

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
DETROIT THERMAL, LLC , for approval of)	
special steam sales agreements with VHS of)	Case No. U-18128
Michigan, Inc., and Riverfront Holdings, Inc.)	
_____)	

At the July 22, 2016 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner

ORDER

On June 30, 2016, Detroit Thermal, LLC (Detroit Thermal), filed an application for *ex parte* approval of three steam sales agreements.

The first agreement, attached as Exhibit A, is an amended and restated steam sales agreement between VHS of Michigan, Inc., d/b/a The Detroit Medical Center, and Detroit Thermal that would amend, restate, supersede, and replace the existing special contract, dated December 31, 2008, for the supply of steam to The Detroit Medical Center. The term of this contract will extend to June 30, 2025, with options for renewal to June 30, 2030.

The second agreement, attached as Exhibit B, is an economic adjustment agreement between Detroit Thermal and Riverfront Holdings, Inc. (RHI). The agreement will have the effect of increasing the revenues received by Detroit Thermal for steam sold to the Renaissance Center, pursuant to the existing steam sales agreement dated October 9, 1998 (October 1998 agreement),

between Detroit Thermal, as successor in interest to the Detroit Edison Company Thermal Energy Division, and DTE Northwind LLC.

The third agreement, attached as Exhibit C, is a steam sales agreement between Detroit Thermal and RHI, under which Detroit Thermal will continue to provide steam to the Renaissance Center on a direct contractual basis following expiration of the October 1998 agreement. The term of this agreement is April 25, 2020 through December 31, 2036.

Detroit Thermal states that it and both VHS of Michigan, Inc., and RHI explored several proposals for the provision of service. Both the customers and the company will benefit from the agreements.

Detroit Thermal is not requesting any ratemaking determinations or any change in the rates or costs of service to other customers. Approval of the contracts does not increase any other customer's rate; therefore, the Commission may approve the contracts without providing notice or an opportunity for a hearing, pursuant to MCL 460.6a(1).

The Commission finds that the steam sales agreements are reasonable and in the public interest, and should be approved. *Ex parte* approval of the application is appropriate.

THEREFORE, IT IS ORDERED that the contracts between Detroit Thermal, LLC, and its steam customers, VHS of Michigan, Inc. and Riverfront Holdings, Inc., attached to the electronic version of this order as Exhibit A, Exhibit B, and Exhibit C, are approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

By its action of July 22, 2016.

Kavita Kale, Executive Secretary

EXHIBIT "A"

DETROIT THERMAL, LLC

VHS OF MICHIGAN, INC. d/b/a THE DETROIT MEDICAL CENTER

AMENDED AND RESTATED STEAM SALES AGREEMENT

THIS AMENDED AND RESTATED STEAM SALES AGREEMENT (this “Agreement”), dated effective as of January 1, 2016 (the “Effective Date”), between VHS of Michigan, Inc., a Delaware corporation d/b/a The Detroit Medical Center (hereinafter called the “Customer” or “DMC”), and Detroit Thermal, LLC, an Ohio limited liability company, 541 Madison Avenue, Detroit, Michigan 48226 (hereinafter called the “Company” or “DT”), is for a firm supply of steam to be delivered by the Company to the Customer’s service locations as identified in Section 1.

This Agreement amends, restates, supersedes and replaces that certain Steam Sales Agreement dated December 31, 2008 by and between Customer and Company. In addition, this Agreement supersedes all previous agreements for steam service provided to the Customer by the Company at the service locations identified in Section 1. Steam service shall be delivered by the Company and received and paid for by the Customer under the following terms and conditions:

1. Service Locations

Steam service shall be provided to DMC at the following locations:

Children’s Hospital of Michigan, 3901 Beaubien, Detroit, MI
Detroit Receiving Hospital & University Health Center, 4300 Brush, Detroit, MI
Harper Hospital, 3825 Brush, Detroit, MI
Harper Hospital-Wertz Clinical Cancer Center, 4100 John R, Detroit, MI
Harper Hospital-Medical Apartments, 3737 Beaubien, Detroit, MI
Harper Hospital-Professional Office Building, 250 Willis E, Detroit, MI
Hutzel Hospital, 432 Hancock E, Detroit, MI
Rehabilitation Institute of Michigan, 261 Mack Avenue, Detroit, MI
Detroit Medical Center Cardiovascular Institute, 311 Mack Avenue, Detroit, MI

New Facilities

In the event that a new structure or facility is constructed by or on behalf of DMC, or an improvement or addition is made to any existing service location during the Initial Service Term or any extension thereof (including, without limitation, the new patient tower currently under construction at Children’s Hospital of Michigan), such new structure or facility, or such improvement or addition to an existing service location, shall be deemed to be a DMC service location under this Section 1, and this Agreement shall be deemed to cover the entire structure or facility on DMC’s property. Any one-time connection or setup costs related to any such new structure, facility, improvement or addition shall be at the sole cost and expense of DMC.

Requirements Contract

Except as otherwise required by applicable law or regulation requiring the availability of back up service, or prudent management practices related to the availability of backup service, DMC shall purchase and DT shall provide steam to serve all of DMC's substantial requirements for heating, domestic hot water and process steam for each DMC service location and additional facilities identified in this Section 1.

2. Term

Subject to the rights of either party to terminate service earlier under Section 9, the initial service term of this Agreement shall begin on the Effective Date and end at 11:59 p.m. on June 30, 2025 (the "Initial Service Term"). After the Initial Service Term, this Agreement shall be extended for an additional five (5) year term, unless it is terminated with a minimum of twelve (12) months prior written notice by either party.

3. Price

As of the Effective Date, the charge for steam service for each month of this Agreement (the "Billing Period") shall be the greater of (A) the lesser of (x) the sum of: (1) the Fuel Consumption Charge per 1000 lbs of steam ("MIb") delivered to DMC; (2) the Fixed Operating Charge; and (3) Applicable Taxes or, (y) \$21 per MIb (the "Cap"), as such amount may be increased or decreased as set forth in the next sentence, plus Applicable Taxes, or (B) \$17 per MIb (the "Floor Charge"), as such amount may be increased or decreased as set forth in the next sentence, plus Applicable Taxes. The Floor Charge and the Cap will be adjusted each January 1 by the same amount as the Adjustable Portion of the Fixed Operating Expense Charge as calculated below under the caption "Adjustment Factor" set forth in Section 3(b) below.

a. Fuel Consumption Charge

For each Billing Period, the Fuel Consumption Charge ("FCC") will be a volumetric charge applied per MIb and shall be equal to the sum of (1) and (2) below:

- (1) the product of (a) 1.47; (b) the Hedge Ratio; and (c) the sum of (i) the NYMEX natural gas future contract price locked in for the Billing Period divided by one (1) minus the Gas-In-Kind Adjustment ("GIKA"), (ii) a \$0.075 capital charge divided by one (1) minus the GIKA, (iii) Transportation Charge ("TC") per dekatherm ("DTH") divided by one (1) minus the GIKA, and (iv) Local Distribution Charge ("LDC") per DTH; and
- (2) the product of (a) 1.47; (b) one (1) minus the Hedge Ratio; and (c) the sum of (i) the NYMEX natural gas futures settlement price per DTH for that month at the Henry Hub delivery location on the natural gas contract termination trading date (i.e. the closing price on the day that is three (3) Business Days prior to the end of the month preceding the Billing Period) divided by one (1) minus the GIKA, (ii) TC per DTH divided by one (1) minus the GIKA, and (iii) LDC per DTH.

The “Hedge Ratio” is equal to the ratio between the volume of Fixed Price Steam, as defined in Section 3(c) below, to the volume of steam delivered to all service locations according to this Agreement. For the absence of doubt, the Hedge Ratio can be a number greater than 1 if the volume of Fixed Price Steam exceeds the volume of steam delivered under this Agreement.

The “Transportation” charge for each billing month will be the twelve month rolling average of the difference between the NYMEX natural gas monthly closing price and the monthly MichCon City Gate Index as published in Gas Daily.

The “Local Distribution Charge” will be the standard XLT tariff (or succeeding tariff) including variable rate elements such as the Cost Based Transportation charge, fixed elements such as customer or meter charges, any then current additional or substitute charges, less any credits that DMC would receive under the standard XLT tariff but not including any charges or credits identified as available under the optional provisions, of DTE MichCon as authorized, from time to time, by the Michigan Public Service Commission (“MPSC”). The fixed Monthly Customer Service Charge or other fixed monthly charges will be converted to a variable rate by dividing the Monthly Customer Service Charge by the product of the steam sales for the month (in Mlb) and 1.47.

The “Gas-In-Kind Adjustment” or “GIKA” means the proportion of gas received by DTE MichCon that is retained as an allowance for company-use and lost-and-unaccounted-for gas pursuant to DTE MichCon’s then current XLT tariff. As of the Effective Date, the current Gas-In-Kind Adjustment is 1.42%.

The following is a formulaic representation for the calculation of the FCC:

FCC =

$$\left[1.47 \times \text{Hedge Ratio} \times \left(\left(\frac{\text{NYMEX NG Future Price Lock}}{1 - \text{GIKA}} \right) + \left(\frac{\$0.075}{1 - \text{GIKA}} \right) + \left(\frac{\text{TC}}{1 - \text{GIKA}} \right) + \text{LDC} \right) \right] +$$

$$\left[1.47 \times (1 - \text{Hedge Ratio}) \times \left(\left(\frac{\text{NYMEX NG Settlement Price}}{1 - \text{GIKA}} \right) + \left(\frac{\text{TC}}{1 - \text{GIKA}} \right) + \text{LDC} \right) \right]$$

b. Fixed Operating Expense Charge:

The Fixed Operating Expense Charge will be \$268,661.30 per month for service to the locations listed in Section 1, of which \$218,449.30 shall be deemed non-adjustable and the balance of \$50,212.00 shall be designated the Adjustable Portion and be adjusted annually as described below.

Adjustment Factor:

The Adjustable Portion of the Fixed Operating Expense Charge will be adjusted each January 1 by the actual average annual rate of change in the U.S. Consumers Price Index- All Urban Consumers (CPI-U) Base 1982-1984, as determined and published by the U.S.

Bureau of Labor Statistics for the most recent twelve month period ending each July. The base CPI-U for July 2015 was 238.654.

c. Fixed Price Steam Program

DMC may, at its option, provide irrevocable notice to DT in the form of Exhibit A (“Hedge Notice”), duly authorized by DMC’s representative on the Operating Committee, indicating the amount of steam, expressed in Mlbs in each Billing Period that DMC wishes to fix the Fuel Consumption Charge in accordance to Section 3(a) (“Fixed Price Steam”). This irrevocable notice must include the price or range of prices that DT is authorized to fix the NYMEX natural gas futures settlement price per DTH in accordance with Section 3(a). The authorized time period shall not exceed twelve months from the date of the Billing Period immediately following the date of DMC’s notification in accordance with this Section 3(c).

Upon receipt of DMC’s Hedge Notice, DT will use commercially reasonable efforts to provide DMC with Fixed Price Steam by obtaining market quotes for the NYMEX natural gas future contracts required to fix the Fuel Consumption Charge within one (1) Business Day (“Business Day” defined as a day during which the New York Mercantile Exchange is open for business). The amount of natural gas (expressed in DTHs) required to fix the Fuel Consumption Charge will be, for each Billing Period contained in the Hedge Notice, the product of the volume of Fixed Price Steam and 1.47. The parties explicitly recognize that the price of natural gas is highly volatile and that pricing will change rapidly. Each Billing Period included in the Hedge Notice will be evaluated independently and if market quotes for the NYMEX natural gas future contract corresponding to the respective Billing Period are equal to or less than the price authorized by DMC in the Hedge Notice, DT will fix the Fuel Consumption Charge for that Billing Period for the volume of steam indicated in the Hedge Notice. For each Billing Period included in the Hedge Notice, if the price range authorized by DMC in the Hedge Notice is not commercially available, DT will provide written notice to DMC of the pricing that is available and DMC at its option can provide a new Hedge Notice as provided for in this Section 3(c). For the absence of doubt, if more than one Billing Period is included in the Hedge Notice, DT will fix some, all or none of the Billing Periods in accordance with authorization provided by DMC and this Section 3(c) depending on market quotes.

To implement the Fixed Price Steam, DT may provide to DMC the form of a transaction protocol and one or more transaction election, confirmation or other forms, but in the event of any conflict between any of the foregoing and the provisions of this Agreement, the provisions of this Agreement will be controlling. Notwithstanding any other provision contained in this Agreement or in any other document furnished in connection with a Fixed Priced Steam Program, DT is not engaged in the business of providing advice with respect to trading in any contract of sale of a commodity for future delivery and further has no duty to inquire into and makes no representation or warranty regarding the suitability of any transactions entered into pursuant to a Fixed Price Steam Program for DMC in light of such DMC’s expertise and experience in dealing with similar

transactions, its financial condition, its business objectives or any other factors, whether or not disclosed to DT.

Locked-in pricing shall only be rescinded with the expressed agreement of both DT and DMC. Notwithstanding anything contained herein to the contrary regardless of whether or not DMC delivers a Hedge Notice, the charge for steam shall be determined in accordance with the formula at the beginning of Section 3, it being acknowledged and agreed that fixing the Fuel Consumption Charge may be irrelevant due to the Floor Charge.

d. Applicable Taxes

All applicable taxes levied by the City, County, State, or Federal governmental agencies on the sale of steam, including but not limited to the City of Detroit utility tax, will be added to the total cost of steam delivered under this Agreement (collectively, “Applicable Taxes”). If DMC is exempt from such tax, DMC shall provide DT proof of such exemption.

e. Price Adjustment

To the extent not yet paid, any amounts owed by either party attributable to the retroactive price adjustment set forth in this Section 3 shall be paid within five (5) Business Days after the execution of this Agreement.

4. Metering

Upon request, the Company will render on a monthly basis one combined bill for all steam delivered to the Customer at the service locations identified in this Agreement for the Billing Period.

5. Reporting Requirements

DT shall provide DMC the following at the first reasonable opportunity, but not later than five (5) Business Days after receipt or preparation by DT:

- (i) A copy of each statement from its natural gas suppliers, including MichCon and its water supplier, including the Detroit Water and Sewerage Department.
- (ii) Notice of any Material Adverse Event. A “Material Adverse Event” means a financial event or condition that can be reasonably expected to substantially impair the ability of DT to perform under the terms of this Agreement.
- (iii) Notice of any reasonable expectation of inability to perform DT’s obligations under this Agreement.

- (iv) Any natural gas or water supply shut off notice or threatened shut off notice received by DT or any shut off notice or threatened shut off notice indicating that steam purchased by DT for resale to its customers will not be provided due to non-payment.
- (v) Copies of all public filings of a financial nature submitted by DT to the MPSC.
- (vi) A copy of DT's annual financial statements.
- (vii) Notice of any general assignment for the benefit of creditors, filing a voluntary bankruptcy petition, becoming the subject of an order for relief or being declared insolvent in any federal or state bankruptcy or insolvency proceedings, filing a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any applicable law, in each case, relating to DT.

6. Operating Committee

DMC and DT will each nominate a representative to serve on an Operating Committee. This Operating Committee will meet no less than four (4) times per year to discuss the performance and administration of this Agreement, and seek to resolve any differences or disagreements relating to this Agreement. From time-to-time, but not more than two (2) times per calendar year, the DMC member of the Operating Committee may request, and DT shall provide to the DMC member of the Operating Committee, a written customer change report listing: (i) the total number of customers taking steam service as of the last day of the immediately preceding month; (ii) the number of customers which ceased taking steam service in the immediately preceding six calendar months and the average annual quantity of steam purchased by those customers in the prior three calendar years; (iii) the number of new customers that began taking steam in the immediately preceding six calendar months and the total projected average annual steam demand for those new customers; and (iv) the anticipated net change in the total average annual quantity of steam purchased by customers as a result of customer changes in the reporting period. A customer change report shall not include the identity of customers or individualized information regarding customer demand. At each meeting, the Operating Committee shall discuss the need for and (if applicable) execution of NYMEX natural gas hedging strategies by DT.

DT's operating protocols for ensuring a reliable supply of steam are detailed in Exhibit B. The Operating Committee will have the responsibility and authority to modify the protocols in Exhibit B as warranted if such modifications are unanimously approved by both members of the Operating Committee.

7. Force Majeure

If either party shall be delayed, hindered in, or prevented from the performance of any of its obligations under this Agreement as a result of Force Majeure (as hereinafter defined), it shall not be liable for loss or damage for the failure or be liable to the other party for a breach of

contract. “Force Majeure” shall mean any period of delay which arises from or through Acts of God; explosion, sabotage, accident, riot or civil commotion; act of war; fire or other casualty; legal requirements; delays caused by the Customer; causes beyond the reasonable control of the affected party; and delay, interruption or termination of steam, water, electricity, gas or other commodities supplied to the Company by third parties for reasons other than non-payment or non-performance by the Company of its obligations under any applicable supply contract. “Force Majeure” does not include bankruptcy, strikes, lockouts, or labor difficulties involving DT. Nothing in this Agreement shall prejudice the Customer's rights, relative to other customers, to continue to receive service in the event of a partial or full curtailment of supply. Notwithstanding anything contained herein to the contrary, in no event shall a Force Majeure event excuse the performance of a monetary obligation.

The party claiming Force Majeure (i) shall give prompt written notice to the other party of the event constituting Force Majeure, specifying the nature of the event and its anticipated duration; and (ii) must make commercially reasonable efforts to remove the cause of its inability to perform.

If a Force Majeure event with respect to which the Company is seeking excuse from performance hereunder continues for a period of 90 consecutive days or more, the Customer may, at its option, terminate this Agreement without liability, including without limitation any liability to the Company for the Termination Charge.

8. Step-In Rights

Without prejudice to any other remedy, DMC may elect to invoke Step-In Rights if one or more of the following event occurs:

- (i) Notice of disconnect for nonpayment of natural gas services that has not been cured within two (2) Business Days;
- (ii) Notice of a Material Adverse Event that could reasonably prevent DT’s ability to perform under this Agreement;
- (iii) DT is more than 60 days delinquent on its natural gas invoices for undisputed amounts of natural gas received; or
- (iv) A default by DT that results in substantial interruption of service or can reasonably be expected to jeopardize the continued provision of steam service to DMC.

If an event giving rise to Step-In Rights occurs, DMC’s representative on the Operating Committee shall give notice to DT’s representative on the Operating Committee that DMC wishes to invoke its Step-In Rights, the reason giving rise to the exercise of such Step-In Rights, the date and time at which DMC intends to exercise its Step-In Rights, the specific Step-In Rights it wishes to invoke and the likely duration for which the Step-In Rights will be exercised (a “Step-In Notice”). The Step-In Notice shall be in writing unless under the circumstances written notice is impractical, in which case the Step-In-Notice may be provided orally but a written confirmation shall be provided as soon as reasonably possible thereafter. DMC shall

retain its Step-In Rights from the date of the Step-In Notice until the earlier of: (i) such time as DT has reasonably demonstrated to DMC's satisfaction that DT has the ability to resume and to continue to provide steam service under the terms of this Agreement; or (ii) the effective date of termination in the event DMC exercises a right of termination under this Agreement (the "Step-In Period"). DMC shall exercise its Step-In Rights in a manner consistent with good industry practice and in compliance with all applicable laws, regulations, ordinances and any applicable collective bargaining agreements.

- a. "Step-In Rights" shall include, at DMC's option:
 - (i) the right to direct DT to utilize for DMC's benefit those DT facilities, boilers and ancillary equipment, steam pipes, manholes, distribution network, rights of ways and all other facilities necessary to provide continuous steam service to DMC;
 - (ii) the right to direct DT to isolate sections of the steam generating and steam distribution assets to ensure a dedicated supply of steam to DMC;
 - (iii) the right to use temporary steam generation facilities supplied by DMC and direct DT to connect those to the steam distribution system through existing connections previously provided for the purpose of serving DMC facilities;
 - (iv) the right to arrange for the delivery of fuel to DT facilities for DMC's account for the specific purpose of serving DMC with steam;
 - (v) the right to direct DT to make its personnel available, or to contract with duly qualified third parties if necessary, to carry out such activities as may be necessary to operate the DT facilities to provide steam to DMC; and
 - (vi) such other rights as may be reasonably necessary for DMC to carry out any of the foregoing rights.
- b. DT will retain the right to control its employees during any Step-In Period and any work performed by DT employees or third parties on behalf of DMC shall not contravene any provision of DT's collective bargaining agreements.
- c. DT shall reimburse DMC for all incremental costs reasonably incurred by DMC in the exercise of its Step-In-Rights during the Step-In Period less an amount equal to the price that DMC otherwise would have been charged by DT for steam service during the Step-in-Period under this Agreement.

