

mand of any court or of any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, and (iii) none of the ERVIN Companies or the ERVIN Joint Ventures is a party to any action, suit or proceeding in which any claim or demand is asserted in favor of it and none is presently contemplated. The ERVIN Companies and the ERVIN Joint Ventures, to the best of the knowledge of the officers of ERVIN, have complied with all laws, regulations and orders applicable to their businesses.

(l) Since the Merger Balance Sheet Date, none of the ERVIN Companies or the ERVIN Joint Ventures has (i) issued or sold, or become obligated to issue or sell, any shares of its capital stock or corporate securities of any kind, or any rights to purchase or subscribe for any of the foregoing, or borrowed or agreed to borrow any money, or mortgaged, pledged or subjected to lien, charge or other encumbrance, any of its property, except in the course of financing the acquisition, construction and development of property in the ordinary course of business, except as stated in Notes 10 and 12 to the Merger Balance Sheet and except for the sale by ERVIN of not more than 22,444 shares of ERVIN Common Stock to certain of its employees, (ii) declared or paid any dividend or made any other distribution on, or purchased or retired or otherwise acquired, any shares of its capital stock, or agreed to become obligated in any manner to do so, except for the repurchase by ERVIN of not more than 22,444 shares of ERVIN Common Stock from certain of its employees, (iii) incurred, or paid or otherwise discharged, any obligations or liabilities (absolute or contingent), except liabilities shown on the Merger Balance Sheet which have been discharged or liabilities incurred or discharged in the ordinary course of business or under contracts listed on the Contract List or of a type not required to be so listed, (iv) suffered any extraordinary losses or waived any rights of substantial value, or (v) entered into any transaction other than in the ordinary course of business.

(m) Idlewild Utilities, Inc., Providence Utilities, Inc., Springfield Utilities, Inc., Sharon Utilities, Inc., Derita Woods Utilities, Inc., and Charleston Utilities, Inc. each have valid and subsisting franchises, consents, certificates or permits, sufficient (with minor immaterial exceptions) to enable them to carry on their respective businesses in the communities, counties and other governmental subdivisions thereof in which they operate and, prior to the Effective Date of the Merger, any required consents, approvals, certificates or licenses of the North Carolina Public Service Commission required for the consummation of the Merger and the other transactions contemplated by this Agreement will have been secured.

(n) The principal operating employee of American Fidelity Insurance Agency, Inc. has a valid and subsisting license as an insurance agent issued by the North Carolina Commissioner of Insurance and no consent or approval of such Commissioner or other governmental authority is required for the consummation of the Merger and the other transactions contemplated by this Agreement.

(o) The entering into of this Agreement and the consummation of the transactions contemplated hereby has been duly authorized by the Board of Directors, subject to the approval thereof by the stockholders, of ERVIN, and will not conflict with any provision contained in the Certificate of Incorporation or By-Laws of ERVIN or result in a breach of any provision of, or constitute a default under, any agreement or instrument to which any of the ERVIN Companies or the ERVIN Joint Ventures is a party or by which any of them may be bound.

§ 3.02 REPRESENTATIONS AND WARRANTIES OF CYANAMID AND DEVELOPMENT. CYANAMID and DEVELOPMENT represent and warrant to ERVIN as follows:

(a) CYANAMID and DEVELOPMENT are corporations duly organized and existing and in good standing under the laws of their respective states of incorporation.

(b) CYANAMID and DEVELOPMENT have taken all corporate action necessary to authorize the execution and delivery of this Agreement by them and the performance by them of their obligations hereunder.