UTILITY ASSET PURCHASE AGREEMENT

THIS UTILITY ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the date last set forth below, between BEREA COLLEGE, a Kentucky non-profit corporation, with its principal office located at Lincoln Hall, 101 Chestnut Street, Berea, Kentucky 40404 (the "Seller"); and the CITY OF BEREA, a Kentucky municipal corporation, with its principal office located at Berea City Hall, 212 Chestnut Street, Berea, Kentucky 40403 (the "Buyer").

WHEREAS, the Seller presently owns and operates an electric distribution system and a water treatment and distribution system that serve the general public in the City of Berea, Kentucky and environs.

WHEREAS, the Seller and Buyer have entered into a Letter of Intent, as amended, concerning the purchase by the Buyer of certain assets from the Seller necessary to operate both the electric distribution system and the water treatment and distribution system.

WHEREAS, Buyer desires to purchase, and Seller desires to sell (i) Seller's assets used in the operation of the Seller's water treatment and distribution system, as more fully described herein, but excluding the Seller's Watershed and Impoundment Assets and (ii) Seller's assets used in the operation of its electric distribution system, as more fully described herein;

WHEREAS, Buyer and Seller desire to enter into that certain Water Withdrawal Agreement referenced as Exhibit D to this Agreement in order to provide for a source of supply of raw, untreated water for the water treatment and distribution system being acquired by the Buyer; and

WHEREAS, the Buyer intends to own and operate the Assets being acquired under this Agreement in the conduct of the water system and electric system previously operated by Seller.

NOW, THEREFORE, in consideration of the mutual agreements contained in this agreement, and intending to be legally bound, the Buyer and Seller hereby agree as follows:

1. **PURCHASE OF WATER SYSTEM ASSETS**. Upon the terms and subject to the conditions contained herein, Seller hereby agrees to sell to Buyer on the Closing Date (as defined in

Section 19 of this Agreement), and Buyer hereby agrees to purchase, all of Seller's tangible assets devoted to the provision of potable water service to the public through its water treatment and distribution system, and Buyer agrees to accept the obligations and liabilities specified in Sections 6 and 7 of this Agreement. The purchase shall include the tangible assets of Seller's raw water intake structures, pump stations, mains as well as the water treatment and distribution system listed and described on **Exhibit A** which is attached hereto and incorporated herein by this reference and Seller's interest in the utility easements, rights of way and other interests in real property listed and described on **Exhibit B** which is attached hereto and incorporated herein by this reference. The Buyer also agrees to purchase the accounts receivable of the water distribution system (the "Water System Accounts Receivable") which are listed and described on **Exhibit C** which is attached hereto and incorporated herein by this reference. The assets listed and described on Exhibits A, B and C are hereinafter referred to as the "Water System Assets."

The Water System Assets being purchased under this Agreement do not include the Seller's existing dams and reservoirs supplying raw, untreated water for the water system or the real estate owned by the Seller which constitutes a portion of the watersheds for the dams and reservoirs. The foregoing dams, reservoirs and watersheds (the "Watershed and Impoundment Assets") are being retained by the Seller and the parties hereto have agreed to enter into a separate agreement (the "Water Withdrawal Agreement") by which the Seller shall continue to own the Watershed and Impoundment Assets with the Buyer having the right to withdraw raw, untreated water from the Reservoirs described in the Water Withdrawal Agreement for treatment and use in the water system being acquired hereunder by the Buyer. A copy of the Water Withdrawal Agreement is attached hereto and incorporated herein by this reference as **Exhibit D**.

2. **PURCHASE OF ELECTRIC DISTRIBUTION SYSTEM ASSETS**. Upon the terms and subject to the conditions contained herein, Seller hereby agrees to sell to Buyer on the Closing Date, and Buyer hereby agrees to purchase the Seller's tangible assets described in this Agreement which are devoted to the provision of electricity to the public through its electric distribution system, and Buyer agrees to accept the obligations and liabilities specified in Sections 6 and 7 of this Agreement. The

purchase shall include the tangible assets of Seller's electric distribution system that are listed and described in **Exhibit E** which is attached hereto and incorporated herein by this reference and all of the Seller's interest in the utility easements, rights of way or other interests in real property used in the electric distribution system that are listed and described in **Exhibit F** which is attached hereto and incorporated herein by this reference. The Buyer also agrees to purchase the accounts receivable of the electric distribution system (the "Electric System Accounts Receivable") which are listed and described on **Exhibit G** which are attached hereto and incorporated herein by this reference. The assets listed and described in Exhibits E, F and G are hereinafter referred to as the "Electric System Assets." The Water System Assets and the Electric System Assets are sometimes collectively referred to as the "Assets." No other assets or property of the Seller of any kind whatsoever (tangible or intangible, real or personal) is being purchased by the Buyer except that which is expressly described and listed in the applicable Exhibits under this Agreement.