9. Termination

DMC Termination/Default

DMC may terminate this Agreement at any time, with or without cause, upon three (3) months prior written notice to DT. In the event that DMC chooses to terminate this Agreement

prior to the expiration date of the Initial Service Term, for reasons other than default by DT or as otherwise provided for in this Section 9, DT shall be entitled to payment of a termination fee as set forth in Exhibit C (the “Termination Charge”), based upon the effective date of such termination. Payment of the Termination Charge by DMC shall be in lieu of, and in satisfaction of, any and all other possible damages, liabilities or other claims by DT in connection with this Agreement.

DT Termination/Default

If: (i) DT commits or suffers a material breach of its obligations under this Agreement (including by way of illustration and not limitation, the filing of a petition for bankruptcy, being named a party in a petition for bankruptcy, a party to a reorganization, etc., a material breach of any other agreement between the parties, a failure to provide adequate service); and (ii) such breach is not cured within five (5) days, DT shall be in default and DMC may, but is not required to, terminate its obligation to continue to receive and pay for service under this Agreement without any obligation or liability whatsoever on the part of DMC, except to pay for service previously provided under this Agreement, by providing to DT written notice of such default and termination.

To provide DMC with reasonable assurances of DT’s ability to continue to perform DT’s obligations, DT shall promptly provide to DMC the information detailed in Section 5. If DT fails to provide the reporting, is notified by DMC of this failure, and such failure to deliver required reporting requirements is not cured within ten (10) Business Days, DMC may, but is not required to, terminate its obligation to continue to receive and pay for service under this Agreement without any obligation or liability whatsoever on the part of DMC, except to pay for service previously provided under this Agreement, by providing to DT written notice of such default and termination.

Furthermore, if such financial statements or reports provide a reasonable basis for DMC to have concerns regarding DT’s providing of services as required under this Agreement, DMC may demand that DT provide reasonable assurances of its ability in that regard, and the failure of DT to promptly provide such assurances shall be considered a default under this Agreement.

Notwithstanding anything to the contrary in DT’s tariffs, in the event DT fails to provide steam to DMC during the term of this Agreement at the price set forth herein due to insolvency or otherwise and DMC is required to pay a tariff rate or price, or incurs costs to obtain or self-generate steam, to serve the service locations at a price or cost in excess of the price under this Agreement, DT shall pay to DMC as liquidated damages an amount equal to the difference between the price under this Agreement and the actual price or cost to obtain or produce the same quantity of steam, but not to exceed the then existing tariff or other regulated rates then in effect that would apply to that quantity of steam in the event and for such period that steam is available to DMC from DT at tariff or other regulated rates, for a period of time until DMC is able to construct its own steam generating facilities using commercially reasonable efforts, but not to exceed the lesser of (i) the period remaining in the term or (ii) three (3) years.

10. Assignment

This Agreement shall be binding upon the parties and their successors and permitted assigns. This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. In addition, DMC hereby irrevocably consents that DT may, in connection with a financing arrangement with an unaffiliated third-party lender, grant to such lender a security interest in its rights under this Agreement as collateral for a loan or other financial obligation and consents to the assignment of this Agreement to the secured party under a security agreement in the event of a default in the terms or conditions thereof.

11. Approval by the MPSC

The parties acknowledge that this Agreement is contingent on approval by the MPSC. The Company shall apply for approval and the Customer shall cooperate to obtain such approval and, to the extent permitted by the MPSC or provided by applicable law, may participate in any proceedings. If MPSC approvals, as contemplated in this Agreement, are not granted on or before nine (9) months from the Effective Date, either party may terminate this Agreement upon 30 days written notice without liability to the other party.

If the MPSC does not approve this Agreement as presented, or conditions its approval on any changes to this Agreement, then either party may terminate the Agreement upon 30 days written notice. Either party shall give the other party such notice within 30 days of the date of the MPSC order. If neither party gives such notice, this Agreement will be in full force and effect, as modified by the MPSC's order. If the MPSC's order approving this Agreement contains any terms and conditions other than approval of this Agreement as presented, then either party shall give the other party such notice within 30 days of the date of the MPSC order. If neither party gives such notice, this Agreement will be in full force and effect.

In the event that this Agreement is not approved, DMC is entitled to reimbursement of any excess charges incurred as a result of this Agreement from the Effective Date until the effective termination date of this Agreement.

12. Compliance with Laws

Each party is responsible for compliance with all laws, including but not limited to anti-discrimination laws, which may be applicable to its respective activities and responsibilities under this Agreement.

13. Authority to Sign

Each party's representative signing this Agreement has the authority to sign and bind the respective party.

14. Confidentiality

Except as provided by applicable law or regulation, Company agrees to maintain and keep confidential any and all information derived from its relationship with Customer, and the information will not, without prior written consent of Customer be disclosed by Company, its

officers, directors, partners, employees, affiliates, agents or representatives, in any manner whatsoever. This provision survives the expiration or sooner termination of this Agreement.

15. Entire Agreement

This Agreement and any exhibits properly incorporated from time to time are the complete agreement between the parties and may be modified only by a written instrument executed by the parties. This Agreement supersedes and renders void any prior agreement between the parties relating to its subject matter.

16. Choice of Law

This Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

17. Medicare Access to Books and Records

If the Secretary of Health and Human Services or the Comptroller General of the United States or their representatives determines this Agreement is a contract described in Section 1861 (v)(1) of the Social Security Act, 42, U.S.C. Section 1395x(v)(1)(I) as amended from time to time, until the expiration of four years after the furnishing of services under this Agreement, upon the request of the Secretary or Comptroller General or their duly authorized representatives, Company will make available to the organization requesting the materials and to Customer such books, documents, and records as are necessary to certify the nature and extent of compensation paid by Company pursuant to this Agreement. Company will notify Customer of such request within ten (10) Business Days, and will promptly provide to Customer copies of all documents provided to the requestor.

18. Waivers

No part of this Agreement may be waived except by the written agreement of the parties. Forbearance in any form from demanding performance is not a waiver of performance. Until complete performance under this Agreement, the party owed performance may invoke any remedy under this Agreement or under law, despite its past forbearance.

19. Effective Date

The rates contemplated in this Agreement will be effective on the Effective Date. For the first month during which the rates under this Agreement are applicable, fixed charges and the total volume of steam delivered under applicable tariff and contract rates shall be prorated based on the number of days of the applicable Billing Period for which service was provided under the tariff and contract rates, respectively.

20. Condensate Energy Recovery

During the Initial Service Term and any extension thereof, DMC shall maintain its condensate return system in a manner consistent with current practice and DT may at its option and expense implement a program to utilize condensate to preheat domestic hot water used at

DMC. If such projects are implemented, they may reduce the steam utilized by DMC to heat domestic water and reduce the amount of water used to quench condensate discharge to the sanitary sewer system. DT shall submit any proposed modifications to DMC's Operating Committee representative for approval. Such approval shall not be unreasonably withheld. Following an appropriate measurement and verification process, DT shall be entitled to bill DMC each month for the monthly energy savings and water and sewer savings associated with each of these projects.

21. General Terms and Conditions

Except to the extent this Agreement provides for additional or different terms and conditions, the sale and delivery of steam under this Agreement is governed by the terms of the Company's General Rules and Metering and Metering Equipment Rules, set forth in the Company's filed MPSC Tariff No. 1—STEAM as amended from time to time. A copy of the Company's current General Rules are available upon request and are incorporated herein by reference. The terms of this Agreement shall apply in all cases where a conflict exists with the provisions of the Company's tariff or General Rules.

22. Headings


The headings in this Agreement are intended solely for convenience and shall not be given effect in the construction and interpretation of this Agreement.

23. Waiver of Right to Jury Trial

IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, DMC AND DT EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.

**VHS of Michigan, Inc. d/b/a
The Detroit Medical Center**

Detroit Thermal, LLC

By: 
Victor Jordan, Vice President

By: _____
David Beavens, Chief Financial Officer

DMC. If such projects are implemented, they may reduce the steam utilized by DMC to heat domestic water and reduce the amount of water used to quench condensate discharge to the sanitary sewer system. DT shall submit any proposed modifications to DMC's Operating Committee representative for approval. Such approval shall not be unreasonably withheld. Following an appropriate measurement and verification process, DT shall be entitled to bill DMC each month for the monthly energy savings and water and sewer savings associated with each of these projects.

21. General Terms and Conditions

Except to the extent this Agreement provides for additional or different terms and conditions, the sale and delivery of steam under this Agreement is governed by the terms of the Company's General Rules and Metering and Metering Equipment Rules, set forth in the Company's filed MPSC Tariff No. 1—STEAM as amended from time to time. A copy of the Company's current General Rules are available upon request and are incorporated herein by reference. The terms of this Agreement shall apply in all cases where a conflict exists with the provisions of the Company's tariff or General Rules.

22. Headings

The headings in this Agreement are intended solely for convenience and shall not be given effect in the construction and interpretation of this Agreement.

23. Waiver of Right to Jury Trial

IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, DMC AND DT EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.

**VHS of Michigan, Inc. d/b/a
The Detroit Medical Center**

Detroit Thermal, LLC

By: _____
Victor Jordan, Vice President

By: 
David Beavens, Chief Financial Officer

EXHIBIT A
HEDGE NOTICE

In accordance with the Detroit Thermal, LLC, VHS of Michigan, Inc. d/b/a Detroit Medical Center Amended and Restated Steam Sales Agreement dated effective as of January 1, 2016, VHS of Michigan, Inc. d/b/a Detroit Medical Center irrevocably authorizes Detroit Thermal, LLC to fix the price of steam as detailed in the schedule below.

Month/Year	Volume (Mlbs. of Steam)	Maximum Price (\$/Mlb.)	Minimum Price (\$/Mlb.)
------------	-------------------------------	----------------------------	----------------------------

Authorized Representative of VHS of Michigan, Inc. d/b/a Detroit Medical Center:

Name: _____	Title: _____
Signature: _____	Date: _____

DT Action: (Check Applicable Box and Sign to Accept or Reject Hedge Notice)

☐ Accepted: The below named authorized representative of Detroit Thermal, LLC confirms that DMC's Hedge Notice has been accepted and effected.

Name: _____	Title: _____
Signature: _____	Date: _____

☐ Rejected: The below named authorized representative of Detroit Thermal, LLC after commercially reasonable efforts was unable to effect DMC's Hedge Notice.

Name: _____	Title: _____
Signature: _____	Date: _____

EXHIBIT B
**DETROIT THERMAL STEAM DELIVERY PRIORITIZATION PROCEDURE FOR
SERVICE TO DMC**

REVISED NOVEMBER 25, 2008

Situation A: Beacon Plant is unable to produce steam due to loss of water, electric or natural gas. Steam from GDRRA plant would be routed through Beacon Plant

- Close Beacon manifold valves to direct steam to B3 feeder.
Close blocking valves from all boilers to the west manifold.
Close blocking valve from the west manifold to the in-house steam pumps and atomizing steam system.
- Isolate pressure regulating valve in manhole #1398 to keep steam from flowing to north end of distribution system.
- Close valve in manhole # 1177 to keep all hospitals on but isolating 10" main going east towards manhole #25.
- Close B-3 and B-3a valves in manhole #1187 to keep steam from flowing west towards Willis plant completely isolating hospitals.

Situation B: GDRRA is unable to produce steam and Beacon Plant cannot supply sufficient system capacity. System operations would route available steam to hospitals

- Close Beacon manifold valves to direct steam to B3 feeder.
Close blocking valves from all boilers to east manifold.
Close blocking valves from manifolds/boilers to B-2, B-4, B-5, and B-7.
Close blocking valve from GDRRA to east and west manifolds. Close the B-5 to B-6 tie valve (which is normally closed).
- Close B-3 and B-3a valves in manhole #1187 to keep steam from flowing west towards Willis plant completely isolating hospitals.
- Isolate pressure regulating valve in manhole # 1398 to keep steam from flowing to north end of distribution system.
- Close valve in manhole #1177 to keep all hospitals on but isolating 10" main going east towards manhole #25.

Situation C: DMC exercises Step-in Rights. System operations would deliver steam from Beacon plant Boilers #6 & #7 that would be dedicated to DMC

- Close Beacon manifold valves to direct steam to B3 feeder
Close blocking valves to west manifold from #1, 2, & 4 boilers.
Close blocking valve to east manifold from #6 & #7 boilers.

- Close blocking valve to west manifold from RRF.
- Close blocking valve from west manifold to in house pumps and atomizing steam.
- Isolate pressure regulating valves in manhole #1398 to keep steam from flowing to north end of distribution system
- Close valve in manhole #1177 to keep all hospitals on but isolating 10" main going east towards manhole #25.
- Close B-3 and B-3a valves in manhole #1187 to keep steam from flowing west to Willis plant completely isolating hospitals.

Situation D: Distribution Line B3 isolated south of manhole #1398. System operations would route steam from GDRRA plant through North End tie (GDRRA M/H #25)

- Close valve in GDRRA m/h #4 to direct steam through North End tie (GDRRA m/h #25)
- Isolate pressure regulating valves in manhole #1398 to keep steam from flowing to north end of distribution system.
- Close valve in m/h #1390 to prevent steam from flowing South of DMC
- Close B-3 and B-3a valves in manhole #1187 to keep steam from flowing west to Willis plant completely isolating hospitals.

Situation E: DTLIC and GDRRA are unable to supply steam or DMC exercises Step-in Rights. Steam would be supplied from temporary boilers placed on DMC campus

- Using existing emergency service valves, tie temporary boilers into m/h #'s 1317 and 1377 on DMC campus.
- Isolate pressure regulating valves in manhole #1398 to keep steam from flowing to north end of distribution system.
- Close valve in manhole #1177 to keep all hospitals on but isolating 10" main going east towards manhole #25.
- Close B-3 and B-3a valves in manhole #1187 to keep steam from flowing west towards Willis plant to isolate hospitals.
- Close valve in manhole #1390 to prevent steam from flowing south of DMC campus.

EXHIBIT C
TERMINATION CHARGE

From	To	Payment Amount
Effective Date	June 30, 2017	\$6,223,936
July 1, 2017	June 30, 2018	\$5,566,716
July 1, 2018	June 30, 2019	\$4,908,111
July 1, 2019	June 30, 2020	\$4,249,510
July 1, 2020	June 30, 2021	\$3,590,912
July 1, 2021	June 30, 2022	\$2,932,318
July 1, 2022	June 30, 2023	\$2,273,728
July 1, 2023	June 30, 2025	\$1,615,140

EXHIBIT "B"

DETROIT THERMAL, LLC
RIVERFRONT HOLDINGS, INC.
ECONOMIC ADJUSTMENT AGREEMENT

THIS ECONOMIC ADJUSTMENT AGREEMENT (this “Agreement”), is entered into this 1st day of June 2016 (the “Execution Date”, but to be effective as of April 1, 2016 (the “Effective Date”), by and between RIVERFRONT HOLDINGS, INC., a Delaware corporation (hereinafter called the “Customer” or “RHI”) and DETROIT THERMAL, LLC, an Ohio limited liability company (hereinafter called the “Company” or “DT”).

WHEREAS, DT, as successor-in-interest to The Detroit Edison Company Thermal Energy Division, and DTE Northwind, LLC (“DTE”) are party to that certain Steam Sales Agreement dated October 9, 1998 (the “DT RenCen Contract”), whereby, among other things, DT has agreed to provide steam to DTE at the Renaissance Center Phase I in Detroit, Michigan (the “Project Site”);

WHEREAS, RHI and DTE are party to that certain Steam and Chilled Water and River Water Supply Contract dated effective as of May 1, 1998 (as in effect as of the date hereof without further modification, the “RHI RenCen Contract”), whereby, among other things, DTE has agreed to provide steam to RHI at the Project Site, it being acknowledged by the parties hereto that (i) DT actually provides such steam to RHI and DTE acts as a contractual intermediary, and (ii) DTE provides other services to RHI at the Project Site that are not provided by DT; and

WHEREAS, DT has requested that RHI modify the effective pricing that RHI pays for steam, with such modification to benefit and be paid to DT directly.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, DT and RHI hereby agree as follows:

1. Capitalized Terms

Capitalized terms used herein but not defined herein shall have the meaning ascribed to such term in the RHI RenCen Contract in effect as of the date hereof.

2. Term

The term of this Agreement shall begin on the Effective Date and continue until December 31, 2019, subject to any earlier termination as provided herein.

3. Price Adjustment

Absent the occurrence and continuance of an Event of Default, commencing on the Effective Date and continuing through and including December 31, 2019, (a) RHI will pay directly to DT, (1) the difference between (X) the Fixed Price (as defined below) per thousand pounds of steam provided under the RHI RenCen Contract (“MIbs”) and (Y) the fixed price

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actually paid by RHI to DTE under the RHI RenCen Contract (the “Price Increase”) and (b) RHI will pay directly to DT an annual fixed charge of \$750,000 per year which is payable in twelve (12) monthly installments. The Price Increase will be applied retroactively commencing April 1, 2016, and does not constitute a volume guaranty of any kind from RHI or any of its affiliates, including General Motors LLC (“GM”). DT’s obligations as set forth herein will not be affected by, and neither RHI nor any of its affiliates, including GM, shall have any liability or obligation to DT relating to, any fluctuations in steam volumes purchased by RHI under the RHI RenCen Contract. “Fixed Price” shall mean (i) for calendar years 2016 and 2017, \$18.00, (ii) for calendar year 2018, \$18.38 and (iii) for calendar year 2019, \$18.74. All applicable taxes levied by the City, County, State, or Federal governmental agencies on the price adjustment for the sale of steam, including but not limited to the City of Detroit utility tax, are included in the Price Increase, will not be separately paid by RHI, and are DT’s responsibility.

4. Invoicing and Payment

Within five (5) business days after the Execution Date, DT shall invoice RHI in an amount equal to the true-up payment to cover the Price Increase and fixed charge for the period between the Effective Date and the last day of the calendar month preceding the Execution Date and RHI shall pay to DT the foregoing true-up payment within thirty (30) calendar days following RHI’s receipt of DT’s invoice for the true-up payment. Thereafter, DT shall submit to RHI each month an invoice of the Price Increase and fixed charge for the prior month. Other than portions of an invoice that are in dispute, as to which RHI shall specify the amount and nature of such dispute, RHI shall pay the amount due to DT no later than thirty (30) calendar days following RHI’s receipt of DT’s monthly invoice.

5. Approval by the MPSC

DT, at its sole cost and expense, will obtain all regulatory and government approvals, permits, licenses, easements and variances, including but not limited to any required consent of the Michigan Public Service Commission (“MPSC”), required for the Agreement and any other transactions contemplated by the Agreement, and provide copies of same to RHI after receipt. To the extent any regulatory or government approval is required and is not obtained within one hundred twenty (120) days after the execution of this Agreement, DT will promptly inform RHI in writing and either party may terminate this Agreement upon five (5) business days’ prior written notice, and DT will immediately refund to RHI any monies it received from RHI pursuant to this Agreement. DT agrees that this Section 5 represents the sole and exclusive manner under which it can terminate this Agreement, DT must exercise its right to terminate this Agreement within thirty (30) days following the expiration of the initial one hundred and twenty (120) day period, and DT may not terminate this Agreement for any other reason.

6. Contingency Plan

DT, at DT’s sole cost and expense, will, on or before the sixtieth (60th) day after the date this Agreement is executed, review and revise the RenCen Crisis Management Plan, with additional long-term alternative supply options, in a form and content acceptable to RHI. If RenCen Crisis Management Plan is not acceptable to RHI, RHI will have the option to have DT revise the RenCen Crisis Management Plan until it is acceptable to RHI.

7. Updated Plans/Calibration

DT, at DT's sole cost and expense, will, on or before the sixtieth (60th) day after the date this Agreement is executed, (i) revise and update the steam services management and control plan, which must be substantially similar to the plan in place for the Hamtramck Contract (as defined below); (ii) provide RHI with its schedule for planned preventative maintenance and repairs for calendar year 2016 based on this Agreement; and (iii) calibrate its Billing Meters for Steam and, if needed, restore to a condition of accuracy or replace defective/inaccurate meters. All of the foregoing must be in a form and content accepted to RHI.

8. MPSC Approval of DMC Agreement

On or prior to the date this Agreement is executed, DT and The Detroit Medical Center must have entered into that certain Amended and Restated Steam Sales Agreement dated as of the date hereof (the "DMC Agreement"). DT shall use commercially reasonable efforts to cause the DMC Agreement to receive all regulatory and government approvals including, but not limited to, any required consent of the MPSC.

