to the following: the Resource Conservation and Recovery Act ("RCRA"); the Clean Air Act, the Clean Water Act; the Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"); the Hazardous Materials Transportation Act and the Toxic Substance Control Act. "Hazardous Substance" means any hazardous substances, hazardous material, flammable or combustible substance, explosive material, radioactive material, solid waste, hazardous waste, toxic substance, pollutant, contaminant, product or by-product or related materials or substances defined in, identified in or regulated by any Environmental Laws, including but not limited to (i) petroleum, including crude oil or any fraction thereof, and (ii) natural gas, natural gas liquids or synthetic gas usable fuel.

(b) The Seller possesses all permits, licenses and authorizations required under Environmental Laws for the conduct of the Business, the Property and for the Business as it will be operated by Seller after the Closing has occurred, except such approvals or authorizations as may be required from the Commission. The Seller asserts and affirms that it is now and has at all times been in compliance with all applicable Environmental Laws. There are no events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance in respect of any Environmental Laws or, except as set forth on Schedule 9 or as disclosed in the phase I environmental site assessment report dated July 2, 1996 by Strategic Analytical Systems, Inc. (the "1996 Phase I Report"), which may give rise to any common law or legal liability of the Seller or otherwise form the basis of any claim, demand, action, suit, proceeding, notice of violation, study or investigation against, relating to or affecting the Seller based on or related to any Hazardous Substances or Environmental Laws.

(c) There is no litigation, arbitration, claim, action, suit or proceeding (or, to the knowledge of the Seller, government investigation or inquiry), pending or, to the knowledge of the Seller, threatened against the Seller, and Seller has received no claim, notice, complaint, court order, administrative order, demand or request for information from any governmental authority or private party, alleging any violation of, or asserting any noncompliance with or exceedance under any Environmental Laws by the Seller or with respect to which the Seller is alleged to have any liability, including but not limited to any liability with respect to investigating or cleaning up any site or providing any other relief under any Environmental Law.

(d) Schedule 9 identifies the Hazardous Substances used, generated, stored or disposed of by the Seller in the operation of the Business. Except as set forth in Schedule 9, the Seller has not transported, or arranged for the transportation of, any Hazardous Substances to any site which is the subject of federal, state or local governmental or private investigations, or which may lead to claims against the Seller for cleanup costs, remedial work or for damages. None of the Property, the property owned, operated or leased by the Seller is or was ever listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of hazardous waste sites maintained by any federal, state or local agency.

(e) Except for Hazardous Substances set forth on Schedule 9, the Seller has not treated, stored for more than 90 days, disposed of or recycled any Hazardous Substances on the Property, any property or facility owned, operated or leased by the Seller nor, to the knowledge of the Seller, has any other party treated, stored for more than 90 days, disposed of or recycled any Hazardous Substances on or at any such property or facility.

(f) Except as set forth on Schedule 9 (which sets forth the capacity and contents of such tanks) there are no underground storage tanks, as such term is defined or used in RCRA or any other Environmental Law, and, to the best of Seller's information and belief, none has been located on the Property or at any property or facility owned, operated or leased by the Seller.

(g) Except as set forth on Schedule 9 or the 1996 Phase I Report, a copy of which has been delivered to the Buyer, the Seller has not used or burned, and does not use or burn, coal in connection with production of manufactured gas, nor was coal so used or burned on or at the Property or any property or facility owned, operated or leased by the Seller. Except as set forth on Schedule 9, there are no asbestos-containing materials, or capacitors, transformers or other equipment or fixtures containing PCBs, and, to the best of Seller's information and belief, none has been located on the Property or at any property or facility owned, operated or leased by the Seller.

(h) Except as disclosed in the 1996 Phase I Report, there has not been any release as defined in CERCLA of any Hazardous Substances at or from the Property or any property or any facility owned, operated or leased by the Seller. Without limiting the generality of the foregoing, except as disclosed in the 1996 Phase I Report, to the best of Seller's information and belief, there has been no activity undertaken or conditions existing at the Property or any property or facility owned, operated or leased by the Seller that could cause or contribute to the discharge of any Hazardous Substances into any water source or system (including surface waters and groundwater) in violation of any Environmental Law.

(i) The transactions contemplated by this Agreement do not require disclosure compliance under any Environmental Law. Except as set forth on Schedule 9, there are no