3. **PURCHASE PRICE**. In consideration of this Agreement, Buyer shall pay to Seller on the Closing Date the sum of Eighteen Million Three Hundred Thirty-Six Thousand Eight Hundred and Seventy-Eight Dollars ($18,336,878.00) in immediately available funds, said sum being referred to herein as the "Purchase Price." It is agreed by the parties hereto that the Purchase Price is based upon the book value of the Assets listed and described on **Exhibits A, B, C, E, F and G** to this Agreement less deductions for the current liabilities as of the Closing Date under the Seller's Water System Obligations set forth on **Exhibit I** and the Seller's Electric System Obligations set forth on **Exhibit K**. The book value of the Assets shall be determined by using the asset values assigned to each of the assets and properties constituting a part of the Assets as set forth in the books and accounts of the College as of December 31, 2003 and subsequently adjusted as hereinafter provided. A true and correct copy of the Seller's book value listings as of December 31, 2003 for each of the assets and properties constituting a part of the Assets is attached hereto as **Exhibit R**. In the event Seller (i) acquires or disposes of any assets or properties which constitute a part of the Assets associated with the water system or the electric system, or (ii) incurs or discharges any current obligations associated with the water system or the electric

system subsequent to the date of this Agreement and prior to the Closing Date, the Purchase Price shall be adjusted to reflect the book value of those additions or dispositions as of the Closing Date. Further, in the event that any of the accounts receivable purchased hereunder are uncollectible by the Buyer utilizing commercially reasonable efforts, or if an account obligor raises any defense, counterclaim, setoff, or any other claim against Buyer in connection with such account, then at the option of Buyer the Seller shall repurchase at face value any such delinquent or disputed account.

4. **BUYER'S REPRESENTATIONS AND WARRANTIES**. Buyer represents and warrants to Seller, both as of the date of this Agreement and as of the Closing Date, as follows:

(a) Buyer is a Kentucky municipal corporation and city of the fourth class, duly organized, validly existing in good standing, and operating under Chapter 81 of the Kentucky Revised Statutes.

(b) Buyer has the full right, power and authority to execute and deliver this Agreement, to purchase, own and operate the Assets described in this Agreement, and to carry out Buyer's obligations under this Agreement.

(c) The execution, delivery and performance of this Agreement have been (or will be as of the Closing Date) duly authorized by all necessary action of Buyer and this Agreement constitutes the valid and binding obligation of Buyer, enforceable against the Buyer in accordance with its terms.

(d) Neither the execution and delivery of this Agreement, nor the performance of Buyer's obligations hereunder will (i) violate any provision of any governing instrument of Buyer, (ii) violate or breach any term of or provision of, or constitute a default or accelerate the performance required under, any indenture, mortgage, deed of trust, security agreement, loan agreement or contract to which Buyer is a party or by which its assets are bound, or (iii) violate any statute, law, judgment, decree, order, regulation or rule of any federal, state, or other governmental unit with authority over Buyer.

(e) The Buyer shall, as of August 17, 2004 and prior to final approval of this Agreement by the Berea City Council, have completed its own inquiry, investigation and due diligence into the operation of the water system and the electric system, including but not limited to the Water

System Assets, the Electric System Assets, and the obligations, contracts, liabilities and debts listed and described on **Exhibits H, I, J and K** to this Agreement. The Buyer has decided to undertake the transaction contemplated by this Agreement in full and complete reliance on its own inquiry, investigation and due diligence as well as its own judgment concerning the prudence and desirability of purchasing, owning and operating the Assets described in this Agreement and of accepting the obligations, contracts, liabilities and debts listed and described on Exhibits H, I, J and K to this Agreement.

5. **SELLER'S REPRESENTATIONS AND WARRANTIES**. Seller represents and warrants to the Buyer, both as of the date of this Agreement and as of the Closing Date, as follows:

(a) Seller is a non-profit corporation duly organized and validly existing in good standing under the laws of the Commonwealth of Kentucky and has adequate corporate power to carry out its obligations under this Agreement.