9. Infrastructure Improvements

Within one (1) business day following the execution of this Agreement, DT must provide RHI evidence satisfactory to RHI that Detroit Renewable Resources LLC ("DRR"), the majority owner of Detroit Renewable Energy LLC ("DRE"), shall have received a cash investment from its members of an amount no less than \$5,000,000 and DRR shall have contributed all of such cash investment to DRE (the "Equity Investment"). DT may receive a portion of the Equity Investment from its parent, DRE. DT hereby agrees to use the portion of the Equity Investment that it receives solely to fund working capital and capital improvements in DT's infrastructure that are necessary for DT to perform its obligations under the DT RenCen Contract, including but not limited to the contingency plan requirements referenced above in Section 6. RHI acknowledges that all or a portion of the Equity Investment may be used by Michigan Waste Energy, Inc. ("MWE") to fund its working capital and capital improvements that are necessary for it to perform its obligations under that certain Steam Service Agreement dated April 3, 2013 (the "Hamtramck Contract") by and between GM and MWE. Notwithstanding Section 10 below, if DRE does not receive the Equity Investment on or before one (1) day following execution of this Agreement, this Agreement will be null and void unless a waiver or deferral is agreed to in writing by RHI.

10. Events of Default

- a. The occurrence of any of the events listed below shall constitute an "Event of Default" by DT hereunder, unless a waiver or deferral is agreed to in writing by RHI:
 - (1) A repudiation or failure by DT to perform any of its material duties or obligations contemplated by this Agreement or the DT RenCen Contract or persistent or repeated failure of DT to perform its duties or obligations under this Agreement or the DT RenCen Contract, and such failure continues and is not cured within thirty (30) calendar days after written

notice thereof is received from RHI, unless the failure specified in such notice is not susceptible of a cure within said thirty (30) day period; or

- (2) DT, MWE, DRE, any subsidiary of DRE, or any direct parent of DRE (a “DT Affiliate”) that is a party to an agreement with RHI (i) commences any case, proceeding or other action under Title 11 of the United States Code or any other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief laws of the US or other applicable jurisdictions in effect from time to time, seeking (A) to have an order for relief entered with respect to it, (B) to adjudicate it as bankrupt or insolvent, (C) reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (D) appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or (ii) makes a general assignment for the benefit of its creditors;
- (3) Any creditor of DT, MWE, or any DT Affiliate commences a repossession or foreclosure action against a material portion of the operating assets of DT, MWE, or any DT Affiliate; or
- (4) An Event Constituting Breach (as defined in the DT RenCen Contract) by DT occurs under the DT RenCen Contract.

11. Remedies

To the extent that an Event of Default occurs and is continuing hereunder, RHI shall be entitled to all rights and remedies available to it under this Agreement, by law or in equity. In addition, upon the occurrence and during the continuance of an Event of Default by DT hereunder, RHI shall have the right to terminate this Agreement and the RHI RenCen Contract and the DT RenCen Contract will each continue in full force and effect.

12. Conditions Precedent

The effectiveness of this Agreement is conditioned upon satisfaction of the following conditions precedent:

- a. contemporaneously with the execution of this Agreement, RHI and DT have entered into that certain Steam Sales Agreement (the “New RenCen Contract”) for a term commencing January 1, 2020 and expiring December 31, 2036;
- b. contemporaneously with the execution of this Agreement, Detroit Renewable Energy LLC shall have entered into that certain Amended and Restated Loan Agreement by and among Detroit Renewable Energy LLC, Detroit Renewable Power LLC, Resource Recovery Business Trust 1991-A, Resource Recovery Business Trust 1991-B and DT, as Borrower and Michigan Strategic Fund, as Issuer, in form and substance reasonably acceptable to RHI; and

- c. contemporaneously with the execution of the Agreement, DT and The Detroit Medical Center shall have entered into the DMC Agreement.

13. Assignment

This Agreement shall be binding upon the parties and their successors and permitted assigns. This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. In addition, RHI hereby irrevocably consents that DT may, in connection with a financing arrangement with an unaffiliated third-party lender, grant to such lender a security interest in its rights under this Agreement as collateral for a loan or other financial obligation and consents to the assignment of receivables generated by DT under this Agreement to the secured party under a security agreement in the event of a default in the terms or conditions thereof. Notwithstanding anything in this Agreement to the contrary, RHI shall have the right to assign this Agreement and the rights and obligations hereunder to an entity that is controlled by, under common control with, or that controls RHI, or that is formed as a result of an internal restructuring of RHI and/or its affiliates. RHI shall provide written notice to DT of any such assignment. Any purported assignment in violation of the foregoing shall be null and void.

14. Confidentiality

DT and RHI each agree to keep and maintain the existence and terms of this Agreement, and any and all related agreements strictly confidential, and the parties shall not disclose the existence or terms thereof to any person or entity not a party thereto, other than a party's respective managers, directors, accountants, attorneys, without the prior written consent of the other parties; provided that nothing shall preclude either party from disclosing the existence and terms of this Agreement or any and all related agreements (i) to their respective lenders (or prospective lenders) or prospective purchasers of the equity or assets of DRR, DRE or any of its subsidiaries or RHI, or (ii) as may be required by applicable laws, including in connection with obtaining MPSC approval.

15. Notices

Except as otherwise specifically provided for in this Agreement, all notices or other communications required or permitted hereunder will be in writing and deemed given if delivered personally, or if deposited in the U.S. mail, certified mail, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, or via facsimile with transmission verified with the original of such notice sent as above described, and in any case addressed as follows:

Detroit Thermal, LLC
5700 Russell Street
Detroit, MI 48211
Attn: Joe Haak
Tel: 313.963.3692

With a copy to:

Jason M. Peters
Andrews Kurth LLP
600 Travis St., Suite 4200
Houston, Texas 77002
Tel: 713.220.4124
Fax: 713.238.7333

Riverfront Holdings, Inc.
c/o General Motors LLC
Global Purchasing and Supply Chain
Vehicle Engineering Center
30001 Van Dyke Avenue
M/C 480-210-880
Warren, MI 48090-9020
Attention: Mark W. Fischer
Email: mark.w.fischer@gm.com

With a copy to:

General Motors LLC
Vehicle Engineering Center
MC 480-210-855
30001 Van Dyke
Warren, MI 48090-9020
Attention: Aaron M. Silver
Email: aaron.silver@gm.com

and to:

Honigman Miller Schwartz and Cohn LLP
660 Woodward Avenue
2290 First National Building
Detroit, Michigan 48226
Attention: Joseph R. Sgroi
Email: jsgroi@honigman.com

or to such other address as the addressee may have specified in a notice duly given as provided herein.

16. Authority to Sign; Originals

Each party's representative signing this Agreement has the authority to sign and bind the respective party. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts will be deemed to be an original and taken together will constitute one and the same instrument. The parties agree that their

respective signatures may be delivered by facsimile or other electronic mail and that facsimile or pdf signatures will be treated as originals for all purposes.

17. Entire Agreement

This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, relating to the subject matter hereof. This Agreement shall constitute the entire integrated agreement between the parties, and no amendment or modification shall be effective except in a writing signed by duly authorized representatives of both parties.

18. Choice of Law; Venue

This Agreement will be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles. The parties agree, and DT and RHI irrevocably consent that, the United States District Court for the Eastern District of Michigan, Southern Division, and the Oakland County Circuit Court in the State of Michigan, United States of America, have personal jurisdiction over the parties and that the exclusive jurisdiction and venue for any dispute arising from or under this Agreement shall be in the United States District Court for the Eastern District of Michigan, Southern Division, or the Oakland County Circuit Court in the State of Michigan, United States of America, and each party waives any right to assert, at any time in any proceeding judicial or otherwise relating to this Agreement that jurisdiction and venue are not proper in those courts.

19. Waivers; Third Parties

No part of this Agreement may be waived except by the written agreement of the parties. Forbearance in any form from demanding performance is not a waiver of performance. Until complete performance under this Agreement, the party owed performance may invoke any remedy under this Agreement or under law, despite its past forbearance. This Agreement is not intended for the benefit of any third party (other than affiliates and subsidiaries of RHI, including GM).

20. Headings; Interpretation

The headings in this Agreement are intended solely for convenience and shall be given no effect in the construction and interpretation of this Agreement. Any agreement, instrument, statute, law, regulation or rule defined or referred to herein shall be deemed to mean such agreement, instrument, statute, law, regulation or rule as from time to time amended, modified or supplemented, and includes, in the case of agreements and instruments, references to all attachments thereto and instruments incorporated therein. Any term defined in this Agreement includes the plural as well as the singular and the derivatives of such terms. "Hereof," "herein" and "hereunder" refer to this Agreement as a whole. "Including" is not limiting and should be followed by the word "without limitation" and "Or" is not necessarily exclusive. Any agreements, covenants, promises, or obligations appearing in the Recitals at the beginning of this Agreement are included in the body of this Agreement as if fully stated herein.

21. Waiver of Right to Jury Trial

IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, RHI AND DT EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.

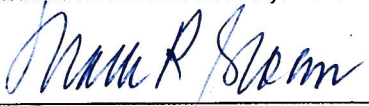
(Signature Page to Follow)

Execution Version

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date set forth above

RIVERFRONT HOLDINGS, INC.

DETROIT THERMAL, LLC

By: 
Name: Mark R. Sloan
Title: Asst. Director
Real Estate

By: _____
David Beavens, Chief Financial Officer

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date set forth above

RIVERFRONT HOLDINGS, INC.

DETROIT THERMAL, LLC

By: _____
Name: _____
Title: _____

By: David Beavens
David Beavens, Chief Financial Officer

EXHIBIT "C"

STEAM SALES AGREEMENT

BETWEEN

DETROIT THERMAL, LLC

AND

RIVERFRONT HOLDINGS, INC.

Effective April 25, 2020

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SCHEDULES

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Schedule 2	Pricing Schedule
Schedule 3	Notice Information
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Schedule 5	Interconnection, Delivery and Metering Points
Schedule 6	Steam Services Management and Control Plan
Schedule 7	Intentionally Deleted
Schedule 8	Intentionally Deleted
Schedule 9	Crisis Management Plan
Schedule 10	Steam Specifications
Schedule 11	Intentionally Deleted
Schedule 12	Intentionally Deleted
Schedule 13	Intentionally Deleted
Schedule 14	Intentionally Deleted
Schedule 15	Intentionally Deleted
Schedule 16	Non-Redundant Equipment
Schedule 17	Intentionally Deleted
Schedule 18	Intentionally Deleted

STEAM SALES AGREEMENT

THIS STEAM SALES AGREEMENT (this “**Agreement**”) is made as of the 1st day of June, 2016, but effective as of April 25, 2020 (the “**Effective Date**”), between RIVERFRONT HOLDINGS, INC., a Delaware corporation (“**Buyer**”), and DETROIT THERMAL, LLC, an Ohio limited liability company (“**Seller**”).

RECITALS

WHEREAS, Seller and DTE Northwind, LLC (“**DTE**”) entered into that certain Steam Sales Agreement dated October 9, 1998 (the “**DT RenCen Contract**”), whereby, among other things, Seller agreed to supply steam to DTE at the Complex (defined below);

WHEREAS, Buyer and DTE entered into that certain Steam and Chilled Water and River Water Supply Contract dated effective as of May 1, 1998 (the “**GM RenCen Contract**”), whereby, among other things, DTE agreed to supply steam, chilled water services and river water to Buyer at the Complex;

WHEREAS, DTE uses the steam supplied by Seller under the DT RenCen Contract in order to satisfy its steam delivery obligations under the GM RenCen Contract; and

WHEREAS, commencing April 25, 2020, Buyer and Seller desire that Seller supply steam to Buyer directly.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I DEFINITIONS, SCHEDULES

SECTION 1.01 Definitions.

As used herein, the following terms shall have the meanings set forth below:

“**Applicable Law**” means any law, regulation, ordinance, rule, mandate, judgment, order, decree, permit, zoning restriction, land use, code or license requirement or restriction, or any interpretation or administration of any of the foregoing by any Governmental Authority, which applies to the operation of the Steam System or the occupancy or use of the Complex, or otherwise governs this Agreement and the transactions and relationship between the parties as contemplated thereby.

“**B-6 Extension**” shall mean the steam pipe from Congress Street to the Complex for the transport of steam to Buyer at the Complex.

“**Base Rate**” means the rate of \$19.12 per Mlb of steam.

“**Base PPI**” means the Producer Price Index in effect on the Effective Date.

“Billing Meters” shall mean meters and associated equipment located at the Metering Points at the Complex as described in Schedule 5 hereto used by Seller for measuring the Steam delivered by Seller, which measurements will form the basis of the calculation of the steam payments owed to Seller pursuant to this Agreement.

“Business Day” shall mean any day which is not a Saturday, Sunday or a legal holiday under State or federal law.

“Business Interruption Event” shall mean (i) partial or total evacuation of employees or tenants or guests from the Complex, Renaissance Center Phase II, the Hotel or any portions thereof; (ii) unscheduled closing of portions of offices, hospitality areas, retail areas, Hotel areas or other portions of the Complex, Hotel or Renaissance Center Phase II; (iii) cancellation or curtailment of retail, hospitality, banquet facility, special events, or Hotel functions at the Renaissance Center; (iv) written complaints to Buyer (or Buyer’s property manager) from tenants, the Hotel or GM; (v) claims asserted against Buyer by tenants, GM or the Hotel; (vi) reimbursement to Hotel guests of all or a portion of their customary room charges; (vii) reimbursement of all or a portion of banquet facility charges to customers; or (viii) rental payment withholding or reduction by Buyer’s tenants.

“Complex” shall mean the Renaissance Center Phase I.

“Contract Rate” shall mean the fluctuating interest rate per annum, which rate per annum shall be equal to, at any given time, the rate of interest announced publicly by JP Morgan Chase Bank, New York, New York, from time to time, as its prime rate as then in effect, plus one percent (1.0%). The Contract Rate shall in no event exceed the maximum rate of interest allowed by Applicable Law.

“Contracting Party” shall mean a Person engaged by Seller pursuant to a Project Document and approved by Buyer, such approval not to be unreasonably withheld, conditioned or delayed.

“Coordination Committee” shall have the meaning given to it in Section 28.01 hereof.

“Cost Substantiation” shall mean a certificate signed by an authorized representative of the party incurring such costs with respect to direct costs incurred by such party, stating the reason for incurring such direct cost, the amount of such direct cost, and the event and Section of this Agreement giving rise to the party’s right to incur such direct cost and that such direct cost is at a verifiable competitive price for the service or materials supplied. Such certificate shall be accompanied by copies of all underlying invoices or charges, together with any additional documentation of such costs or expenses incurred which are reasonably necessary to verify the amount of such costs and expenses and to demonstrate the basis for the amount claimed.

“Current Year PPI” means the Producer Price Index in effect as of April 25 of each Year of Operation.

“Crisis Management Plan” shall have the meaning set forth in Section 5.02 hereof.

“Delivery Criteria” shall have the meaning set forth in Section 16.01(d) hereof.

“Delivery Point(s)” shall mean the point(s) at which steam is delivered by Seller to Buyer as shown on Schedule 5 hereto.

“DT RenCen Contract” shall have the meaning set forth in Recitals hereof.

“DTE” shall have the meaning set forth in Recitals hereof.

“Effective Date” means April 25, 2020.

“Effective PPI” means the Current Year PPI divided by the Base PPI.

“Emergency” means an incident beyond the reasonable control of the Seller and its contractors and suppliers requiring immediate action on the part of the Seller that, if not immediately addressed, may reasonably be expected to result in eminent and substantial damage, injury or loss.

“Event” shall mean, as to a Failure to Provide Steam Service, each occurrence of such failure; *provided, however*, that if such a failure ends as a result of fluctuations in load demands, changes in temperature or other conditions and then recurs as such demands or conditions again change, where the subsequent failure is due to the same underlying cause as the initial failure, such series of occurrences shall be deemed to be one Event for purposes of Section 9.05.

“Event Constituting Breach” shall have the respective meanings set forth in Sections 19.01 and 19.02.

“Facility” shall mean the equipment and facilities installed by Seller in accordance with the DT RenCen Contract in Level A, Level B or other areas of the Complex, for the provision of steam to Buyer.

“Failure to Provide Steam Service” shall have the meaning set forth in Section 9.05(a) hereof.

“Fair Market Value” for Seller’s interest in the Facility shall mean the value of Seller’s interest in the Facility that would be obtained in an arms-length transaction between an informed and willing buyer and an informed and willing seller, under no compulsion, respectively, to buy or sell. The Fair Market Value determination shall take into account, to the extent that such items exist and/or are in effect at the time of such determination, among other things: (a) the value of any Project Documents, (b) the cost of any remediation of Hazardous Matter required under Applicable Law to be necessary at the Project Site (as identified by an environmental audit at Seller’s expense) that is the responsibility of Seller, and (c) the value of this Agreement prior to termination. The Fair Market Value will be agreed upon by Buyer and Seller or, in the absence of such agreement, determined by an Independent Appraisal as provided under this Agreement.

“Fixed Monthly Payment” shall have the meaning set forth in Section 9.03(a) hereto.

“Force Majeure” shall have the meaning set forth in Section 17.01 hereto.

“Further Assurances” shall have the meaning set forth in Section 16.01(f) hereof.

“Governmental Authority” shall mean any federal, State or local government authority, agency, political subdivision, court or other body, officer or public entity, including any zoning authority, building inspector or health, environmental or safety inspector, having jurisdiction over Buyer or Seller.

“GM” means Riverfront Holdings Phase II, Inc. and General Motors LLC (as successor in interest to General Motors Corporation), currently the tenants of Renaissance Center Phase II, or one of their respective successor or assigns, as applicable.

“GM RenCen Contract” shall have the meaning set forth in Recitals hereof.

“Hazardous Matter” shall mean all pesticides, pollutants, contaminants, chemicals, gasoline, petroleum products, asbestos, radioactive materials (including by-product, source, and/or special nuclear materials), ureaformaldehyde, flammable explosives, or other hazardous wastes or toxic materials, including, without limitation, materials now or hereafter subject to regulation as hazardous material under any Applicable Law.

“Hotel” means the hotel located at the Complex.

“Improvements to the Project Site” shall mean the architectural, structural and other permanent modifications to Level A and Level B of the Complex in existence on the Effective Date or any modifications thereto made after the Effective Date.

“Independent Appraisal” shall mean an appraisal performed in accordance with the following requirements: Buyer and Seller each shall select an appraiser with experience and qualifications in the valuation of steam generation facilities to perform an appraisal based on the Fair Market Value or Salvage Value, as the case may be, of Seller’s interest in the Steam System and Improvements to the Project Site, as set forth herein. Such appraiser shall have significant experience and qualifications in the representation of investment banks or other financial institutions that are active in the project finance markets for independent steam or similar commodity generation facilities, and have acted on behalf of such institutions in the valuation of facilities such as the Steam System. The appraisers shall complete the appraisal and deliver a copy thereof to each party within sixty (60) calendar days after receipt of notice of appointment, or within such other time period established by the parties. If the higher of the two (2) appraisals is less than ten percent (10.0%) above the lower appraisal, the two (2) appraisals shall be averaged and such average shall constitute the Fair Market or Salvage Value, as the case may be. If the higher of the two (2) appraisals is ten percent (10.0%) or more above the lower appraisal, the two (2) appraisers shall nominate a third similarly qualified appraiser; *provided, however*, that, if either party fails to appoint an appraiser within fifteen (15) Business Days after a written request to do so by the other party, or if the two (2) appraisers fail to agree upon a third appraiser, then either party may apply to the American Arbitration Association to make such appointment. Once appointed, the third appraiser shall perform an appraisal based on the Fair Market Value or Salvage Value, as the case may be, of Seller’s interest in the Steam System and the Improvements to the Project Site, which appraisal shall be averaged with the two (2) prior appraisals to constitute the Fair Market Value or Salvage Value, as the case may be. Unless the

parties agree otherwise, any third appraisal shall be made within sixty (60) calendar days of such appointment and the expenses attendant shall be shared equally by Seller and Buyer.

“Independent Engineer” shall mean an independent engineering firm.

“Interconnection Facilities” shall mean interconnection facilities and devices, including all steam, metering devices, and all related materials, equipment and structures necessary to interconnect and deliver steam from the Facility to its delivery points, and shall exclude the Pumping Station, Raw Water Return Line, Raw Water Intake Line, and Raw Water Service Line and all sewer lines.

“Interconnection Point(s)” shall mean the points identified in Schedule 5 hereto.

“Metering Point(s)” shall mean the respective point(s) at which the steam generated at and delivered from the Facility is metered as indicated on Schedule 5 attached hereto.

“Operating and Maintenance Agreement(s)” shall mean the agreement(s), if any, entered into between Seller and third party operator(s) for the long-term operation and maintenance of the Facility, as amended from time to time.

“Option Period” shall have the meaning set forth in Section 2.01 hereof.