(b) The Seller is the true and lawful owner of the Water System Assets and the Water System Assets are free and clear of any and all liens, encumbrances, obligations or liabilities of any kind whatsoever, except for obligations arising under: (i) the wholesale water supply agreements ("Water Supply Contracts") attached hereto as **Exhibit H** and incorporated herein by this reference; (ii) the tariff, service and rate obligations applicable to the Water System Assets under relevant orders issued by the Kentucky Public Service Commission ("PSC Water Tariffs"); and (iii) the operational agreements, trade accounts payable and obligations incurred or accrued in the ordinary course of business ("Water System Obligations") which are listed and described on **Exhibit I** attached hereto and incorporated herein by this reference.

(c) The Seller is the true and lawful owner of the Electric System Assets and the Electric System Assets are free and clear of any and all liens, encumbrances, obligations or liabilities of any kind whatsoever, except for obligations arising under: (i) the wholesale electric purchase agreement entitled Contract for Electric Service, dated November 13, 1969, with Kentucky Utilities Company together with all amendments, schedules, tariffs, supplements, and

agreements of any kind whatsoever between Berea College and Kentucky Utilities Company, KU Energy Corporation or any of their corporate affiliates (collectively, the "Electric Power Agreement") including the documentation attached hereto as **Exhibit J** and incorporated herein by this reference; (ii) the tariff, service and rate obligations applicable to the Electric System Assets under relevant orders issued by the Kentucky Public Service Commission ("PSC Electric Tariffs"); and (iii) the operational agreements, trade accounts payable and obligations incurred or accrued in the ordinary course of business ("Electric System Obligations") which are listed and described on **Exhibit K** attached hereto and incorporated herein by this reference.

(d) The Seller is conducting and shall continue to conduct the business of the water system and the electric system in the ordinary course until the Closing under this Agreement.

(e) The Seller is maintaining and shall continue to maintain the Water System Assets and the Electric System Assets in the ordinary course until the Closing Date under this Agreement, ordinary wear and tear excepted. **Provided, however, the Seller expressly disclaims any express or implied representation or warranty of merchantability, fitness for any particular purpose or any other warranty of any kind whatsoever with respect to the condition, suitability or functionality of the Water System Assets and the Electric System Assets which are being conveyed to Buyer in their existing condition "AS IS" and "WHERE IS" together with "WITH ALL FAULTS."**

(f) Seller has the full right, power and authority to execute and deliver this Agreement, and the execution, delivery and performance of this Agreement have been (or will be as of the Closing Date) duly authorized by all necessary action of Seller and this Agreement constitutes the valid and binding obligation of Seller, enforceable against the Seller in accordance with its terms.

(g) Neither the execution and delivery of this Agreement, nor the performance of Seller's obligations hereunder will (i) violate any provision of any governing instrument of Seller, (ii) violate or breach any term of or provision of, or constitute a default or accelerate the

performance required under, any indenture, mortgage, deed of trust, security agreement, loan agreement or contract to which Seller is a party or by which its assets are bound, or (iii) violate any statute, law, judgment, decree, order, regulation or rule of any federal, state, or other governmental unit with authority over Seller.

6. **OBLIGATIONS AND LIABILITIES.** Buyer is not assuming any of Seller's obligations, liabilities or debts in relation to the electric system or the water system other than obligations, agreements, liabilities and debts listed and described on **Exhibits H, I, J, and K** all of which the Buyer, at the Closing, expressly assumes and agrees to pay and perform. All other obligations, liabilities or debts, including but not limited to any of the bonded indebtedness of Berea College associated with the electric system and the water system shall be settled by the Seller on the Closing Date or remain solely with the Seller thereafter.

7. **BUYER'S OPERATION OF WATER AND ELECTRIC SYSTEMS.** Except as otherwise provided herein, from and after the Closing of this Agreement, the Buyer shall own and operate and shall accept full responsibility for the water system and the electric system utilizing the Assets acquired from Seller and shall accept full responsibility for all costs related to their ownership and operation provided, however, this provision shall not operate to hold Buyer responsible for any liabilities or obligations not otherwise specifically assumed by Buyer herein which arise as a result of Seller's actions or inactions, or are incurred by Seller, prior to the Closing Date. From and after the Closing of this Agreement, all electric and water customers currently served by Seller shall for all intents and purposes become customers of Buyer. The Seller's current customers shall after the Closing Date be billed for service at the existing rates and charges for such customers as have previously been approved for use for such customers by the Kentucky Public Service Commission ("PSC") until such time as such rates and charges are amended or changed by the Buyer in the manner provided by law. At Closing, the Buyer assumes all of Seller's obligations under the obligations, agreements, liabilities and debts listed in **Exhibits H, I, J and K**, and Seller shall be relieved of any further obligation or liability thereunder from and after the Closing Date. From and after the Closing Date, Buyer shall be responsible for all federal,

state and local taxes, levies and the like that may be assessed or imposed in connection with Buyer's ownership and operation of the electric and water systems; provided, however, this provision shall not operate to hold Buyer responsible for any liabilities or obligations not otherwise specifically assumed by Buyer herein which arise as a result of Seller's actions or inactions, or are incurred by Seller, prior to the Closing Date.

8. **EMPLOYEES.** Buyer agrees to offer employment to each employee of Seller's water system and electric system who is listed in **Exhibit L** at a compensation level no lower than his or her existing compensation level on the Closing Date, provided that such employee passes such physical examination and other screening tests routinely required of applicants for employment with Buyer. Seller shall be responsible for the payment and provision of all salary and other benefits to the existing employees of the water system and electric system through and including the Closing Date. Buyer shall thereafter be responsible for the payment and provision of all salary and other benefits to the employees listed on Exhibit L who become employees of the Buyer. As of the Closing Date, the Seller's existing employees engaged in the operation of the water system and the electric system shall cease to be employees of the Seller.

Those employees of the Seller who accept employment with the Buyer shall not be eligible to make individual contributions or receive further employer contributions in the 403 (b) retirement plan sponsored by Berea College although such employees will be vested in the existing balances of their retirement accounts in the manner provided by law.

9. **PRORATION OF CUSTOMER BILLS.** At the close of the monthly billing cycle in which the actual Closing Date of this Agreement occurs, the Buyer's meter readers will read all meters of the electric and water service customers served by the electric and water systems (the "Final Meter Reading") and provide copies of those meter readings to Seller. Revenues for the monthly billing cycle in which the Closing Date actually occurs shall be pro-rated between Seller and Buyer based upon the ratio of (a) the number of days in the billing period through and including the Closing Date to (b) the number of days in the billing period after the Closing Date. Buyer shall collect and retain all payments with

respect to services provided by the water system and the electric system after the Closing Date. Buyer shall collect and remit to Seller all revenue for water and electric services provided by Seller on or before the Closing Date. Any payments for services collected by the Buyer shall, to the extent properly allocable to periods prior to and including the Closing Date, be promptly forwarded to the Seller, and any portion thereof properly allocable to periods after the Closing Date shall be retained by the Buyer. Any advanced or prepaid payments paid by water or electric service customers prior to the Closing Date and allocable to a period of time after the Closing Date shall be provided by Seller to Buyer on the Closing Date. Any payments received by Seller subsequent to the Closing Date with respect to water or electric services provided after the Closing Date shall be promptly forwarded to Buyer.

10. **OFFICE LEASE**. The Buyer and Seller agree to enter into a lease for the Buyer's use of the Seller's existing utility offices located upon the Berea College campus (the "Office Lease") which shall be for a term expiring not later than December 31, 2005. The base rent to be paid by the Buyer under the Office Lease shall be $450.00 per month. The Office Lease shall be in form and substance set forth in **Exhibit M** which is attached hereto and incorporated herein by this reference.

11. **UTILITY YARD LEASE**. The Buyer and Seller agree to enter into a lease for the Buyer's use of the Seller's existing utility yard and garage located at 513 Scaffold Cane Road, Berea, Kentucky or such other suitable utility yard and garage location owned by the Seller as may be mutually agreed upon by and between the Buyer and Seller (the "Utility Yard Lease") which shall be for an initial term of three (3) years from the Closing Date and the Buyer shall have the option to renew such lease for one additional term of two (2) years on the same terms and conditions except that the rental shall be at a fair market rate mutually agreed upon by the parties. The base rent to be paid by the Buyer under the Utility Yard Lease shall be $450.00 per month. The Utility Yard Lease shall be in form and substance set forth in **Exhibit N** which is attached hereto and incorporated herein by this reference.