“Permit” shall mean any waiver, exemption, variance, franchise, certification, approval, permit, authorization, license, consent or similar order or decision of or from any Governmental Authority or Person having jurisdiction or authority over the matter in question.

“Person” means any individual, limited liability company, partnership, corporation, association, business, trust or other entity or Governmental Authority.

“Producer Price Index” shall mean the United States Department of Labor’s Bureau of Labor Statistics Producer Price Index for Fuels and Related Products and Power, or the successor of such index.

“Project Documents” shall mean the Operating and Maintenance Agreement(s) and other agreements entered into between the Seller and third parties regarding the performance of this Agreement by Seller.

“Project Site” shall mean the Facility location in the Renaissance Center as described in Schedule 1 hereto.

“Pumping Station” shall mean the pump house building and equipment therein used to pump river water from the Detroit River.

“Raw Water Intake Line” shall mean the pipeline running from the Detroit River to the Pumping Station through which water is pumped out of the Detroit River by the Pumping Station.

“Raw Water Return Line” shall mean the pipeline running from the Facility to the Detroit River through which river water that was pumped out of the Detroit River by the

Pumping Station is returned to the Detroit River.

“Raw Water Service Line” shall mean that portion of the pipeline through which river water is pumped out of the Pumping Station to Service the Complex.

“Renaissance Center Phase II” shall mean existing Towers 500 and 600 owned by a separate Person and located adjacent to the Complex.

“RFQ” shall have the meaning set forth in Section 16.01(a) hereof.

“RFQ Acknowledgement” shall have the meaning set forth in Section 16.01(b) hereof.

“RFQ Notice” shall have the meaning set forth in Section 16.01(c) hereof.

“Salvage Value” shall mean, at any given time, the value of the steam component of the Facility or the Steam Interconnection Facilities, as applicable, if the steam component of the Facility was sold for scrap or salvage, after deducting the cost of removal and repair. The Salvage Value will be agreed upon by Buyer and Seller, or, in the absence of such agreement, determined by an Independent Appraisal as provided in this Agreement.

“Schedule” shall mean a schedule as identified in Section 1.02 which is incorporated in, and made a part of, this Agreement.

“Section” shall mean a section of this Agreement.

“Seller Proposal” shall have the meaning set forth in Section 16.01(d) hereof.

“Seller’s Ability” shall have the meaning set forth in Section 16.01(f) hereof.

“Service Interruption Notice” shall have the meaning indicted in Section 9.05(b).

“State” shall mean the State of Michigan, and all of its applicable administrative, contracting and regulatory agencies and offices.

“Steam Interconnection Facilities” shall mean steam interconnection facilities and devices, including all distribution, transformation, protection devices and relaying facilities and equipment, metering devices, circuit breakers, and all related materials, equipment and structures necessary to interconnect and deliver steam from the Facility to the Delivery Point.

“Steam Services and Management Control Plan” shall have the meaning set forth in Section 5.02 hereof.

“Steam System” shall mean the steam component of the Facility and the Steam Interconnection Facilities within the limits of the Complex, together with all wires, piping and equipment owned by Seller in connection therewith, as required to provide steam in accordance with this Agreement.

“Steam Variable Payment” shall have the meaning set forth in Section 9.03(a) hereto.

“**Tariff Rate**” shall mean the average rate charged to Seller’s customers that are tariff customers of Seller as of January 1, 2020 (but excluding Buyer, The Detroit Medical Center or any other contract customers of Seller as of such date), as re-determined in accordance with Section 9.03(b).

“**Term**” shall have the meaning set forth in Section 2.01.

“**Terms Notice**” shall have the meaning set forth in Section 16.01(e) hereof.

“**Water Expert**” shall mean the independent water expert as defined in Section 5.05 hereof.

“**Year of Operation**” shall mean each of sixteen (16) consecutive periods, with Year of Operation 1 commencing on the Effective Date and ending on April 25, 2021. The remaining fifteen (15) Years of Operation shall be successive periods of twelve (12) months each, commencing on the day following the last day of Year of Operation 1, with the last such period ending on December 31, 2036 unless otherwise extended pursuant to the terms and conditions set forth herein. During the Option Periods, the successive twelve (12) month periods following the last day of Year of Operation shall each be deemed Years of Operation for purposes of this Agreement.

SECTION 1.02 Schedules.

The following Schedules are attached to this Agreement and incorporated herein by reference; *provided, however*, that where the terms of such Schedules are inconsistent with the specific provisions of this Agreement exclusive of such Schedules, the provisions of this Agreement exclusive of such Schedules shall control the interpretation thereof:

- (a) Schedule 1: Facility and Interconnection Facilities Description and Description of the Project Site;
- (b) Schedule 2: Sample Invoice;
- (c) Schedule 3: Notice Information;
- (d) Schedule 4: Intentionally Deleted;
- (e) Schedule 5: Interconnection, Delivery and Metering Points;
- (f) Schedule 6: Steam Services Management and Control Plan;
- (g) Schedule 7: Intentionally Deleted;
- (h) Schedule 8: Intentionally Deleted;
- (i) Schedule 9: Crisis Management Plan;
- (j) Schedule 10: Steam Specifications;

- (k) Schedule 11: Intentionally Deleted;
- (l) Schedule 12: Intentionally Deleted;
- (m) Schedule 13: Intentionally Deleted;
- (n) Schedule 14: Intentionally Deleted;
- (o) Schedule 15: Intentionally Deleted;
- (p) Schedule 16: Non-Redundant Items;
- (q) Schedule 17: B-6 Extension Description;
- (r) Schedule 18: Intentionally Deleted.

SECTION 1.03 Terms Generally.

Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

ARTICLE II **TERM**

SECTION 2.01 Term.

Unless earlier terminated as provided herein, the Term of this Agreement shall commence on and as of the Effective Date and shall continue until December 31, 2036 (the “**Term**”). Buyer shall have the option to negotiate an extension of this Agreement and the Term with Seller for additional terms (each an “**Option Period**”) of five (5) years each or terminate in accordance with Article XXIV terms of this Agreement. The Term of this Agreement shall not be extended on account of suspension of performance of Buyer’s and Seller’s obligations due to a Force Majeure event.

ARTICLE III **SELLER’S AND BUYER’S REPRESENTATIONS AND** **WARRANTIES AND COVENANTS**

SECTION 3.01 Seller’s Representations and Warranties and Covenants.

Seller makes the following representations, warranties and covenants and agrees that (i) the representations and warranties being made as of the date on which this Agreement is executed and delivered by the parties shall also be made on the Effective Date and (ii) the covenants shall remain in effect during the Term:

- (a) Seller is a limited liability company duly formed and existing in good standing under the laws of the State of Delaware, and is duly qualified to conduct business in the State of Michigan, except to the extent failure to be so qualified would

reasonably be expected to adversely affect Seller's ability to perform its obligations hereunder. Seller has the power to own its property and to carry on its business as it is now being conducted and as it is proposed to be conducted pursuant to the terms hereof.

(b) On or before June 1, 2016, Seller provided Buyer true and correct copies of all material documents pertaining to Seller's organization, membership, governance or operation and/or placing any restriction on Seller's ability to conduct its business affairs or perform its obligations under this Agreement.

(c) As of June 1, 2016, there is no action, suit, investigation or proceeding pending or, to the knowledge of Seller, threatened against Seller, or any of its properties, which could materially adversely affect the transactions contemplated by this Agreement, or which involves the possibility of materially adversely affecting the ability of Seller to comply with this Agreement.

(d) Seller has all requisite limited liability company power and authority to execute, deliver and perform Seller's obligations under this Agreement, and the execution, delivery and performance by Seller of this Agreement has been duly authorized by all necessary limited liability company actions on its part, and this Agreement has been duly executed and delivered by Seller.

(e) The execution, delivery and performance of this Agreement will not result in a breach or violation of or conflict with, or constitute a default under, any term or provision of any mortgage, lease, license, agreement or other instrument, or any judgment, decree, governmental order, statute, rule or regulation, by which Seller is bound or by which all or a substantial part of its assets are subject, or result in the creation or imposition of, or the obligation to create or impose, any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the assets of Seller.

(f) Seller is financially solvent; Seller has or will obtain all required licenses and permits necessary in connection with the performance by Seller under this Agreement; Seller has the expertise, authority, and financial, physical and personnel resources necessary to perform its obligations under this Agreement; Seller has inspected the Project Site and other areas of the Complex related to Seller's services, and Seller has familiarized itself with the local conditions (including both all physical conditions and all Applicable Laws) under which Seller's obligations under this Agreement are to be performed.

(g) Seller covenants that the design, construction, operation and maintenance of the B-6 Extension, the Steam System and the Improvements to the Project Site satisfies all of the requirements and criteria set forth in this Agreement, and the B-6 Extension, the Steam System, the Improvements to the Project Site, Seller's steam supply, and Seller conforms to and comply with all covenants, conditions, restrictions, reservations and land use restrictions applicable thereto and all Applicable Laws applicable to the Steam System, the Improvements to the Project Site, Seller's operations or Seller.

(h) During the Term of this Agreement and subject to the terms and conditions hereof, Seller shall not sell steam from the B-6 Extension to any Person other than Buyer or its permitted successors and assigns, unless Seller shall have first provided all of the steam capacities required under this Agreement.

(i) Throughout the term of this Agreement, Seller will provide, as reasonably requested from time to time by Buyer, such true and correct copies of all documents reasonably related to the performance of this Agreement as reasonably requested from by Buyer to the extent such documents place any material restriction on Seller's ability to perform its obligations under this Agreement.

(j) Seller covenants that it will keep the Project Site, the Steam System and property covered by easements (other than the Steam System) free and clear of all liens, mortgages, or encumbrances of any kind, except for such liens, mortgages, and encumbrances (i) for which bonds, satisfactory in form and substance to Buyer, have been secured, or (ii) reflecting easements or rights-of-way granted to public utilities or Governmental Authorities and required for Seller to fulfill its obligations hereunder. Within twelve (12) Business Days after notice from Buyer, Seller shall cause all such liens to be discharged or statutorily bonded off the record.

ARTICLE IV **BUYER'S OBLIGATIONS**

In addition to Buyer's other obligations under this Agreement, including, without limitation, those pertaining to payment, Buyer shall perform the following obligations:

SECTION 4.01 License for Project Site.

Subject to any existing restrictions on Buyer with third party lessors of the Project Site, Buyer hereby grants Seller a non-exclusive, non-assignable, license to use the Project Site during the Term; provided that such use is limited to Seller's performance of its obligations under this Agreement. To the extent necessary to assure Seller access to the Project Site in order to perform its obligations hereunder, the parties agree to negotiate in good faith the terms of any necessary access, lease, or sublease agreement to adequately grant Seller such necessary access rights.

SECTION 4.02 Delays or Interference by Buyer.

Buyer shall cooperate with Seller as reasonably required to enable Seller to perform its obligations under this Agreement. Seller's failure to perform its obligations under this Agreement shall be excused to the extent such failure is directly and proximately caused by a material breach of any provision of this Agreement by Buyer, *provided* that Seller promptly notifies Buyer that the material breach of Buyer is preventing Seller from performing its obligations.

SECTION 4.03 Maintenance of Internal Distribution Steam System.

Buyer shall be responsible for the maintenance and repair of Buyer's existing internal

distribution system for steam at the Complex (including facilities for delivery of steam from the Complex to Renaissance Center Phase II) starting at the Interconnection Point for steam and ending at the Interconnection Point for steam condensate. Maintenance of steam supply lines beyond the Interconnection Points and steam condensate return lines before the Interconnection Points shall be the responsibility of Buyer.

SECTION 4.04 Return of Condensate to Seller's Facility.

Seller shall be responsible to provide facilities at the Complex to drain steam condensate to the Facility at the Interconnection Point set forth on Schedule 5.

SECTION 4.05 Water for Condensate Tempering.

Buyer will provide city water and/or river water and will pay any discharge fee (if applicable) for condensate tempering prior to discharge of condensate by Seller.

SECTION 4.06 Delays or Interference by Seller.

Seller shall cooperate with Buyer as reasonably required to enable Buyer to perform its obligations under this Agreement. Buyer's failure to perform its obligations under this Agreement shall be excused to the extent such failure is due to the breach of this Agreement by Seller or other fault or neglect of Seller, *provided* that Buyer promptly notifies Seller that an act or omission of Seller is preventing Buyer from performing its obligations.

ARTICLE V

OPERATION AND MAINTENANCE OF THE STEAM SYSTEM

SECTION 5.01 Seller's Responsibility.

Seller shall be responsible for the operation (which may be by remote monitoring), repair and maintenance of the Steam System and shall operate (which may be by remote monitoring) and maintain the Steam System at its own expense in accordance with generally accepted engineering and industry standards and in a manner calculated to enable Seller to perform its obligations under Article IX hereof. Notwithstanding the foregoing, the parties acknowledge and agree that the portion of the Steam System for condensate tempering, chemical additions or monitoring of pH levels is not being performed by Seller.

SECTION 5.02 Supply Services Management and Control Program.

Seller acknowledges that supplying steam to Buyer in accordance with the terms of this Agreement is of the essence of this Agreement. Seller shall develop, implement, and maintain a state of the art steam supply services management and control program to monitor and control the performance of Seller's obligations under this Agreement as reasonably required to assure the reliability of steam supply services and to avoid, minimize, circumvent and correct any interruption in steam supply services in the form to be attached hereto as Schedule 6 (the "**Steam Services Management and Control Plan**"). The Steam Services Management and Control Plan includes: (i) program and procedures to monitor and evaluate Seller's performance of steam services; (ii) the comprehensive crisis management plan in the form to be attached hereto as

Schedule 9 (the “**Crisis Management Plan**”), which must always provide for backup plans to furnish steam from alternative sources; (iii) program and procedures to anticipate required steam loads and conditions affecting such loads; (iv) program and procedures to identify and correct chronic failures of Steam System components and equipment; (v) comprehensive preventative maintenance and repair program meeting the recommendations of equipment manufacturers and generally accepted engineering and industry practices; and (vi) comprehensive emergency maintenance and repair program. The Steam Services Management and Control Plan shall be revised and updated by Seller on a periodic basis throughout the Term of this Agreement to provide for ongoing monitoring, evaluation and improvement of Seller’s operation of the Steam System and reliable delivery of steam in accordance with this Agreement. The provisions of the Crisis Management Plan shall not limit, qualify or supersede the other terms and conditions of this Agreement with respect to the rights and obligations of the parties. Prior to the Effective Date, Seller will create the initial Steam Services Management and Control Plan along with the initial Crisis Management Plan to be approved by Buyer in accordance with other agreements between Buyer and Seller once approved by Buyer, the initial Steam Services Management and Control Plan and the Crisis Management Plan will be attached to this Agreement as Schedule 6 and Schedule 9, respectively.

SECTION 5.03 Buyer’s Review.

Buyer shall have the right at all reasonable times, and upon forty-eight (48) hours prior notice, at Buyer’s expense to review the operation and maintenance of the Steam System and the records and documents related thereto, as reasonably required to determine whether the Steam System is being operated in accordance with the terms hereof and of the Operating and Maintenance Agreement(s) (if any) and in accordance with generally accepted engineering and industry practices.

SECTION 5.04 Monitoring Station.

Seller has installed contact points available to Buyer for the purposes of providing the information set forth below. Such monitoring capabilities include the following:

(a) For steam quantities delivered to Buyer (and other Persons to be serviced under this Agreement) at the Complex: one hour integrated average - Mlb/hr integrated - Mlb/mo;

- Mlb/yr peak - Mlb/hr for: day, month, year;
- historical - Mlb/hr by: hour, month and year for current and past year;

(b) For delivered steam temperatures (°F) and pressures (psig): instantaneous average - for: current month

- peak - for: day, month, year;
- historical - by: hour for current and past year; and

(c) With respect to the condensate return, for City of Detroit potable water delivered by Buyer at the Steam Interconnection Facilities, as indicated on Schedule 5, to the extent that the steam condensate is tempered with City of Detroit potable water prior to disposal:

- instantaneous - gpm integrated - gal/mo;
- gal/yr peak gpm - for: day, month, year;
- historical gal - by: hour, month and year for current and past year

SECTION 5.05 Water Expert.

Seller or its affiliates shall make determinations and recommendations regarding levels of PH, impurities and non-condensibles in the steam or condensate as to minimize equipment scaling and corrosion. Notwithstanding the foregoing, Seller shall provide the services of an independent water expert (the “**Water Expert**”) who specializes in water treatment and who is familiar with the local water supply in order to make determinations and recommendations regarding levels of PH, impurities and non-condensibles in the steam or condensate as to minimize heating equipment scaling and corrosion. The parties agree that representatives of Seller or its affiliates shall be deemed independent for these purposes, and, further, that Seller’s obligations hereunder shall be satisfied to the extent it uses, as the Water Expert, advisory services customarily provided by chemical suppliers at no additional charge in connection with chemical supply arrangements similar in scope to those required for the Facility.

SECTION 5.06 Quality Testing.

Seller or its affiliates shall periodically test the quality of steam being supplied from the Steam System and to furnish reports of such test results to Buyer. If a quality variance from the specifications set forth in Schedule 10 is indicated by any such report, Seller shall use its commercial best efforts to immediately take corrective action so that the steam complies with the specifications set forth in Schedule 10 subject to the requirements of Section 9.09 regarding Buyer’s approval of treatments and additives not specified in Schedule 10. The parties agree that representatives of Seller or its affiliates shall be deemed independent for these purposes, and, further, that Seller’s obligations hereunder shall be satisfied to the extent it uses for testing advisory services customarily provided by chemical suppliers at no additional charge in connection with chemical supply arrangements similar in scope to those required for the Facility.

SECTION 5.07 Planned Maintenance.

Prior to the first day of each Year of Operation, or on the Effective Date with respect to the first Year of Operation, Seller shall prepare and submit to Buyer for Buyer’s review and approval, which approval shall not be unreasonably withheld or delayed, a schedule for planned preventative maintenance and repairs during the year, setting forth the anticipated dates on which a curtailment of steam service may occur in order to complete routine preventative maintenance and repairs.

SECTION 5.08 Planned Maintenance Service Curtailment.

Except for emergency situations, Seller shall notify Buyer at least eight (8) hours in advance of any non-scheduled maintenance and/or repairs that may result in a curtailment of steam service. With respect to emergency situations, Seller shall consult and coordinate with Buyer regarding any interruption or curtailment of steam service to the extent practical in order to minimize the disruption of business operations of Buyer, Buyer's tenants, GM, the Hotel and the Renaissance Center Phase II owner. Seller shall use its commercial best efforts to avoid and minimize any interruption or other failure in the steam services.

SECTION 5.09 Health and Safety Plan.

Seller shall develop and enforce a comprehensive health and safety plan covering operation of the steam component of the Facility and activities of Seller related to the provision of steam services under this Agreement. Seller's health and safety plan shall comply with Buyer's minimum safety requirements for activities at the Complex and shall be properly coordinated with Buyer's overall safety management process. Seller shall coordinate with Buyer's property manager and shall keep the property manager informed in advance of all planned activities at the Project Site or other areas of the Complex that affect the safety of workers or others.

SECTION 5.10 Interconnection Facilities

Seller shall be responsible for revising at its cost and expense, to the extent required by Seller to perform its obligations under this Agreement, all Steam Interconnection Facilities. Seller's Interconnection Facilities shall continue to meet or exceed generally accepted engineering and metering standards and codes, safety conditions, environmental requirements and be in good operating condition at the time of issuance of the building permit for construction of such Interconnection Facilities. Buyer shall not be responsible for any damage to the Steam System due to demand from Buyer's systems. Seller shall be responsible for making the changes or modifications to Buyer's electric and mechanical systems, and all other Complex related changes required, to provide a safe, satisfactory interconnection to Buyer from Seller. During the Term, the Steam System shall meet all of Buyer's applicable operating and interconnection requirements as described herein.

ARTICLE VI **ALTERATIONS TO THE SYSTEM**

SECTION 6.01 Changes By Buyer.