12. **LAND FARMS LEASE, ETC.** The Buyer and Seller agree to enter into a lease (the "Land Farms Lease") for the Buyer's use of the Seller's existing land farms for the purpose of remediating sludge from the Water Plant. Such lease shall be for a term not to exceed three (3) years

from the Closing Date without the payment of additional consideration. In addition to other reasonable and customary terms, the Land Farms Lease shall specify that the land farms will be utilized by the Buyer in a manner consistent with Seller's existing practice and be subject to all necessary and applicable state and federal permit requirements and that the Buyer shall comply with all applicable state and federal laws and regulations pertaining to such remediation activities. The Land Farms Lease shall be in form and substance as set forth in **Exhibit S** which is attached hereto and incorporated herein by this reference.

13. **ALLOCATION OF PURCHASE PRICE**. The Purchase Price being paid by the Buyer to the Seller shall be allocated in the manner set forth in **Exhibit O** which is attached hereto and incorporated herein by this reference.

14. **ELECTRIC POWER AGREEMENT**. The Buyer shall satisfy itself through its own inquiry and due diligence that the Electric Power Agreement referred to and described in Section 5 (c) of this Agreement and in **Exhibit J** is assignable to Buyer. Upon the Closing of this Agreement, the Seller assigns the Electric Power Agreement to the Buyer and the Buyer assumes all of the on-going obligations, claims or causes of action of the Buyer arising under or relating to the Electric Power Agreement. Provided, however, the Buyer shall not be obligated for any electric power purchases made by the Seller for electric power consumed on or prior to the Closing Date.

15. **WATER SUPPLY CONTRACTS**. The Buyer shall satisfy itself through its own inquiry and due diligence that it will be able to perform the Water Supply Contracts listed and described in **Exhibit H**. Upon the Closing of this Agreement, the Seller assigns the Water Supply Contracts to the Buyer and the Buyer assumes all of the on-going obligations, claims or causes of action arising under or relating to the Water Supply Contracts. Provided, however, the Buyer shall not be obligated in any way for water sales or operations under the Water Supply Contracts by Seller on or prior to the Closing Date.

16. **WATER SYSTEM OBLIGATIONS**. The Buyer shall satisfy itself through its own inquiry and due diligence that it will be able to perform the Water System Obligations listed and described in **Exhibit I**. Upon the Closing of this Agreement, the Buyer assumes all of the on-going obligations, claims or causes of action arising under or relating to the Water System Obligations.

Provided, however, the Buyer shall not be obligated in any way for water service operations of the Seller on or prior to the Closing Date.

17. **ELECTRIC SYSTEM OBLIGATIONS**. The Buyer shall satisfy itself through its own inquiry and due diligence that it will be able to perform the Electric System Obligations listed and described in **Exhibit K**. Upon the Closing and consummation of this Agreement, the Buyer shall assume all of the on-going service obligations, claims or causes of action arising under or relating to the Electric System Obligations. Provided, however, the Buyer shall not be obligated in any way for electric service operations of the Seller on or prior to the Closing Date.

18. **PUBLIC SERVICE COMMISSION APPROVAL**. Within thirty (30) days from the date of this Agreement, both Seller and Buyer agree to file and pursue with diligence a Joint Application before the Public Service Commission of the Commonwealth of Kentucky seeking approval of this Agreement and the transactions contemplated herein to the extent they are within the jurisdiction of the Public Service Commission.

19. **CLOSING DATE**. The closing of this Agreement (the "Closing") shall take place within thirty (30) days after the latest of (a) receipt of an acceptable final order from the PSC approving this Agreement, and no appeal having been taken or remaining pending from the issuance of such order, (b) receipt of any other required waivers or consents to the transfer of the Assets, and (c) completion of all conditions precedent as provided in Section 22 hereof; provided, however, that the Closing shall take place no later than 5:00 p.m., local Madison County time, on December 31, 2004 (the actual closing date hereunder being referred to as the "Closing Date"). Notwithstanding the foregoing, the Parties may, by mutual agreement, defer the Closing Date to a later date but not later than March31, 2005.

20. **CONVEYANCE AND TRANSFERS**. Seller will not convey, lease or in any way dispose of the Assets which it holds as of the date of this Agreement until the Closing Date, other than in the ordinary course of business. On the Closing Date, Seller shall transfer and convey to Buyer, its successors and assigns forever, the Assets together with all files, plats, maps, plans, records and ledgers or copies thereof in any way connected with rendition of water and electric service by Seller. Seller agrees

to execute and deliver to Buyer such instruments of assignment or conveyance as may be mutually agreed upon for the transfer to the Buyer of the Assets described in **Exhibits A, B, C, E, F and G** of this Agreement. Buyer shall be responsible for all fees and taxes, if any, associated with the recording of any instruments necessary to effect such transfers.

21. **BINDING EFFECT**. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

22. **CONDITIONS PRECEDENT, ETC**. The parties hereto understand and agree that this Agreement and the obligations of the parties hereunder are expressly conditioned on the following, each of which is a condition precedent to the Closing and the validity and enforceability of the Agreement:

(a) The Public Service Commission shall have entered a final order, from which either no appeal is taken or no appeal remains pending, that approves the Joint Application to be filed by Buyer and Seller as contemplated in Section 19 herein, including approval of this Agreement and all of its terms, conditions, undertakings, agreements and limitations between Buyer and Seller to the extent within the jurisdiction of the Public Service Commission.

(b) The Public Service Commission shall not have attached to its order, any terms, conditions or limitations which in the sole opinion of either the Buyer or the Seller shall (i) materially adversely affect the economic feasibility of this transaction or the Agreement between the parties, or (ii) require Buyer or Seller to take any action or refrain from taking any action which might require either of them to breach any of their obligations under any mortgage indenture, as supplemented, or any other agreement to which either of them might be a party. Such opinion must be expressed in writing to the other Party within thirty (30) days of issuance of any such order or shall be deemed to be waived.

(c) The execution, delivery and performance of this Agreement shall have been approved by the Berea City Council and the Mayor of Berea in the manner required by law. A certified copy of the ordinance(s) or other actions of the Berea City Council approving this Agreement and the transactions contemplated herein shall be attached as **Exhibit P** to this

Agreement. All of the actions of the Buyer and the Berea City Council that are required to approve and adopt this Agreement as a legally enforceable obligation of the Buyer shall be completed not later than August 17, 2004. In the event such actions are not completed by the Buyer and the Berea City Council by August 17, 2004, the Seller may, in its sole discretion, terminate this Agreement which shall then be null, void and of no further effect.

(d) The execution, delivery and performance of this Agreement shall have been approved by the Berea College Board of Trustees in the manner provided by the governing instruments of Berea College. A certified copy of the resolution(s) or other actions of the Berea College Board of Trustees approving this Agreement and the transactions contemplated herein shall be attached as **Exhibit Q** to this Agreement. All of the actions of the Seller and the Berea College Board of Trustees that are required to approve and adopt this Agreement as a legally enforceable obligation of the Seller shall be completed not later than August 17, 2004. In the event such actions are not completed by the Seller and the Berea College Board of Trustees by August 17, 2004, the Buyer may, in its sole discretion, terminate this Agreement which shall then be null, void and of no further effect.

(e) If additional approvals, consents or waivers are required for this Agreement from any state or federal agency or authority having jurisdiction over the subject matter hereof, Buyer and Seller shall have obtained them.

(f) Buyer shall have obtained tax-exempt bond financing for this transaction on such terms as Buyer may deem acceptable. Buyer shall, within thirty (30) days after the date of the execution of this Agreement, take steps to initiate the process for obtaining such financing and shall make a good faith effort to secure financing in accordance with these terms.

(g) Buyer and Seller shall have entered into and executed the Water Withdrawal Agreement that is attached hereto as **Exhibit D**.

(h) Buyer and Seller shall have entered into and executed an assignment from Seller to Buyer of the Electric Power Agreement listed in **Exhibit J.**

(i) Buyer and Seller shall have entered into and executed the Office Lease that is attached hereto as **Exhibit M**.

(j) Buyer and Seller shall have entered into and executed the Utility Yard Lease that is attached hereto as **Exhibit N**.

(k) Buyer and Seller shall have entered into and executed the Land Farms Lease that is attached hereto as **Exhibit S**.

(l) Buyer and Seller shall have completed all other Exhibits to this Agreement.

23. **OTHER NEGOTIATIONS AND AGREEMENTS OF SELLER**. Notwithstanding any other provision of this Agreement, it is expressly agreed by the parties that the Seller shall be entitled to conduct negotiations with third parties having a potential interest in acquiring either or both of the Electric System Assets and the Water System Assets and to enter into agreements of any kind with such third parties for transactions similar to those contemplated by this Agreement; provided, however, that any such agreements by the Seller and a third party shall be expressly contingent upon: (a) the failure of the Buyer and the Berea City Council to complete all such actions that are required to approve and adopt this Agreement as a legally enforceable obligation of the Buyer not later than August 17, 2004 (b) the termination of this Agreement as otherwise provided herein.