Buyer shall have the right to order changes in the Steam System and/or the Improvements to the Project Site by issuance of a written change order to Seller. Seller shall perform all such Buyer-requested changes, except those changes that (i) materially and adversely impact the performance, operation or maintenance of the Steam System; (ii) cause the Steam System or Improvements to the Project Site to violate any Applicable Law or safety standards; (iii) materially and adversely impact the performance, operation or maintenance of Buyer's internal distribution system or other areas of the Complex or other facilities; or (iv) are contrary to Seller's best professional judgment and advice; in which case Seller shall immediately notify Buyer in detail in writing of such reason for not wanting to perform the requested change. All

Buyer-requested changes that are approved by Seller pursuant to this Section 6.01 shall be completed at Buyer's expense, except changes necessitated by (i) any error or omission in the design and engineering or the drawings and specifications for the Steam System or the Improvements to the Project Site; (ii) any failure of the design or engineering or the drawings and specifications for the Steam System or the Improvements to the Project Site to comply with the System Description set forth on Schedule 1 to the GM RenCen Contract; or (iii) any health or safety condition in accordance with this Agreement identified by the Buyer; all of which shall be completed at Seller's expense. At the time changes are approved, the Coordination Committee hereof shall determine the timing for payment for the change. Except with respect to changes for which Seller is responsible, all Buyer-requested changes shall be priced as follows: work to be performed under approved change orders in excess of \$100,000 shall be priced by competitive bid; work to be performed under approved change orders less than \$100,000 shall be priced on a Cost Substantiation basis. In the case of Cost Substantiation, if Buyer does not accept in writing to the Cost Substantiation certificate provided by Seller within twenty (20) Business Days after receipt thereof, such costs shall be deemed rejected by Buyer.

SECTION 6.02 Changes by Seller.

Subject to the conditions of this Section 6.02, Seller shall have the right to make changes to the Steam System or the Improvements to the Project Site, so long as the change complies with all the requirements of this Agreement and does not have a material adverse effect on the ability of Seller or Buyer to perform their respective obligations under this Agreement. Buyer shall have the absolute right, in Buyer's sole and arbitrary discretion, to approve (i) all changes that affect the appearance of the Project Site and/or the environmental condition of the Project Site, (ii) the schedule for performance of any delivery, installation or construction activities to implement the changes, and (iii) any changes that modify the current design of the Steam System. All other proposed changes allowable under this Section 6.02 are subject to the reasonable approval of Buyer. Seller shall provide Buyer with twelve (12) Business Days advance notice of any proposed change, and Buyer shall have the right to review such proposed changes. Buyer shall deliver any comments it may have on the proposed changes to Seller in writing no later than twelve (12) Business Days following receipt thereof. Thereafter, the parties will negotiate in good faith to resolve any issues raised by such comments, except that Buyer's decisions with respect to changes subject to Buyer's sole discretion shall be final. As to changes requiring reasonable approval of Buyer, if the parties are unable to reach agreement after negotiating in good faith, unresolved disputes shall be referred to the Coordination Committee.

SECTION 6.03 Replacements; Upgrades.

So long as the replacement or alteration shall not have a material adverse effect on the ability of Seller or Buyer to perform their respective obligations hereunder, Seller shall, at its own cost and expense, have the right to replace or upgrade any component of the Steam System or to add components to the Steam System. Prior notice of any proposed replacement or alteration (other than routine maintenance or in the case of an emergency) shall be given to Buyer. Seller shall not, however, make any replacement or alteration to the Steam System that would materially and negatively impact the operating efficiency of the Steam System, unless such replacement or alteration is necessary to the performance of Seller's obligations hereunder, or is required by the terms and conditions of a Permit, or by Applicable Law. In addition, any

replacement or alteration which alters the Steam System's exterior appearance or environmental impact must be approved by Buyer in writing in advance. All replacements and additions must be at least of equal or better quality than the item being replaced or modified. All replacements, upgrades or additions of such components are for Seller's account and shall belong to and become the property of Seller and shall become a part of the Steam System subject to the terms of this Agreement.

SECTION 6.04 Ownership.

Modifications to the steam component of the Facility or the Improvements to the Project Site made pursuant to this Article VI, will be owned by Seller or Buyer, as appropriate under the circumstances. The Coordination Committee will determine ownership at the time the proposed modification is approved.

ARTICLE VII **PERMITS, LICENSES, AND APPROVALS**

SECTION 7.01 Seller Responsibility.

Seller shall at its own cost and expense maintain throughout the term of this Agreement all Permits and easements, if any, from all applicable Governmental Authorities, or other Persons, necessary for the occupancy of the Project Site, and commercial operation of the Steam System. These Permits and easements may include, but are not limited to, federal, state, local and municipal licenses, State Local, and municipal building code and zoning variances, where required.

ARTICLE VIII **METERING DEVICES, INSPECTIONS AND ADJUSTMENTS**

SECTION 8.01 Monitoring Meters.

Seller shall provide, own and maintain all monitoring meters necessary for the operation of the steam component of the Facility and for billing purposes, as applicable. All Billing Meters, associated equipment and the arrangement thereof and all calibration procedures installed after the Effective Date shall be subject to reasonable approval by Buyer in writing prior to the purchase and installation by Seller, at its sole cost and expense.

SECTION 8.02 Buyer's Meters.

Buyer shall have the option to install and maintain, at its own expense, check meters and associated equipment downstream of the Delivery Point(s) and upstream of the Interconnection Point(s) in order to verify all Billing Meter readings of Seller, *provided* that such check meters and associated equipment and the installation thereof do not adversely affect Seller's ability to operate the Steam System in accordance with this Agreement.

SECTION 8.03 Sealed Meters.

Seller's Billing Meters shall be sealed and such seals shall be broken only by Seller and

only when a Billing Meter is to be inspected, tested, adjusted or repaired. Buyer shall receive reasonable prior notice of any testing, inspecting or adjustment of Billing Meters and shall have the right to be present at such events.

SECTION 8.04 Meter Calibration.

Periodic calibration of Seller's Billing Meters will be made by Seller at least once every six months, or once a year, based on the recommendations of the Billing Meter manufacturer, at no cost to Buyer and additional tests will be made at Buyer's cost at any reasonable time upon request of Buyer. If, as a result of such tests, a Billing Meter is found to be defective or inaccurate, it promptly will be restored to a condition of accuracy or replaced by Seller at Seller's sole cost and expense.

ARTICLE IX **PROVISION OF STEAM SERVICES**

SECTION 9.01 Steam Supply Requirements.

Commencing on the Effective Date and continuing uninterrupted throughout the Term of this Agreement, Seller agrees to supply and deliver to Buyer, subject to Force Majeure under Article XVII hereof, interference by Buyer under Section 4.02 hereof, any suspension or curtailment of steam services in accordance with Section 17.02(b) and scheduled curtailments approved in advance by Buyer, and Buyer agrees to purchase from Seller, one hundred percent (100%) of Buyer's requirements for steam for the Complex (including requirements of Buyer's tenants, the Hotel and Renaissance Center Phase II) on a continuous (24 hours a day, 7 days a week), year-round basis. Buyer agrees to pay (pursuant to the terms set forth in Section 9.03) for steam actually received by Buyer hereunder.

SECTION 9.02 Steam Quality Specifications.

The steam delivered pursuant to this Agreement shall be in strict conformance with the specifications set forth in Schedule 10. The specifications set forth in Schedule 10 shall require, at a minimum, that Seller use its commercial best efforts to provide the required steam as dry steam at 125 PSIG so that such steam shall be chemically or mechanically balanced to control PH, hardness, impurities and non-condensibles at levels recommended by the Water Expert so as to minimize scaling and corrosion which would otherwise impair the heat transfer performance of the equipment operated by Buyer, Buyer's tenants, GM, the Hotel operator, or the Renaissance Center Phase II owner. Steam delivered shall conform to or exceed generally accepted engineering standards for the pressure level of 125 psig measured at steam pit #1 in the Complex. The Steam System shall be capable of meeting load swings as designated in Schedule 10 in the supply pressure. The Delivery Points for the steam shall be as specified in Schedule 5. Seller shall be responsible for the maintenance of steam supply lines up to and including the Steam Interconnection Point(s) and condensate drain line after the Steam Interconnection Point(s).

SECTION 9.03 Payment.

- (a) Commencing at the Effective Date and continuing throughout the Term of

this Agreement, subject to pro-rata under this Section 9.03 and Section 17.04, Buyer shall pay Seller the Fixed Monthly Payment regardless of any event of Force Majeure; provided, however, the Fixed Monthly Payment shall be adjusted for the period of such non-availability, on a pro rata basis, based on the actual capacity of steam that is made available by Seller. The price for all steam delivered by Seller to Buyer during all or part of each Year of Operation for the Term of this Agreement shall be equal to the prices set forth in paragraphs (i) and (ii) below, except where modifications are required pursuant to Sections 9.05, 9.06 and 9.07.

(i) Buyer shall pay Seller a fixed monthly payment, or pro-rata for any portion thereof of \$41,666.67 (the “**Fixed Monthly Payment**”); provided, however, in no event will twelve (12) Fixed Monthly Payments exceed \$500,000.

(ii) Buyer shall pay Seller a steam variable payment based on the monthly steam use quantity multiplied by the lesser of (a) Effective PPI multiplied by the Base Rate or (b) 75% of the Tariff Rate (the “**Steam Variable Payment**”), as such amounts are modified (up or down) in accordance with this Section 9.03.

(iii) The foregoing prices include any taxes paid or payable by Seller and Buyer shall not reimburse Seller for taxes paid or payable by Seller. Buyer will pay for all water and wastewater for temperature conditioning the waste condensate prior to draining from the Complex, if required.

(b) The Tariff Rate shall be re-calculated on an annual basis. Such re-calculation shall be made effective on the first day of each Year of Operation commencing on the second Year of Operation, and shall be the then-prevailing average rate determined as of the applicable Year of Operation charged to Seller’s customers that are tariff customers of Seller as of each such date of re-determination.

(c) The Effective PPI shall be re-calculated on an annual basis in proportion to the percentage increase or decrease in the Producer Price Index from the date of this Agreement. Such increase or decrease shall be made effective on the first day of each Year of Operation commencing on the second Year of Operation, and shall reflect the percentage increase or decreased in the Producer Price Index in effect as of April 25 of each new Year of Operation. For illustration purposes only, if the Current Year PPI on April, 25, 2020 equals 195, then the Base Year PPI will equal 195 and the number to apply under Section 9.03(a)(ii)(a) will equal the Base Rate (e.g. $(195/195) * 19.12 = 19.12$). However, if Current Year PPI on April 25, 2021 for the second Year of Operation equals 210 and the Base PPI equals 195, then the number to apply under Section 9.03(a)(ii)(a) will be \$20.60 (e.g. $(210/195) * 19.12 = 20.60$). For the avoidance of doubt, the parties agree the Producer Price Index used in determining the Steam Variable Payment may increase or decrease during the Term; provided, however, once a Steam Variable Payment is established it will remain fixed for that applicable Year of Operation.

(d) In the event that Buyer terminates this Agreement in accordance with the

terms of this Agreement prior to the expiration of the Term of this Agreement, Buyer shall continue to make payments in accordance with this Section 9.03 for steam services received by Buyer during the period of time after notice of termination is delivered to Seller until the effective date of termination; provided, however, Buyer will have no liability for any steam services delivered after Buyer notifies Seller in writing to cease providing steam services on a date certain.

SECTION 9.04 Right of Offset

In addition to any right of setoff or recoupment provided by law, and notwithstanding anything to the contrary in this Agreement, all amounts due to Seller will be considered net of indebtedness of Seller to Buyer; and Buyer will have the right to setoff against or to recoup from any amounts due to Seller from amounts due to Buyer from Seller under this Agreement.

SECTION 9.05 Failure of Service; Property Damage; Liquidated Damages.

(a) “**Failure to Provide Steam Service**” shall mean an interruption in Seller’s supply of steam to Buyer or a failure of Seller’s supply of steam to Buyer to meet the quantity requirements under Section 9.01 or the quality standard set forth in Section 9.02 for any reason other than a delay or interference by Buyer in accordance with Section 4.02 hereof, a Force Majeure event as defined in Article XVII, a material breach of any provision of this Agreement by Buyer, or a scheduled curtailment of steam service agreed upon in advance by Buyer.

(b) In the event of a Failure to Provide Steam Service, if Buyer, in its sole discretion, does not accept deliveries of such substandard steam or services, Seller is obligated to secure and deliver an alternative, reliable source of steam meeting the requirements of this Agreement to Buyer. In the event of a Failure to Provide Steam Service, Buyer shall notify Seller as soon as commercially practicable, by telephone, confirmed promptly thereafter in writing (“**Service Interruption Notice**”). The Service Interruption Notice shall describe the deficiency in delivery of steam in reasonable detail.

(c) Seller shall indemnify and hold harmless Buyer from and against all loss, damage, cost and expense due to damage to property resulting from a Failure to Provide Steam Service; *provided, however*, that Seller’s indemnification obligation under this Section 9.05(c) with respect to property damage for each occurrence shall be limited to the actual amount of any property damage in excess of Fifty Thousand (\$50,000) Dollars but not more than One Million Five Hundred (\$1,500,000) Dollars.

(d) Both parties recognize that Buyer will suffer significant losses and damage in the event of a Failure to Provide Steam Service. Both parties further recognize that the actual amount of loss and damage suffered by Buyer stemming from Buyer’s business disruption and lost revenues caused by interruptions or other failures in the steam supply is difficult or impossible to calculate. However, the parties have made a reasonable attempt to determine a liquidated damages amount which best approximates business disruption and lost revenues. Accordingly, if a Business Interruption Event occurs as a

result of a Failure to Provide Steam Service; and if the Failure to Provide Steam Service continues for more than one hour after notice from Buyer or continues for more than one hour, in the aggregate, in any four-hour period after notice from Buyer and if the Failure to Provide Steam Service is not due to a failure of a Non-Redundant Equipment listed in Schedule 16 hereto, then Seller shall pay to Buyer, as liquidated damages and not as a penalty, the amount of Seven Thousand Five Hundred (\$7,500/hr) Dollars per hour, or portion thereof, commencing at the beginning of the Failure to Provide Steam Service and continuing until Seller's uninterrupted steam supply (meeting the requirements of this Agreement) is restored or Buyer is able to purchase an uninterrupted supply of steam (meeting the requirements of this Agreement) from another Person or Buyer is able itself to produce an uninterrupted supply of steam (meeting the requirements of this Agreement). Notwithstanding the foregoing, the total amount of liquidated damages payable by Seller to Buyer hereunder for any Failure to Provide Steam Service shall not exceed One Hundred Seventy Five Thousand (\$175,000) Dollars per Event, and the total amount of liquidated damages payable by Seller to Buyer under this Section 9.05(d) for all Failures to Provide Steam Service shall not exceed, in the aggregate, Three Hundred Fifty Thousand (\$350,000) Dollars per Year of Operation and Three Million Five Hundred Thousand (\$3,500,000) Dollars over the life of this Agreement.

SECTION 9.06 Seller's Warranty.

Seller agrees to supply steam under this Agreement that meets the requirements of this Agreement and any additional standards imposed by Applicable Laws. SELLER DISCLAIMS ANY OTHER WARRANTY WITH RESPECT TO THE STEAM, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 9.07 Failure of Services; Payment For Substitute Service.

(a) In the event that Seller fails to provide an uninterrupted supply of steam to Buyer meeting the quantity standards in Section 9.01 and the quality standards in Section 9.02 for any reason other than Buyer's material breach of this Agreement or a Force Majeure event, if Buyer is able to purchase a substitute steam supply from another Person or if Buyer is able to itself produce a substitute steam supply, then Seller shall reimburse Buyer for all reasonable and verifiable costs and charges associated with all replacement steam supplies commencing with the first hour of the first day that Buyer secures such replacement steam supplies, including, but not limited to, boiler delivery and installation costs, rental and fuel costs, labor costs, dismantling costs, start-up, and/or other charges related to Buyer's alternate supply steam equipment during the period of interruption, less the monthly payment amount that Buyer would have been required to pay Seller for such steam under Section 9.03(d) of this Agreement. Buyer agrees to reasonably cooperate with Seller regarding the procurement of any such substitute services and shall notify Seller prior to incurring any costs for such services under this Section 9.07.

(b) In the event that Seller fails to provide an uninterrupted supply of steam to Buyer meeting the quantity standards in Section 9.01 and the quality standards in Section 9.02 due to Buyer's material breach of this Agreement or an event of Force Majeure and

which is an insured peril under Seller's business interruption insurance and Seller fails to deliver to Buyer an alternative, reliable, uninterrupted supply of steam meeting the requirements of this Agreement, then Seller shall be obligated to reimburse Buyer for the costs and charges associated with all replacement steam. Seller's obligation hereunder (i) shall be limited to failures to provide steam due to causes that are insured perils under the insurance coverage required to be provided by Seller under Article XII; (ii) shall be subject to the applicable waiting periods, deductibles and maximum coverage amounts and other terms of the policy(ies) provided in accordance with Article XII; and (iii) shall not exceed, when combined with reimbursement to Buyer under Section 9.07(a), the sum of Ten Million (\$10,000,000) Dollars per Year of Operation.

SECTION 9.08 Cost Reimbursement.

Reimbursement to Buyer by Seller of the amounts owing pursuant to Sections 9.05 and 9.07 (other than from insurance proceeds) shall be made by direct payment to Buyer, Buyer offsetting the amounts against current invoices, or by Seller's crediting such amounts against future invoices from Seller. Interest shall accrue on such amounts from the date assessed or incurred by Buyer at the Contract Rate; *provided, however*, that interest shall apply to the net amount due to Buyer from Seller after deducting any amounts due and owing to Seller by Buyer under this Agreement. Such amounts shall be paid or credited against Seller invoices as quickly as possible, but in no event shall such payment or crediting period exceed six (6) monthly billing periods following restoration of Seller's steam supply. All amounts not so credited by the sixth (6th) billing period following restoration of Seller's steam supply shall be paid by Seller to Buyer in a direct cash payment on or before the fifteenth (15th) day of the seventh (7th) billing period following restoration of the steam supply and any credits remaining after termination of this Agreement shall be immediately paid to Buyer in cash or credited against any payment due to Seller from Buyer. In the event a payment is not made by cash to Buyer or credited against any payment due to Seller from Buyer, Buyer may deduct or offset the amount against any future invoice payment.

SECTION 9.09 Consent For Treatment/Additives.

Seller shall request, in writing, Buyer's written approval for any and all chemical treatment or additives not specified in Schedule 10 to inhibit corrosion added to the steam produced by Seller, and Seller shall provide a reasonable time for Buyer to respond to such request for approval prior to Seller's making such additions or treatments; *provided, however*, that neither Buyer's right to approve such additions or treatments, nor anything else contained herein, shall be read to infer that Buyer is in any way responsible for such additions or treatments. Notwithstanding the foregoing, Buyer shall not be compelled to do anything that, in Buyer's judgment, could reasonably lead to any noncompliance with any permits, and Seller shall not be responsible for any corrosion or other damage resulting where Buyer rejects Seller's recommendations regarding additives or treatments. Seller shall also provide Buyer with copies of all material safety data sheets relating to such additions or treatments.

SECTION 9.10 Exclusive Remedy for Money Damages.

This Article IX together with Section 20.02 set forth the exclusive remedy for money damages available to Buyer for a Failure to Provide Steam Service pursuant to this Agreement; provided, however, neither this Article IX nor Section 20.02 prohibit any other non-monetary remedies available to Buyer under law or at equity.

SECTION 9.11 No Additional Payment.

Seller acknowledges that this Article IX contains the full and complete compensation to Seller for steam services provided to Buyer under this Agreement and, regardless of any increase in Seller's cost.

ARTICLE X
COORDINATION OF ACTIVITIES

SECTION 10.01 Notice of Interruption or Deficiencies.

Buyer and Seller shall notify the other party, as soon as possible, of any interruption in the delivery of, or deficiencies in the quality or quantity of deliveries of, steam of which they have knowledge, so that the other parties can immediately institute corrective and precautionary measures with the objective of mitigating the potential damages arising therefrom.

SECTION 10.02 On-Going Communication.

Buyer and Seller shall maintain open daily communications to share information regarding operation of both the Complex and the steam component of the Facility so that the Complex and the steam component of the Facility can better coordinate services. Among the items to be addressed by such communications are matters relating to the scheduling of maintenance and Buyer's expected consumption levels. Any communications regarding expected consumption levels will be for planning purposes only and do not represent a commitment to purchase.

SECTION 10.03 Operating and Management Procedures.

Not later than six (6) months prior to the Effective Date, Buyer and Seller shall develop mutually agreeable operating and management procedures to serve as guidelines for such operating aspects of mutual interest as the parties may agree upon. Such procedures (i) shall not override any other provisions of this Agreement, (ii) shall not create any contractual obligations binding on either party, and (iii) may be revised by the parties at any time. The procedures shall establish a means of continuous communication between Buyer and Seller. The procedures may include planning arrangements, information sharing, joint short-term and long range planning arrangements for performing concurrent maintenance and improvements, emergency notification and response procedures for Steam System forced outages and upsets, and designation of decisional authority levels for responding to Facility or Complex emergencies.

ARTICLE XI
BILLING AND PAYMENT; FINANCING

SECTION 11.01 Monthly Invoice.

Seller shall submit to Buyer each month an invoice of the Fixed Monthly Payment for which Buyer is responsible.

SECTION 11.02 Invoice Data; Metering Device Readings.