24. **CERTAIN EASEMENTS AND RIGHTS-OF-WAY**. Certain of the easements and rights-of-way listed and described in **Exhibits B and F** are within or contiguous to the campus of Berea College and the Watersheds referenced in the Water Withdrawal Agreement, to this extent, the Buyer agrees that it shall use its best efforts in maintaining the appearance of such easements and rights of way in a manner consistent with the appearance of the Berea College campus and the Watersheds. In addition, whenever the operations or maintenance of the water system or electric system dictate that the Buyer shall have the necessity to enter upon the Berea College campus for the purpose of maintaining, servicing, excavating or otherwise dealing with any easements and rights-of-way described in **Exhibits B and F** or otherwise in connection with providing electric or water service, the Buyer shall provide reasonable notice (taking into account whether such entry is during normal business hours, nights or weekends and

whether such entry is necessitated by an interruption of service or other emergency situation) to the Seller c/o the Berea College Department of Public Safety in order to assure the safety of the Seller's students and employees while such work is being performed by Buyer.

25. **INDEMNIFICATION**.

(a) From and after the Closing Date, Seller shall indemnify and hold harmless Buyer, its elected officials, officers, employees, agents, consultants, advisors or other representatives, including legal counsel, accountants and financial advisors, and their successors and permitted assigns (collectively, the "Buyer Indemnitees") for and against any and all claims, losses, liabilities, causes of action, costs and expenses, including court costs and reasonable attorneys' fees and disbursements in connection therewith, actually incurred by a Buyer Indemnitee and resulting from any representations and warranties made by Seller in this Agreement not being true and correct when made or when required by the Agreement to be true and correct, or any breach or default by Seller in the performance of its covenants, agreements, or obligations under this Agreement required to be performed by Seller prior to or after Closing or from any liabilities or obligations not otherwise specifically assumed or undertaken by Buyer herein which arise as a result of Seller's actions or inactions, or are incurred by Seller, prior to the Closing Date.

(b) From and after the Closing Date, Buyer shall indemnify and hold harmless Seller, its trustees, officers, employees, agents, consultants, advisors or other representatives, including legal counsel, accountants and financial advisors, and their successors and permitted assigns (collectively, the "Seller Indemnitees") for and against any and all claims, losses, liabilities, causes of action, costs and expenses, including court costs and reasonable attorneys' fees and disbursements in connection therewith, actually incurred by a Seller Indemnitee and resulting from any representations and warranties made by Buyer in this Agreement not being true and correct when made or when required by the Agreement to be true and correct, or any breach or default by Buyer in the performance of its covenants, agreements, or obligations under this Agreement required to be performed by Buyer prior to or after Closing, including the performance of the obligations, agreements, and liabilities expressly assumed or undertaken by the Buyer under this Agreement.

26. **ENTIRE AGREEMENT**. This Agreement, including all of its Exhibits, which are hereby incorporated by reference, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior written or oral agreements or courses of dealing. This Agreement may not be modified, amended or terminated except by a written agreement that is signed by all of the parties hereto and that specifically refers to this Agreement.

27. **GOVERNING LAW**. This Agreement and any amendments hereto shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky and each party hereby consents to jurisdiction and venue in the state courts of Madison County, Kentucky.

28. **ASSIGNMENT**. Neither party may assign this Agreement, in whole or in part, without the written consent of the other party, except that the City of Berea may assign this Agreement to any water or utility commission or similar entity that may be organized by it for the acquisition and operation of the electric and water utilities referenced herein. Such assignment shall not, however, affect the obligations of the City of Berea hereunder.

29. **OPTION TO REPURCHASE**. In the event the City of Berea or its permitted assignee under this Agreement shall subsequently determine to sell either the Electric System Assets or the Water System Assets within five (5) years from the Closing Date hereof, then the Seller hereunder shall have the option to repurchase the Electric System Assets or the Water System Assets, together with any additions thereto, under the same terms and conditions as provided in this Agreement; provided, however, that the purchase price shall be based upon the Buyer's book value at the time of the proposed sale by the Buyer. Buyer shall provide Seller with prompt written notice if any such sale is under consideration and Seller shall have thirty (30) days to notify the Buyer it intends to exercise its option to repurchase hereunder.