Seller will read, record, and electronically monitor the metering devices, and will prepare and send to Buyer an invoice for the Steam Variable Payment. The invoice will be sent to Buyer within a mutually agreeable time period following the preceding month of service. Buyer shall have the right to be present when metering devices (including Billing Meters) are read. A sample form of the invoice and bill calculation is included in Schedule 2 hereto and Seller shall provide all information required for Buyer's completion of the steam services portion of the invoice included in Schedule 2 hereto. The billing period shall commence at the time and day of each calendar month designated by mutual agreement of the parties, except for the month of the Effective Date, in which case the billing period shall commence on the Effective Date. Notwithstanding the foregoing, within one Business Day following the day that Seller reads or electronically records the metering devices, Seller shall provide to Buyer, by e-mail or otherwise, all demand and usage information required for the Steam Variable Payment portion of the invoice.

SECTION 11.03 Payment; Interest.

Other than portions of an invoice that are in dispute, as to which Buyer shall specify the amount and nature of such dispute, Buyer shall pay the amount due to Seller no later than thirty (30) calendar days following Buyer's receipt of the monthly invoice from Seller.

ARTICLE XII **INSURANCE**

SECTION 12.01 Seller's Insurance.

Seller, at its sole expense, shall obtain and maintain the following insurance coverages in full force and effect to cover all activities contemplated herein throughout the Term of this Agreement, unless otherwise specified:

(a) Commercial general liability covering liability arising from premises, operations, independent contractors, products--completed operations, personal and advertising injury, and blanket contractual liability coverage in limits of not less than \$1 million each occurrence, \$2,000,000 in the aggregate with a \$10 million umbrella.

(b) Pollution Legal Liability insurance, including first party clean-up expense and third party liability coverage for sudden, accidental and non-sudden (gradual) occurrences for bodily injury (including mental anguish and shock), property damage, cleanup costs and defense with minimum limits of the greater of \$1 million per occurrence, or such limits as may be required according to applicable governing regulations. Such pollution insurance will include transportation and non-owned disposal site coverage.

(c) Commercial automobile liability insurance covering all owned, non-owned and hired vehicles in limits of not less than \$5 million each accident, including all statutory coverages for all states of operation.

(d) Contingent business interruption insurance in limits of not less than \$10 million annual aggregate to cover situations in which Seller is prevented, either temporarily or permanently, from producing and delivering steam pursuant to this Agreement, as a result of a covered property loss at the Complex. The coverage period will be for a minimum of twelve (12) months. The deductibles and waiting periods are at Seller's expense and will be based on reasonable availability in the market.

(e) Statutory workers' compensation for all states of operation and employers' liability insurance in accordance with all statutory limits.

(f) Employers Liability - \$1,000,000 each employee for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.

(g) Any other insurance coverage or bonds required by any government body for the types of Services specified in this Agreement.

(h) It is understood and agreed that a combination of primary and umbrella/excess policies can be utilized to satisfy the limits required in this Section 12.01.

SECTION 12.02 Primary Policies.

All policies of insurance required of Seller pursuant to this Article in which Buyer is named as an additional insured, shall be written as primary policies, not contributing with, nor in excess of, coverage that Buyer may carry. If Seller's liability policies do not contain a separation of insureds provision, they shall be endorsed to provide cross-liability coverage. Seller shall assume responsibility for its own deductible amounts and losses in excess of policy limits for an insured loss.

SECTION 12.03 Property Insurance.

Seller shall obtain and maintain property insurance, at Seller's sole cost and expense, on an "all-risk", replacement cost basis with no coinsurance provisions or penalties, covering Seller's owned personal property, improvements and betterments, equipment and supplies located at the Complex or in transit thereto.

SECTION 12.04 Insurance Carriers.

All insurance required to be carried by Seller under this Agreement shall be maintained with reputable insurance companies acceptable to Buyer who shall have an AM Best rating of A- VII or better. The policy(ies) maintained by Seller pursuant to this Agreement shall include Buyer, such affiliates and contractors of Seller as it may reasonably request, the Renaissance Center Phase II owner and the separate Hotel owner, if any, as additional insureds under the commercial general liability, auto and umbrella policies maintained by Seller pursuant to this

Agreement, as applicable.

SECTION 12.05 Certificates of Insurance.

The coverages obtained by Seller pursuant to this Article shall be subject to review and approval by Buyer. Seller shall provide Buyer with a certificate of insurance: (a) evidencing Buyer as an additional insured of all of the above mentioned coverages, except workers compensation, and Employers Liability, for all events connected with this Agreement; (b) evidencing waiver of subrogation and primary and non-contributory wording is included; (c) providing at least thirty (30) calendar days' prior written notice to Buyer of cancellation, modifications or material change to any policy. By requiring insurance herein, Buyer does not represent that coverage and limits will necessarily be adequate to protect Seller. The purchase of appropriate insurance coverage by Seller or the furnishing of the certificate(s) of insurance shall not release Seller from its respective obligations or liabilities under this Agreement.

SECTION 12.06 Waiver of Subrogation.

Seller hereby waives all rights of recovery under subrogation against each other for property damage caused by fire or other perils to the extent covered by insurance required under this Article XII or any other insurance actually carried by Seller. Seller shall ensure that the appropriate waiver of subrogation endorsements or provisions are included within each of the respective insurance policies required under this Article XII. All insurance policies required under this Agreement shall permit and recognize such waivers of subrogation.

SECTION 12.07 Subcontractors

Seller shall cause each subcontractor employed by Seller to purchase and maintain liability insurance of the type specified above and listing Buyer as an additional insured as respects the commercial general liability and umbrella liability policies of each subcontractor. When requested by Buyer, Seller shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

ARTICLE XIII **UNCONDITIONAL FIRST OPTION TO PURCHASE FACILITY**

SECTION 13.01 Buyer's Option.

Buyer shall have the unconditional and first option to purchase Seller's interest in the Facility located within the Complex after December 31, 2036, by providing Seller with at least one hundred eighty (180) calendar days prior written notice of its election to exercise such option, specifying in such notice the effective closing date for such purchase. The purchase price, which shall be payable in immediately available funds at closing, shall be the Fair Market Value of Seller's interest in the Facility. Buyer shall also have a right of first refusal to purchase Seller's interest in the Facility if Seller shall desire to sell or transfer all or any significant part of the Facility. Buyer's right shall not be operative with respect to sales, exchanges or other dispositions of obsolete equipment, equipment that is being replaced, or equipment or property other than real property that will no longer be utilized in the operation of the Facility. Seller shall give Buyer written notice of its intent to sell to a third Person not less than one hundred twenty (120)

calendar days, and not more than three hundred sixty-five (365) calendar days, prior to its intended date of transfer of title. Such notice shall identify the proposed purchaser and describe in detail the material terms and conditions of the proposed transaction. Seller must obtain the written approval of Buyer for the third Person which may purchase the Facility from Buyer prior to sale. Buyer must exercise its option to purchase Seller's interest in the Facility, upon the material terms and conditions of the transaction proposed by the third Person set forth in Seller's notice, by delivering written notice to Seller of such election within ninety (90) calendar days following the date of receipt by Buyer of Seller's notice of intention to sell the Facility. Seller may terminate its election to sell the Facility at any time prior to closing.

SECTION 13.02 Purchase and Sale.

If Buyer shall have elected to purchase the Facility pursuant to either of the unconditional and first options to purchase described above, then Seller shall transfer its interest in the Facility to Buyer pursuant to a bill of sale, in form and substance reasonably satisfactory to Buyer, free and clear of all liens and encumbrances in exchange for payment by Buyer to Seller of the entire purchase price in funds consisting of lawful currency of the United States of America, together with any funds owed by Buyer to Seller under this Agreement, net of any funds owed by Seller or its subsidiaries to Buyer. Any sales taxes on such purchase shall be paid by Buyer and any other taxes due and owing in connection with the Facility shall be apportioned between Buyer and Seller as of the date of the closing on the basis of each Party's respective period and percentage of ownership as relates to said taxes.

SECTION 13.03 Determination of Fair Market Value.

Buyer, at its option, may initiate the process of determining Fair Market Value at any time it deems reasonably necessary, and Seller agrees to provide reasonable access to the Facility to facilitate that process. Other than its obligations under any agreement entered into with a proposed third-Person purchaser of the Facility which is expressly made subject to Buyer's unconditional first option to purchase, Seller shall not enter into any contract, or incur any obligation, that will grant to any other Person an option or right to acquire the Steam System or Facility or Improvements to the Project Site or any significant part thereof. This Agreement shall terminate sixty (60) calendar days following the closing.

SECTION 13.04 Right to Setoff.

Whenever Buyer or Buyer's designee is entitled, pursuant to the terms of this Agreement, to purchase Seller's interest in the Steam System or the Facility, Buyer or such designee shall also be entitled to off-set from the purchase price thereof any amounts reasonably determined by Buyer to be owing to Buyer from Seller under this Agreement.

SECTION 13.05 No Obligation to Purchase.

This Article does not create any obligation on the part of Buyer to purchase Seller's interest in the Facility unless Buyer shall have given its notice of intent to purchase as set forth in Section 13.01.

ARTICLE XIV

**ASSIGNMENT OF CONTRACTS UPON PURCHASE OR ASSUMPTION OF
CONTROL BY BUYER**

SECTION 14.01 Assignment to Buyer.

In the event that Buyer exercises its right to purchase Seller's interest in the Steam System or Facility or assumes control of the System or Facility pursuant to other provisions of this Agreement, by operation of law or otherwise:

(a) Seller shall assign to Buyer its interest in those Project Documents and other contracts designated by Buyer, that relate to the operation and maintenance of the System. Buyer's right to request assignment of certain Project Documents and contracts shall not create any obligation by Buyer to assume all or any of those Project Documents and contracts. Buyer shall, however, assume the Seller's obligations for payment and performance of all such Project Documents and contracts assigned to Buyer in accordance with this Section 14.01. In addition, Buyer shall pay all commercially reasonable cancellation fees payable by Seller under Project Documents that are not assumed by Buyer hereunder. All contracts entered into by Seller shall provide for the consent of the other party to such assignment by Seller of its rights therein to Buyer.

(b) Seller shall provide the Buyer with access to the System, Facility and Improvements to the Project Site as required by Buyer to operate the Facility and System.

(c) Seller shall provide or cause to be provided to Buyer originals or copies of all plans, specifications, drawings, including "as-built" and mylar drawings, manuals and records, past and present, as well as all associated computer files, relating to the System or any part thereof, and assign to Buyer its interest in all necessary proprietary information, licenses and equipment relating to the System as necessary for the operation and maintenance of the System by Buyer. Buyer shall pay any royalties payable by Seller with respect to providing or assigning such items. Furthermore, Seller shall make its personnel available to train and assist Buyer's personnel or contract operators for a period of two (2) months prior to Buyer's takeover of the System and Facility.

SECTION 14.02 Survival.

This Article XIV will survive the expiration or termination of this Agreement.

**ARTICLE XV
SALE OR TRANSFERS OF ANY OWNERSHIP INTEREST IN THE SYSTEM OR
FACILITY**

SECTION 15.01 Transfer During Term of Agreement.

Any actual or attempted sale, transfer or conveyance of any ownership interest of Seller in the System or Facility during the Term of this Agreement, except for transfers to an entity that is controlled by, under common control with, or that controls, the Seller, whether partial or whole, by Seller to any entity other than Buyer must be approved in advance by Buyer in writing, such approval not to be unreasonably withheld or delayed. Any guaranty provided by

Seller or its affiliates will not be invalidated or otherwise affected by any such change in ownership of Seller. Seller shall provide written notice to Buyer of its intent to sell to an entity other than Buyer not less than sixty (60) calendar days prior to its intended date of transfer of title. The Seller shall not sell, transfer or convey to a third party any interest in the Improvements to the Project Site at any time.

SECTION 15.02 Transfer After Termination.

With respect to any portions of the Facility not removed by Seller in accordance with this Agreement, any actual or attempted sale, transfer or conveyance of any ownership interest of Seller in the Facility or this Agreement by Seller subsequent to the termination of this Agreement to an entity other than Buyer shall be null and void unless the purchaser is approved by Buyer in accordance with this Agreement.

ARTICLE XVI **STEAM SUPPLY RIGHT OF LAST REFUSAL**

SECTION 16.01 Right of Last Refusal.

(a) Prior to agreeing to purchase or receive steam or heat and/or hot water (collectively, “**Steam Service**”) at the Complex or the Renaissance Center Phase II, Buyer will submit to prospective bona-fide suppliers, including Seller, a request for quotation (the “**RFQ**”) to provide any of such Steam Services, in accordance with Buyer’s customary procedures.

(b) Seller will acknowledge in writing to Buyer its receipt of the RFQ within five Business Days of its receipt of the RFQ or in accordance with Seller’s customary procedures (the “**RFQ Acknowledgment**”). Under no circumstances may Seller invoke its rights under this Article XVI unless Buyer receives the RFQ Acknowledgment from Seller as provided in this Section 16.01(b).

(c) If Seller wishes to exercise its rights under this Article XVI, then at all times during Buyer’s RFQ process, Seller must participate in such process, including the submission of bids, on the same basis as other potential suppliers of the Steam Service to Buyer. If, at any time during Buyer’s RFQ process, Buyer determines in the exercise of its reasonable discretion that Seller is failing to participate on the same basis as other potential supplier(s) of such Steam Service then Buyer will notify Seller in writing of such determination (the “**RFQ Notice**”). If Seller does not cure such failure within five Business Days after receipt of the RFQ Notice, then Buyer may disqualify Seller from the RFQ process. Buyer will inform Seller in writing of such disqualification, and the rights granted to Seller under this Article XVI will be null and void and of no further force and effect, and Seller will have no further rights with respect thereto.

(d) If Seller has not been disqualified as noted above, then as set forth in the RFQ, Seller must submit to Buyer in accordance with the timeline established by the RFQ its proposal (the “**Seller Proposal**”) for supply of the Steam Service. The Seller

Proposal must, at a minimum, comply in all respects with the RFQ. If Buyer determines at any time that the Seller Proposal fails to comply with the RFQ, Buyer will notify Seller in writing of such determination and the rights granted to Seller under this Article XVI will be null and void and of no further force and effect, and Seller will have no further rights with respect thereto. Conversely, if Buyer determines that the Seller Proposal complies with the RFQ, Buyer will then evaluate, on the same basis as Buyer evaluates other prospective supplier(s), whether the Seller Proposal is competitive in terms of delivery, price, service and technology (collectively, the “**Delivery Criteria**”).

(e) If Seller, in Buyer’s reasonable discretion, meets the Delivery Criteria then Buyer shall award Seller the right to supply such Steam Service. In the event Buyer determines, in the exercise of its reasonable discretion, that the Seller Proposal does not meet the Delivery Criteria, then Buyer agrees to notify Seller in writing of the material terms of the Delivery Criteria (including price, investment, timing, non-proprietary technology, and the existence of proprietary technology) not met by the Seller Proposal (the “**Terms Notice**”). The Terms Notice will require Seller to notify Buyer within five Business Days in writing whether Seller wishes and is able to supply such Steam Service on the same terms as the Terms Notice. Notwithstanding anything contained herein to the contrary, if Buyer determines Seller cannot match a proposal other than Seller’s due to the existence of a proprietary technology and/or a unique technology or process not already possessed by Seller, then instead of providing Seller a Terms Notice, Buyer will inform Seller of this determination in writing and the rights granted to Seller under this Article XVI will be null and void and of no further force and effect, and Seller will have no further rights with respect thereto.

(f) Following Seller’s receipt of a Terms Notice from Buyer, Seller will notify Buyer in writing within five Business Days of its willingness and ability to supply such Steam Service on such terms. If Buyer, in good faith, is concerned about Seller’s ability, for any material reason, to supply such Steam Service in accordance with the Terms Notice (the “**Seller’s Ability**”), then Buyer will have the right to request further assurances from Seller of Seller’s Ability (the “**Further Assurances**”). Such Further Assurances may consist of financial information or such other information Buyer may reasonably request.

(g) If Seller notifies Buyer that it is willing and able to supply such Steam Service in accordance with the Terms Notice, and, if Buyer requests Further Assurances as provided above, and Seller is able to provide such Further Assurances of Seller’s Ability to the reasonable satisfaction of Buyer within five Business Days after such request, Seller will be awarded the Steam Service.

(h) If Seller fails to timely notify Buyer or notifies Buyer that it is unwilling or unable to supply such Steam Service on such terms, then (i) the rights granted to Seller under this Article XVI will be null and void and of no further force and effect; (ii) Seller will have no further rights with respect thereto; and (iii) Buyer may source such Steam Service on terms no less favorable to Buyer than those set forth in the Terms Notice.

(i) Under no circumstances will Buyer be responsible for any payments or

liable in any manner to Seller in the event that Seller fails to exercise the rights granted to Seller under this Article XVI or if Seller cannot provide such Steam Service on a competitive basis.

(j) For the avoidance of doubt, Seller acknowledges and agrees that the award of any Steam Service to Seller will be in Buyer's sole and absolute discretion.

ARTICLE XVII **FORCE MAJEURE**

SECTION 17.01 Force Majeure Events.

"Force Majeure" events are defined to mean acts of God; fires; action or inaction of Governmental Authorities (e.g., failure to issue permits) not due to the fault of the party affected by the Force Majeure event; combined action of workers (either those employed in the performance of an obligation under this Agreement or in any industry essential to the performance of such obligation) in no way caused by or resulting from default or collusion on the part of the party affected by the Force Majeure event; strikes; lockouts; embargoes; unavoidable casualties; unusually severe and adverse weather conditions; unforeseeable actions of Governmental Authorities; unavoidable failure of natural gas or other utilities supply (excluding failure of steam service) in no way caused by or resulting from default on the part of the party affected by the Force Majeure event; and other causes, whether of a similar or dissimilar nature to the events listed above, beyond the reasonable control of the party affected by the Force Majeure event, but only to the extent such events could not have been reasonably anticipated by the affected party and cannot be reasonably avoided or circumvented by the affected party.

SECTION 17.02 Suspension of Obligations; Extension of Time.

If either party shall be unable to carry out any of its obligations under this Agreement, in full or in part, due to an event of Force Majeure, this Agreement shall remain in effect but the affected party's obligations shall be suspended for a period equal to the disabling Force Majeure circumstances, together with a period of time reasonably required to remedy any damage caused by such circumstances; *provided, however*, that:

(a) The non-performing party (i) gives the other party prompt written notice describing the particulars of the Force Majeure event, including, but not limited to, the nature of the occurrence and its expected duration, (ii) continues to furnish timely regular reports with respect thereto during the period of Force Majeure and (iii) provides notice of the termination of the Force Majeure event;

(b) The suspension or curtailment of performance is of no greater scope than is required by the Force Majeure event;

(c) The Force Majeure event described above is not otherwise specifically addressed by other provisions of this Agreement;

(d) Inability to make a payment due under this Agreement and other economic

hardship, including changes in Steam System or the steam component of the Facility economics or tax laws and/or loss of profits, shall not constitute Force Majeure;

(e) The Force Majeure event described above is not otherwise due to the negligent acts or omissions or willful misconduct of the party relying on such Force Majeure; and

(f) The non-performing party uses its commercial best efforts to remedy its inability to perform and to mitigate, in an expeditious manner, any losses to the other party, which such party could not, with the exercise of commercial best efforts, avoid. Accordingly, Seller's failure to supply steam meeting the requirements of this Agreement shall not be deemed to be excused and suspended by a Force Majeure event during any period of time during which Buyer is able to obtain a substitute supply of steam meeting the requirements of this Agreement, to the extent such failure is due to causes which are insured perils under the insurance coverage required to be provided by Seller under Article XII hereof and which are otherwise covered by the insurance required to be provided under Article XII hereof, subject to the applicable waiting periods, deductibles and maximum coverage amounts and other terms of the policy(ies) provided in accordance with Article XII hereof.

SECTION 17.03 Prior Obligations.

No obligations of either party that arose before the Force Majeure event causing the suspension of performance shall be excused as a result of the Force Majeure event.

SECTION 17.04 Payment During Suspension.

During the suspension of Seller's services to supply steam under this Agreement due to a Force Majeure event, Buyer shall make payment to Seller of a pro-rata portion of the Fixed Monthly Payment for steam based on the actual available supply of steam to Buyer during the Force Majeure period.

ARTICLE XVIII **INDEMNIFICATION**

SECTION 18.01 Seller's Indemnification Obligation.

Seller shall indemnify and save harmless Buyer, its parent, and each of their respective affiliates, subsidiaries, managers, members, officers and employees from and against any and all losses, claims, damages, liabilities, demands, suits, causes of action, costs and expenses (including interest and reasonable attorneys' fees) arising or resulting from, Events Constituting Breaches of this Agreement by Seller under Section 19.02 hereof (other than breaches for which Seller is obligated to pay for substitute services under Section 9.07; breaches for which Seller is required to pay for property damage under Section 9.05 or breaches subject to the waiver of subrogation under Section 12.06 hereof); or the negligence or willful misconduct of Seller, excepting only the proportional share of such injury, death, harm or loss, if any, directly and proximately caused by the fault or negligence of Buyer or its agents or contractors or any third party or parties.

SECTION 18.02 Liens.

Seller shall indemnify and hold Buyer harmless from any claims of Seller's creditors, respectively, to any right, title or interest in the other's property and possessions or resulting from any encumbrances, liens or claims placed on the other's property and possessions, except as provided for herein. The duties to indemnify provided herein shall survive the expiration or early termination of this Agreement with respect to any claims based on facts or conditions occurring prior to expiration or early termination hereof.

ARTICLE XIX **EVENTS CONSTITUTING BREACH**

SECTION 19.01 Events Constituting Breach By Buyer.

The occurrence of any of the following shall constitute an "Event Constituting Breach" by Buyer hereunder, unless due to Seller's wrongful acts or omissions or a Force Majeure event:

(a) Any undisputed payment hereunder is not made when due and remains unpaid for another thirty (30) calendar days after written notice from Seller; *provided, however,* that this provision shall not apply when Buyer's nonpayment is the result of a good-faith dispute as to an invoice from Seller and is limited to the amount in dispute.

(b) Failure by Buyer to perform any of its material duties or obligations contemplated by this Agreement or persistent or repeated failure by Buyer to perform its duties or obligations under this Agreement, and such failure continues and is not cured within thirty (30) calendar days after written notice thereof is received from Seller, unless the failure specified in such notice is not susceptible of a cure within said thirty (30) day period, in which case, an Event Constituting Breach shall not occur unless (i) Buyer fails to commence and continue with due diligence a cure for such failure within said thirty (30) calendar days and (ii) the failure specified in such notice continues and is not cured within such time period as is reasonably required to cure such default, which time period shall not exceed one hundred twenty (120) calendar days after the original written notice thereof is received from Seller.

(c) Wrongful failure or refusal to accept steam and such wrongful failure or refusal continues for thirty (30) days following Buyer's receipt of written notice from Seller of its wrongful failure or refusal to accept steam.

(d) A petition in bankruptcy is filed by or against Buyer and is not dismissed within ninety (90) calendar days; or a receiver for all or any portion of Buyer's business shall be appointed by any state or federal court and such appointment of a receiver is not vacated within ninety (90) calendar days of being made.

SECTION 19.02 Events Constituting Breach By Seller.

The occurrence of any of the events listed in Sections 19.02(a) through 19.02(e)

following shall constitute an “Event Constituting Breach” by Seller hereunder, unless due to Buyer’s wrongful acts or omissions or a Force Majeure event.

(a) Any material representation or warranty furnished by Seller in this Agreement is discovered to have been false or misleading in any material respect when made and such representation or warranty (i) continues to be false or misleading for a period of thirty (30) calendar days after written notice to that effect is provided by Buyer and (ii) is material at the time that an Event Constituting Breach pursuant to this Section 19.02(a) is declared.

(b) Failure by Seller to perform any of its material duties or obligations contemplated by this Agreement or persistent or repeated failure of Seller to perform its duties or obligations under this Agreement, and such failure continues and is not cured within thirty (30) calendar days after written notice thereof is received from Buyer, unless the failure specified in such notice is not susceptible of a cure within said thirty (30) day period, in which case, an Event Constituting Breach shall not occur unless (i) Seller fails to commence and continue with due diligence a cure for such failure within said thirty (30) calendar days and (ii) the failure specified in such notice continues and is not cured within such time period as is reasonably required to cure such default, which time period shall not exceed one hundred twenty (120) calendar days after the original written notice thereof is received from Buyer.

(c) A petition in bankruptcy is filed by or against Seller and is not dismissed within ninety (90) calendar days; or a receiver for all or any part of Seller’s businesses shall be appointed by any state or federal court and such appointment of a receiver is not vacated within ninety (90) calendar days of being made.

(d) Failure to provide steam service, which failure causes the Complex to be unsafe or uninhabitable for tenants and their employees and such failure is not, within seven (7) calendar days after written notice from Buyer, cured to the extent necessary to cause the Complex to become safe and inhabitable for tenants and their employees commensurate with conditions reasonably expected to occur in a similar situation, so long as, at all times following such failure, Buyer has complied with all cooperation, space, access and other requirements applicable to Buyer under the Crisis Management Plan that are reasonable under the circumstances.

(e) Any payment hereunder is not made when due and remains unpaid for another thirty (30) calendar days after written notice from Buyer; *provided, however*, that this provision shall not apply when Seller’s nonpayment is the result of a good-faith dispute as to an invoice from Buyer and is limited to the amount in dispute.

(f) The guaranty provided to Buyer by Seller, Seller’s parent, and Seller’s affiliates prior to the Effective Date shall terminate unless Buyer provides its express written consent to such termination.

ARTICLE XX

REMEDIES UPON BREACH

SECTION 20.01 Seller's Remedies.

Upon the occurrence and during the continuance of an Event Constituting Breach by Buyer, Seller may exercise any and all rights or remedies available to it under, and pursuant to the terms and limits set forth in, this Agreement; *provided, however*, that Seller shall not suspend steam service to Buyer from the Steam System because of any Event Constituting Breach by Buyer unless Buyer has requested such suspension and Seller will not have the right to terminate this Agreement except as follows:

(a) In the event Buyer fails to pay any undisputed amounts when due and no Event Constituting a Breach by Seller exists, Seller may give Buyer written notice of such non-payment, and if Buyer fails to make such payment within thirty (30) days after receipt of written notice from Seller, Seller may give Buyer a second written notice of such failure. If Buyer fails to make such payment within five (5) business days after receipt of such second written notice from Seller, Seller may, by giving written notice to Buyer, terminate this Agreement such termination being effective 180 calendar days following such notice. Upon termination, all obligations of the parties hereunder to perform shall cease except as to obligations with respect to events and actions in existence prior to the effective date of termination and as to obligations that, pursuant to the terms of this Agreement, shall survive termination. In the event of termination under this Section 20.01, Seller shall be entitled to receive all amounts due and owing to Buyer from Seller under this Agreement and compensation from Buyer for the costs of enforcing this Agreement, including, without limitation, reasonable attorneys' fees.

(b) In the event Seller terminates pursuant to Section 20.01(a), Seller shall be provided with access to the Complex for one hundred eighty (180) calendar days after the effective date of termination, or such other time as reasonably required to remove equipment owned by Seller, to remove such equipment that Seller elects to remove in Seller's discretion.

(c) Seller acknowledges and agrees that Section 20.01(a) describes Seller's sole and exclusive rights to terminate this Agreement and Seller hereby waives any other rights it may have to terminate this Agreement.

SECTION 20.02 Buyer's Remedies.

Upon the occurrence and during the continuance of an Event Constituting Breach by Seller, Buyer may exercise any and all rights or remedies available to it under, and pursuant to the terms and limits set forth in, this Agreement, including, without limitation, termination of this Agreement as provided in this Section 20.02.

(a) In the event of the occurrence and continuance of an Event Constituting Breach by Seller, Buyer shall have the right to terminate this Agreement by delivery to Seller of a written notice of termination, such termination being effective upon receipt of such notice. Upon termination, all obligations of the parties hereunder to perform shall cease except as to obligations with respect to events and actions in existence prior to the effective date of termination and as to obligations, which, pursuant to the terms of this

Agreement, shall survive termination. Unless requested otherwise by Buyer, Seller shall promptly remove any equipment or material constituting the Steam System and restore the Project Site to its original condition, all at no cost to Buyer. Seller shall be provided with access to the Complex for one hundred eighty (180) calendar days after the effective date of termination, or such other time as reasonably required to remove equipment owned by Seller (not to exceed one hundred eighty (180) calendar days after the effective date of termination), to remove such equipment that Seller elects to remove in Seller's discretion. Seller's removal of equipment may not disrupt the ability of Buyer or alternative steam supplier's ability to conduct business in a normal and usual manner.

(b) The payment amount calculated in accordance with the foregoing shall be reduced on account of (x) costs incurred by Buyer that could have been reasonably avoided or mitigated by Buyer, as the case may be; (y) reasonable commercial value of Steam System equipment items owned by Seller located at the Project Site and designated by Buyer to be owned by Buyer and not to be removed; and (z) amounts due to Seller from Buyer under this Agreement; and the payment amount calculated in accordance with the foregoing shall be increased by amounts otherwise due and owing to Buyer from Seller under this Agreement.

(c) In the event of termination under this Section 20.02, Buyer shall be entitled to receive compensation from Seller for losses which shall include (i) costs of enforcing this Agreement, including, without limitation, reasonable attorneys' fees; and (ii) costs for removal and repairs to the Project Site for Steam System equipment items owned by Seller located at the Project Site and designated for removal by Buyer, if Seller fails to remove such items or repair any damage within one hundred eighty (180) calendar days after notice of termination. The payment amount calculated in accordance with the foregoing shall be reduced on account of (x) costs incurred by Buyer that could have been reasonably avoided or mitigated by Buyer; (y) reasonable commercial value of Steam System equipment items owned by Seller located at the Project Site and designated by Buyer for purchase by Buyer; and (z) amounts due to Seller from Buyer under this Agreement; and the payment amount calculated in accordance with the foregoing shall be increased by amounts otherwise due and owing to Buyer from Seller under this Agreement.

SECTION 20.03 Remedies in the Event of Bankruptcy.

(a) Buyer and Seller acknowledge and agree that successful delivery of steam in accordance with this Agreement will require prompt continued administration and performance by Seller under this Agreement and that any delay therein for any reason, including a bankruptcy proceeding respecting Seller would create immediate and irreparable harm to Buyer and Buyer's tenants, GM, and Seller and all contractors and suppliers of Seller. To that end, this Agreement contains a right by Buyer to terminate in the event of bankruptcy of Seller, it being recognized that such action will be necessary to avoid and minimize such delay and interruption of performance and consequent damage to all concerned.

(b) If, as a matter of law, Buyer does not have the right due to a bankruptcy

proceeding involving Seller to exercise the remedies provided for in this Agreement, then if Seller, as debtor, or its trustee, wishes to assume this Agreement, in addition to curing or adequately assuring the cure of all of Seller's defaults (adequate assurance of curing default being defined below) existing under this Agreement on the date of filing of the proceedings or thereafter, Seller, as debtor, or the trustee, must also furnish adequate assurances of future performance (adequate assurance of future performance being defined below) under this Agreement. "Adequate assurance of curing default" means the posting with Buyer of a sum of cash sufficient to cure such default. "Adequate assurance of future performance" means, at a minimum:

- (i) Posting with the Court, to be held in a segregated account, upon the acceptance of this Agreement and on the first day of each month thereafter, of a sum of cash sufficient to meet all payments expected to become due from Seller to contractors, laborers, trade unions, vendors, suppliers, materialmen and equipment lessors within sixty (60) days of the date of assumption of this Agreement, with respect to the initial deposit required to be made upon acceptance of this Agreement, and within thirty (30) days with respect to each monthly deposit required to be made thereafter;
- (ii) Establishing a line of credit or other financing arrangement sufficient to provide financing of all costs and expenses expected to be required for the performance of Seller's remaining obligations under this Agreement;
- (iii) Providing evidence, reasonably satisfactory to Buyer, that Seller, as debtor, or its trustee, has reestablished satisfactory business and credit arrangements with its vendors, suppliers, materialmen and equipment lessors and satisfactory employee and union arrangements with its work force; and
- (iv) Obtaining the written consent and acquiescence of the surety issuing the payment and performance bonds, if applicable, to such assumption and the acknowledgment of such surety that such assumption will not affect, alter or diminish the surety's obligations under such bonds.

ARTICLE XXI

LIMITATION ON DAMAGES

SECTION 21.01 Consequential Damages.

Except for liquidated damages imposed in accordance with this Agreement, neither Seller, Buyer nor any of their respective successors and assigns shall be liable in any action at law or in equity, whether based on contract or arising as a result of an Event Constituting Breach, tort, strict liability or otherwise, to the other party hereto or to any other Person, including affiliates, subsidiaries, partners, shareholders, managers, members, directors, officers, agents, employees or representatives of the other party hereto, or any third-party beneficiary of this Agreement, for any special, consequential, indirect or incidental damages or for loss of profits or revenues (including, without limitation, loss of profits or revenues contemplated under any power sales agreements entered into by Seller with Persons other than Buyer, its successors or

assigns), loss of use or loss of business opportunity.

SECTION 21.02 Punitive Damages.

Neither Seller, Buyer nor any of their respective successors and assigns shall be liable hereunder for punitive or exemplary damages as a result of an Event Constituting Breach or otherwise.

ARTICLE XXII **ENVIRONMENTAL MATTERS**

SECTION 22.01 Prohibition Against Hazardous Matter.

Seller acknowledges and agrees that Seller and its contracting parties, and their employees and others performing activities for Seller at the Project Site, shall not treat, store, or dispose of any Hazardous Matter on or below the Project Site and shall maintain generator only status; *provided, however*, that Seller may accumulate such Hazardous Matters as allowed under Applicable Laws for off-site treatment, storage, or disposal so long as such Hazardous Matters are generated on-site and Seller may store commercial products purchased for use on-site that may contain such Hazardous Matters.

SECTION 22.02 Seller's Assigns Bound.

Seller agrees that any contract or deed executed by Seller for transfer of possession of Seller's interest or transfer of whole or part of the Project Site through sale, lease, or other disposition by Seller to any successor, assign, or other transferee shall incorporate the obligations set forth above in Section 22.01 and that these obligations shall bind, and inure to the benefit of, any successor, assign, or other transferee.

SECTION 22.03 Indemnification.

(a) Seller shall indemnify and hold Buyer harmless from and against any and all liabilities, damages, penalties, orders, complaints, or fines (including, without limitation, reasonable costs of investigation, reasonable costs associated with remediation, responses, removal or corrective actions, and financial assurances, and reasonable attorneys' fees, but in no event shall such terms include consequential damages such as, by way of example and not limitation, loss of use, loss of profits or loss of business opportunity) (any or all of which are hereinafter referred to as "Claims") arising from, out of, or by reason of (i) any release of a Hazardous Matter by Seller or its respective agents, contractors, or employees or (ii) off-site treatment, transportation, storage, or disposal, or cleanup or remediation performed by Seller or its respective agents, contractors, or employees of Hazardous Matters that originated from the Project Site prior to the Effective Date. The parties acknowledge and agree that neither Seller nor any of its respective agents, contractors, or employees is performing condensate tempering, chemical additions or monitoring of pH levels.

(b) The right of indemnification set forth in Section 22.03(a) shall be subject to the following terms and conditions:

(i) For purposes of this Section the term “release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a reportable quantity as defined under CERCLA of a hazardous substance or hazardous waste or that amount of a hazardous substance or hazardous waste that results in cleanup, removal, or remediation liability being imposed in an action brought by a Governmental Authority.

(ii) Buyer shall, upon discovery or notice of any release of a Hazardous Matter which may give rise to a claim under this Section 22.03, promptly verbally notify the other party. Such verbal notice shall be promptly followed by written confirmation, but in no event later than ten (10) Business Days from the date of discovery or notice.

(iii) Buyer, upon discovering or first learning of any such release shall, if required by law, properly notify the appropriate Governmental Authority and shall simultaneously, or as soon as possible after notifying the appropriate Governmental Authority, inform the other party that it has notified such authority.

(iv) The parties mutually agree to provide each other with copies of any data, results, or reports and any correspondence with any Governmental Authority regarding any such release.

(v) In the event any release of a Hazardous Matter results in a formal claim for indemnification hereunder, and provided all of the obligations of Buyer (the “**Indemnified Party**”) have been fulfilled as set forth in this Section, Seller (the “**Indemnifying Party**”) shall, upon prompt written notice of any such claim, undertake the defense thereof by representatives reasonably acceptable to the Indemnified Party.

(vi) If the Indemnifying Party, within a reasonable time after notice of any such claim for indemnification, fails to defend such claim, the Indemnified Party shall have the right to undertake the defense, compromise, or settlement of such claim on behalf of and for the account and risk of the Indemnifying Party, which may include, without limitation, expenses (including attorney fees) and liabilities of the Indemnified Party as well as any money damages or other money payments resulting from the defense, compromise, or settlement of such claim; *provided, however*, the Indemnifying Party shall have the right, upon advance written notice, to assume the defense of such claim prior to settlement, compromise, or final resolution thereof, but such assumption shall not relieve the Indemnifying Party of any costs incurred by the Indemnified Party up to the date of such assumption.

(vii) Seller agrees that any contract for transfer of possession in whole or part of the Project Site or the Complex through voluntary sale, lease, or other voluntary disposition by Seller shall incorporate the obligations set forth above in this Section 22.03(a).

(viii) The parties agree that the indemnification obligations set forth in this Section 22.03(a) survive the expiration or termination of this Agreement but shall bind and inure only to the benefit of the respective initial successor or initial assignee of the parties.

SECTION 22.04 Factors To Be Considered.

The parties hereto acknowledge and agree that, in developing and performing any actions hereunder, the parties hereto will utilize the following factors in developing the particular action(s) to be undertaken:

- (a) Specific requirements, if any, under applicable Environmental Laws, and to the extent not specifically precluded by applicable Environmental Laws;
- (b) Technical feasibility of the action(s);
- (c) Economic reasonableness of the action(s);
- (d) Continued industrial use of the Project Site; and
- (e) The following human health and environmental risk-based factors:
 - (i) likely exposure pathways consistent with such industrial use;
 - (ii) typical simulated exposure distributions consistent with such exposures;
 - (iii) fate and transport characteristics;
 - (iv) local geology and hydrogeology; and
 - (v) toxicity of the material(s) in question.

ARTICLE XXIII **NOTICES**

SECTION 23.01 Notice to Parties.

Except as otherwise specifically provided for in this Agreement, all notices or other communications required or permitted hereunder will be in writing and deemed given if delivered personally, or if deposited in the U.S. mail, certified mail, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, or via facsimile with transmission verified with the original of such notice sent as above described, and in any case addressed as set forth on Schedule 3 or to such other Person or address as the addressee may have specified in a notice duly given as provided herein. To the extent Schedule 3 is not complete as of the date hereof, the parties agree to complete Schedule 3 prior to the Effective Date.

ARTICLE XXIV **TERMINATION**

SECTION 24.01 Termination By Buyer For Convenience.

(a) Buyer shall have the right at any time from and after January 1, 2021, to terminate this Agreement, without cause and for the convenience of Buyer upon twelve (12) months written notice of termination. In the event of such termination, Buyer shall have no liability of any kind to Seller in connection with such termination.

(b) If this Agreement is terminated in accordance with Section 24.01(a), Seller shall be provided with access to the Complex for one hundred eighty (180) calendar days after the effective date of termination, as reasonably required to remove equipment owned by Seller that Seller elects to remove in Seller's discretion.

(c) For the avoidance of doubt, if Buyer elects to terminate this Agreement in accordance with Section 24.01(a), Buyer will provide Seller the rights under Article XVI and the rights granted to Seller pursuant to Article XVI shall continue until this Agreement is terminated.

SECTION 24.02 No Limitation.

The right of Buyer to terminate this Agreement as set forth in this Article XXIV is in addition to any other rights Buyer has to terminate this Agreement as set forth elsewhere in this Agreement.

ARTICLE XXV **NON-WAIVER**

SECTION 25.01 Writing Required.

No provision of this Agreement shall be considered waived by either party unless such waiver is given in writing.

SECTION 25.02 No Waiver.

The failure of either party to insist on strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any such provision or the relinquishment of any rights hereunder in the future, but the same shall continue and remain in full force and effect.

ARTICLE XXVI **ASSIGNMENT**

SECTION 26.01 General.

Except as provided in this Article XXVI, this Agreement may not be assigned by either Buyer or Seller without the written consent of the other party and the written agreement of assignee whereby assignee expressly assumes and agrees to perform each and every obligation of

this Agreement, and any assignment in violation hereof shall be null and void.

SECTION 26.02 Assignment By Seller.

Notwithstanding anything in this Agreement to the contrary, and provided that such assignment does not have a material adverse effect on Seller's ability to provide steam as required under this Agreement, Seller shall have the right to assign this Agreement and the rights and obligations hereunder to an entity that is controlled by, under common control with, or that controls Seller, or that is formed as a result of an internal restructuring of Seller and/or its affiliates, with the prior written consent of Buyer which will not be unreasonably withheld, conditioned, or delayed.

SECTION 26.03 Assignment By Buyer.