30. **TITLE AND RISK OF LOSS**. Title to all of the Assets described in this Agreement shall remain with the Seller until the Closing of this Agreement by the parties on the Closing Date at which time title to the Assets shall pass to the Buyer. Risk of Loss to the Assets shall pass with the transfer of title. No less than fifteen (15) days prior to the Closing Date, Buyer shall demonstrate to Seller that Buyer has secured commercially reasonable insurance coverage to protect against loss to the Assets

effective as of the Closing Date.

31. **HYPOTHECATION OR PLEDGE PROHIBITED**. The Buyer shall have no right to pledge or hypothecate this Agreement or any interest of the Buyer thereunder. This Agreement shall not constitute a pledge or security agreement of any kind whatsoever and the Buyer shall have no lien or security interest in or upon any of the Assets described in this Agreement. This provision shall not be construed to preclude Buyer from granting a security interest in any assets purchased hereunder for any purpose, including but not limited to securing any loans or bonds necessary to finance the Purchase Price described in Section Three, above.

32. **CAPTIONS**. The captions used in this Agreement are for convenience of reference only and shall not be given any effect in the interpretation of this Agreement.

33. **NO PARTY DRAFTER**. No party shall be deemed the drafter of this Agreement, and in the event that the Agreement is interpreted by a court, it shall not be construed more strongly against either party.

34. **NO WAIVER**. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term, or any other term, of this Agreement. Any waiver must be in writing.

35. **PARTIES IN INTEREST**. This Agreement and the attached Exhibits and transactions contemplated herein are not intended to confer upon any person, other than the Buyer and the Seller and their successors and permitted assigns, any rights or remedies; provided, however, that the indemnification provisions in Section 25 of this Agreement shall inure to the benefit of the Buyer Indemnitees and the Seller Indemnitees.

36. **FURTHER ASSURANCES**. From and after the Closing Date, each of the parties shall, without further consideration, execute and deliver to the other such other instruments of transfer, and take such other action, as the other party may reasonably request, to carry out the transactions contemplated by this Agreement.

37. **COUNTERPARTS**. This Agreement may be executed in two or more counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument.

38. **EXPENSES**. Each of the Seller and Buyer shall be responsible for its own costs and expenses (including the fees and expenses of any attorneys, consultants, accountants, engineers and other professionals) incurred in connection with the negotiation, drafting, due diligence and execution of this Agreement. Provided, however, in the parties' joint application for approval of this Agreement before the Public Service Commission (or any other state or federal authority having jurisdiction over the subject matter hereof), such application shall be directed by the Seller, and each party shall bear its own expense of such application and any proceedings before the Public Service Commission or such other state or federal authority.

39. **BEST EFFORTS**. The Seller and Buyer shall each use its best efforts to procure upon reasonable terms and conditions all consents and approvals, completion of all filings, all registrations and certificates, and satisfaction of all other requirements and conditions prescribed by law which are necessary for the Closing and consummation of the transactions contemplated by this Agreement. Each of the parties hereto shall use its best efforts and good faith to perform and fulfill all conditions and obligations to be fulfilled or performed by it hereunder to the end that the transactions contemplated by this Agreement will be fully and timely consummated.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the parties have caused this Utility Asset Purchase Agreement to be duly executed as of the last date set forth below.

"SELLER"

BEREA COLLEGE

By: _____

Its: President

Attest: _____

Its: Vice President for Finance

Date: June 18, 2004

"BUYER"

CITY OF BEREA

By: _____

Its: Mayor

Attest: _____

Its: City Clerk

Date: June 18, '04

COMMONWEALTH OF KENTUCKY)
) :SS
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this the 18th day of June, 2004, by Larry D Shinn, President, to me personally known, as the President of Berea College, a Kentucky non-profit corporation, and that said instrument was signed on behalf of Berea College by proper authority and the instrument was the act of the corporation for the purposes stated above.

My commission expires: February 17, 2006.

Sherry J. Wakefield
NOTARY PUBLIC, STATE AT LARGE

COMMONWEALTH OF KENTUCKY)
) :SS
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this the 18th day of June 2004, by Steven Connelly, to me personally known, as the Mayor of the City of Berea, a Kentucky municipal corporation, and that said instrument was signed on behalf of the City of Berea by proper authority and the instrument was the act of the City of Berea for the purposes stated above.

My commission expires: February 17, 2006.

Sherry J. Wakefield
NOTARY PUBLIC, STATE AT LARGE

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