(a) Notwithstanding anything in this Agreement to the contrary, Buyer shall have the right to assign this Agreement, in whole or in part, and the rights and obligations hereunder to an entity that is controlled by, under common control with, or that controls Buyer, or that is formed as a result of an internal restructuring of Buyer and/or its affiliates. In addition, Buyer shall have the right to assign the rights and obligations of Buyer under this Agreement with respect to the steam required to be furnished to (i) the Hotel portion of the Complex, (ii) GM, (iii) all or a portion of the Complex, or (iv) the Renaissance Center Phase II owner, in each case, to a Person designated by Buyer, provided such Person agrees in writing to assume such right and obligations of Buyer under terms and conditions consistent with the terms and conditions of this Agreement. Buyer shall provide written notice to Seller of any such assignment.

(b) Notwithstanding anything in this Agreement to the contrary, Buyer shall have the right to assign this Agreement, in whole or in part, and the rights and obligations hereunder to a purchaser of all or a portion the Complex or to a purchaser of Buyer's rights and interests in any lease for the Complex; provided that such purchaser agrees in writing to assume such rights and obligations of Buyer under terms and conditions consistent with the terms and conditions of this Agreement. The Buyer shall provide Seller with ninety (90) calendar days advance notice of its intent to assign this Agreement to a purchaser of the Complex (or to a purchaser of Buyer's rights and interests in any lease).

ARTICLE XXVII
FURTHER ASSURANCES

SECTION 27.01 Additional Documents.

Seller and Buyer agree to execute, acknowledge, and deliver any and all such further documents and instruments and to take such action as may reasonably be required in order to effectuate the purpose of this Agreement and to obtain any Permits necessary or convenient to accomplish the foregoing; *provided, however*, that any such action is not, in the sole discretion of either party, materially adverse to such party's interest.

ARTICLE XXVIII

COORDINATION COMMITTEE

SECTION 28.01 Coordination Committee.

In addition to maintaining routine communications, Seller and Buyer shall establish a “**Coordination Committee**” consisting of two management representatives of each of Seller and Buyer.

SECTION 28.02 Meetings.

The Coordination Committee shall meet as soon as possible, if the purpose is to review and resolve disputes and otherwise as required, but not less often than once each calendar quarter:

- (a) to review and resolve disputes referred to it pursuant to the terms of this Agreement;
- (b) to provide projections of upcoming operating schedules for maintenance and shutdown of Buyer’s and Seller’s equipment; and
- (c) for other purposes as provided for in this Agreement.

ARTICLE XXIX **EMPLOYEES, AGENTS AND REPRESENTATIVES**

SECTION 29.01 Authorized Representatives.

Whenever either party is entitled, pursuant to the terms of this Agreement, to review, inspect, notify, consent, approve or take similar actions, such rights may be exercised through the duly authorized agents or representatives of such party; *provided, however*, that notice of such authority shall have been provided to the other party.

SECTION 29.02 Designation of Representatives.

Each party shall designate in writing the persons authorized to act on such party’s behalf.

ARTICLE XXX **RIGHT TO REVIEW, APPROVE, COMMENT, ETC.**

SECTION 30.01 No Responsibility.

Except to the extent expressly provided otherwise in this Agreement, whenever Buyer is entitled, pursuant to the terms of this Agreement, to review, inspect, consent, approve or take similar actions, neither such rights nor any review, consent, approval or comment by Buyer made or given pursuant to such rights, nor anything else contained herein, shall create any responsibility of Buyer for the obligations of Seller under this Agreement for the operation of the Steam System.

SECTION 30.02 Buyer’s Approval of Contracting Parties.

The Buyer has relied upon the creditworthiness, experience, reputation and professional ability of the Seller; accordingly, subject to Section 29.02, the Seller shall not subcontract or assign its obligations under this Agreement, in whole or in part, or transfer any interest in this Agreement, or enter into any Project Documents for the performance of Seller's obligations under this Agreement, without the prior written consent of the Buyer, which consent shall not be unreasonably withheld or delayed. The Seller shall make no substitution for a Contracting Party without the further written consent of the Buyer, which consent shall not be unreasonably withheld or delayed.

SECTION 30.03 Required Provision of Project Documents.

All Project Documents shall:

(a) Require all obligations of the Contracting Party be performed in accordance with the requirements of this Agreement, except to the extent that the Project Document imposes more stringent requirements on the Contracting Party;

(b) Require the Contracting Party to comply with all customary Renaissance Center Rules and safety requirements then in effect applicable to activities performed at the Complex.

(c) Require the Contracting Party to maintain adequate insurance coverage for its activities and operations in connection with this Agreement.

(d) Require the Contracting Party to indemnify the Buyer from all costs, loss, expense and damage resulting from the negligence or willful misconduct of the Contracting Party.

(e) Provide for the assignment of the Project Document to the Buyer upon the written notice of assignment from Buyer in the event of the default of the Seller under this Agreement or the termination of this Agreement.

(f) Provide that the Buyer is the intended beneficiary of the performance of the obligations of the Contracting Party under the Project Document and that the Buyer shall be entitled to the enforcement of such performance obligations, as a third party beneficiary.

SECTION 30.04 Buyer's Approval of Project Documents.

All Project Documents (including without limitation, the contract between Seller and its district steam supplier) and all amendments and modifications to Project Documents, and any surrender or cancellation of a Project Document, shall be subject to prior review by the Buyer for compliance with the requirements of this Article; provided, however, that pricing and payment terms in such Project Documents may be deleted at the Seller's election. Notwithstanding the Buyer's review and approval of the form of any Project Document, the Seller shall bear the risk of any inconsistencies between the terms and conditions of this Agreement and the terms and conditions of such Project Document.

SECTION 30.05 Assignment to Buyer.

Seller agrees that, subject to the terms of this Agreement, in the event of default of the Seller under this Agreement or termination of this Agreement, all Project Documents identified by the Buyer in written notice to Seller shall be assigned to the Buyer effective on the assignment date designated in such written notice.

ARTICLE XXXI
ARTICLE HEADINGS

SECTION 31.01 Convenience Only.

The headings used in this Agreement are for convenience only and shall not affect the construction of any terms of this Agreement.

ARTICLE XXXII
GOVERNING LAW/FORUM

SECTION 32.01 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

SECTION 32.02 Venue.

Any judicial action instituted to enforce an arbitration decision under this Agreement shall be instituted in a state or federal court located in the State of Michigan in Oakland County.

ARTICLE XXXIII
ENTIRE AGREEMENT

SECTION 33.01 Entire Agreement.

This Agreement, including the Schedules attached hereto and made a part hereof, shall completely and fully supersede all other prior understandings or agreements, both written and oral, relating to the subject matter hereof. This Agreement, including the Schedules attached hereto and made a part hereof, shall constitute the entire integrated agreement between the parties, and no amendment or modification shall be effective except in a writing signed by duly authorized representatives of both parties.

ARTICLE XXXIV
SEVERABILITY

SECTION 34.01 Modifications.

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and

the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect. Notwithstanding the foregoing, whether or not there is agreement as to any such modifications, if any provisions of this Agreement or the application thereof to any Person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision shall be valid and enforceable to the extent permitted by law.

ARTICLE XXXV

COUNTERPARTS AND SURVIVAL

SECTION 35.01 Execution.

This Agreement may be executed in one (1) or more counterparts, each of which shall be considered an original and all of which shall constitute but one (1) and the same instrument.

SECTION 35.02 Survival

In addition to any provision that expressly states it will survive the expiration or termination of this Agreement, all other provisions which by their very terms should survive the expiration and termination of this Agreement will survive the expiration and termination of this Agreement including without limitation, Article XVIII, Article XXI, Section 22.03, Article XXIII, Article XXXI, Article XXXII, Article XXXIII, Section 35.02, Section 36.08, and Article XXXVIII.

ARTICLE XXXVI

DISPUTE RESOLUTION

SECTION 36.01 Resolution of Disputes.

Seller and Buyer agree to use their reasonable efforts to promptly resolve any disputes that may arise under this Agreement. In the event the Coordination Committee does not resolve any such disputes and other disputes referred to it pursuant to this Agreement within thirty (30) calendar days from the date the dispute is submitted to the Coordination Committee, the parties shall submit such dispute to upper management personnel from Buyer and Seller for review and resolution. In the event such upper management personnel are unable to resolve such dispute within thirty (30) calendar days from the date such dispute is submitted to them, the parties shall submit such dispute either to the Independent Engineer or to arbitration, each as provided herein.

SECTION 36.02 Independent Engineer.

If the matter in dispute involves (a) any matter(s) primarily requiring the exercise of engineering judgment and (b) an expenditure of \$100,000 or less, the dispute shall be brought to the Independent Engineer who shall assume exclusive jurisdiction thereof. Any other dispute may be brought to the Independent Engineer by the parties or may be subject to resolution by arbitration if agreed to in writing by the parties. Any questions as to whether a matter primarily requires engineering judgment shall be resolved in accordance with procedures established by

the American Arbitration Association within thirty (30) calendar days.

SECTION 36.03 Decisions By Independent Engineer.

The Independent Engineer shall be required to make a final determination, not subject to appeal, within thirty (30) calendar days from the receipt of such dispute by the Independent Engineer. The parties agree to be bound by the terms of the Independent Engineer's final determination. The determination by the Independent Engineer shall be made in writing and shall contain written findings of fact on which his decision is based, and shall be specifically enforceable by a court of competent jurisdiction. The Independent Engineer shall determine a fair and equitable allocation of the reasonable out-of-pocket expenses (except attorney's fees) of both parties incurred in connection with the resolution of any dispute hereunder, which expenses associated with each dispute shall be borne and paid by the party losing such dispute. Each party shall bear its own attorney's fees, unless the Independent Engineer shall determine that the nature of the action or the defense of the losing party was frivolous, in which event the Independent Engineer shall determine the fair and equitable attorney's fees to be reimbursed by the losing party to the prevailing party.

SECTION 36.04 Selection of Independent Engineer.

The Independent Engineer, and any successor Independent Engineer, shall be mutually selected by the parties to serve in such capacity pursuant to this Agreement. The Independent Engineer shall not otherwise be associated with the transactions contemplated by this Agreement. Such Independent Engineer shall have knowledge with respect to heating, ventilating, steam, river water systems, and control facilities. If Seller and Buyer have not agreed upon the selection of an Independent Engineer within (30) calendar days after an unresolved dispute begins, the Independent Engineer shall be selected by the American Arbitration Association as expeditiously as possible. Fees of the Independent Engineer so selected shall be paid one-half by Seller and one-half by Buyer. Seller and Buyer shall mutually cooperate to retain the Independent Engineer upon terms and conditions mutually satisfactory to Seller and Buyer as soon as practicable after selection of the Independent Engineer.

SECTION 36.05 Replacement Independent Engineer.

If the Independent Engineer resigns, if the parties mutually agree to terminate the services of the selected Independent Engineer, or if a party demonstrates that the Independent Engineer is subject to a conflict of interest or malfeasance, then the parties shall mutually agree on a replacement. The successor Independent Engineer shall not otherwise be associated with the transactions contemplated by this Agreement. The successor Independent Engineer shall have knowledge with respect to heating, ventilating, steam, river water systems, and controls facilities. If Seller and Buyer have not agreed upon the selection of a successor Independent Engineer within fifteen (15) Business Days of the resignation or termination of the Independent Engineer, a new Independent Engineer shall be selected by the American Arbitration Association as expeditiously as possible. The successor Independent Engineer's fees shall be paid in the same manner as provided in Section 36.04.

SECTION 36.06 Continued Performance.

During resolution of any dispute under this Article XXXVI, Seller and Buyer shall each continue to perform all of their respective obligations under this Agreement without interruption or slow down to the extent reasonably possible. The Coordination Committee shall develop an equitable plan of action for the performance of obligations of the parties during the resolution of disputes with the intent that unnecessary cost or damage to both parties will be avoided.

SECTION 36.07 Arbitration.

With respect to technical matters in excess of \$100,000 and other non-technical disputes, the parties may, but are in no event required to, elect to submit such dispute to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The arbitration panel selected to hear such dispute shall have knowledge and expertise regarding steam and chilled water generation and distribution facilities. During resolution of any dispute submitted to arbitration, the Seller and Buyer shall each continue to perform all of their respective obligations under this Agreement without interruption or slow down during any dispute or arbitration proceedings. Arbitration arising out of this Agreement shall include, by joinder, consolidation or otherwise, any Person not a party to this Agreement whose presence is required if complete relief is to be accorded in the arbitration. If the parties agree to submit a dispute to arbitration, the award rendered by the arbitrator shall be specifically enforceable under the prevailing arbitration law in any court having jurisdiction thereof.

SECTION 36.08 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

ARTICLE XXXVII APPROVAL

SECTION 37.01 Execution and Delivery.

This Agreement shall not become effective, and the terms hereof shall not be binding upon Seller or Buyer, until it is executed by each and delivered to the other. In addition, the parties agree that this Agreement shall not be deemed a contract between the parties until the Effective Date.

SECTION 37.02 Michigan Public Service Commission.

(a) As a condition precedent of Buyer's obligations under this Agreement and Seller's obligations to provide steam from the district steam system under this Agreement, Seller shall have obtained any required consent of the Michigan Public Service Commission with respect to this Agreement and the transactions contemplated herein, it being anticipated that such approvals will be applied for and prosecuted by Seller. Seller shall use its best efforts to obtain such consent on a timely basis so as to avoid any interference or delay in the performance of Seller's obligations under this Agreement; *provided, however*, that, in all events, Seller shall obtain such consent on or before April 30, 2019, which date shall not be subject to extension for any reason, notwithstanding any other provision of this Agreement. Buyer shall reasonably cooperate with Seller in obtaining the required Michigan Public Service Commission consent.

(b) In the event that Seller is unable to obtain the consent of the Michigan Public Service commission by April 30, 2019, in accordance with Section 37.02(a), this Agreement shall terminate. In the event of such termination, the obligations of the parties hereunder shall cease, except as to obligations with respect to events and actions in existence prior to the effective date of termination and as to obligations that, pursuant to the terms of this Agreement, shall survive termination.

ARTICLE XXXVIII

THIRD-PARTY BENEFICIARY RIGHTS

SECTION 38.01 Intended Beneficiaries.

The parties acknowledge that Buyer, tenants, GM, the Renaissance Center Phase II owner, the Hotel operator and the Hotel owner (if any) are intended third-party beneficiaries of the obligations of Seller to furnish steam in accordance with this Agreement.

SECTION 38.02 Right to Operate System.

Seller acknowledges and agrees that Buyer, GM, the Renaissance Center Phase II owner, the Hotel operator and the Hotel owner (if any) each shall have the right to use, operate, maintain, repair and replace the steam component of the Facility and the Project Site as necessary to furnish the steam required to be furnished by Seller under this Agreement, in the event that (i) Seller fails to provide the steam required under Article IX and such failure constitutes a default under this Agreement; and (ii) such failure continues for a period of more than twenty (20) hours after receipt of written notice from Buyer during which Seller either (a) fails to initiate action reasonably designed to cure such failure, or (b) having commenced to cure such failure discontinues such action.

SECTION 38.03 Intentionally Deleted.

SECTION 38.04 No Other Beneficiaries.

Except as expressly provided herein, nothing in this Agreement shall be deemed to grant any third-party beneficiary or similar rights to any other Person or entity not a signatory to this Agreement.

SECTION 38.05 Limitation on Damages.

The limitations on damages set forth in Article XXI hereof shall be binding upon all third party beneficiaries of the obligations of Seller under this Article XXXVIII.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

DETROIT THERMAL, LLC, an Ohio limited liability company

By: David Beavens

Name: David Beavens

Title: Chief Financial Officer

RIVERFRONT HOLDINGS, INC., a Delaware corporation

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

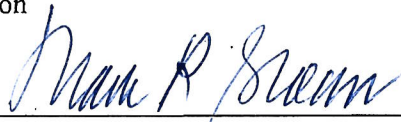
DETROIT THERMAL, LLC, an Ohio limited liability company

By: _____

Name: David Beavens

Title: Chief Financial Officer

RIVERFRONT HOLDINGS, INC., a Delaware corporation

By: 

Name: Mark R. Sloan
Asst. Director

Title: Real Estate

Schedule 1
FACILITY AND INTERCONNECTION FACILITIES DESCRIPTION AND
DESCRIPTION OF THE PROJECT SITE

Schedule 1
FACILITY AND INTERCONNECTION FACILITIES DESCRIPTION AND
DESCRIPTION OF THE PROJECT SITE

STEAM SYSTEM DESCRIPTION

The steam Facility is located within the Renaissance Center on Levels A and B. The area Level A is bounded by column rows B, C, 23 and 26. The area on Level B is bounded by column rows A, C, 29 and 34. These areas do not include the piping and electrical power runs which are outside these areas.

The steam is piped to the steam Facility on level B, where a steam separator removes the additional condensate to produce dry steam. Within the same steam facility, the steam is piped to two parallel steam flow meters used for billing, and then to two parallel pressure control valves. The flow meters will provide integrated hour readings with an hourly reset. The parallel flow meters and parallel control valves are different sizes to allow for accurate flow measurement and pressure regulations at high and low loads. A single bypass is provided around the pressure reducing valves. Portions of the steam line are hung from the ceiling of Level B.

The Facility on Level A of the Complex collects the condensate returns from the Renaissance Center and continuously monitors the pH of the condensate sample stream. The condensate is drained through an insulated pipe by gravity from the facility on Level A, dropping down to Level B, to the discharge interconnection point on Level B of the Complex. Portions of the condensate line are hung from the ceiling of Level A and B.

The ventilation system for the Facility on Level B consists of a room intake and exhaust fan and vent. The supply air for ventilation will come from Level B area and the discharge of vented air will be to the Level B area.

Controls for the steam Facilities within the Renaissance Center are local. The control system contains equipment operating status and includes key alarm points with key information telemetered to the Seller's Beacon Heating Plant.

Schedule 2

SAMPLE INVOICE



Riverfront Holdings, Inc.
Date

Steam Variable Payment

(a) Effective PPI * Base Rate

(b) 75% of Tariff Rate

Fixed Monthly Payment

\$41,666.67

Total Amount Due

Service Period

Meter No.

Meter Readings
From To

Mlbs Used

Please remit payment to:

DETROIT RENEWABLE ENERGY
Lockbox # 23-3502
3502 Momentum Place
Chicago, IL 60689-5335

By Wire:

Beneficiary Account: 7915245604
Fifth Third Bank
38 Fountain Square Plaza, Cincinnati OH 45263
Wire ABA: 042000314
ACH/EFT ABA: 072405455

Please contact Monique Middlebrooks at (313) 972-4634 with any questions regarding this invoice.

Schedule 3

NOTICE INFORMATION

Detroit Thermal, LLC
5700 Russell Street
Detroit, MI 48211
Attn: President and Vice President of Finance
Tel: (313) 963-3844
Fax: (313) 963-7285

With a copy to:

Jason M. Peters
Andrews Kurth LLP
600 Travis St., Suite 4200
Houston, Texas 77002
Tel: 713.220.4124
Fax: 713.238.7333

RIVERFRONT HOLDINGS, INC.
200 Renaissance Center, 13th Floor
Detroit, Michigan 48243
Attn: [_____]
Tel: [_____]
Fax: [_____]

Schedule 4
[NOT USED]

Schedule 5
INTERCONNECTION, DELIVERY AND METERING POINTS

STEAM:

ITEM DESCRIPTION	INTERCONNECTION POINT	DELIVERY POINT	METERING POINT
Steam	-In vertical 16" Steam Riser at Steam Pit 1 Level B -In horizontal 8" steam pipe near Steam Pit 1 Level A	Masonry wall where steam pipe exits the meter and control enclosure on Level B	Steam Flow: Level B in Control Valve station room Pressure: At Interconnect pt in vertical 16" riser
Steam Separator Drain and Steam Trap Drains	Sewer-if cooled, or tie into existing building condensate return	Not applicable	Not applicable
Condensate Return	Existing condensate return line Level A Col. B-24/25 And Raw Water Return Line, Level B Col. A/B-2/4	Not applicable	Not applicable
City Water -for pH sample station and safety eyewash/shower	Nearest city water line and Nearest sewer	Not applicable	Not applicable
Electrical Power	Nearest power supply point	Not applicable	Not applicable
Control System Interface for Pressure Indication	Pressure tap at Interconnect pt in vertical 16" riser	Not applicable	Not applicable

Schedule 6

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Schedule 7

[NOT USED]

Schedule 8

[NOT USED]

Schedule 9

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Schedule 10
STEAM SPECIFICATIONS

Quantities:

Maximum Rate of Change of Demand:	45.0 MLb/Hr / 15 Minute period
Maximum Summer Demand (during mutually agreed upon period of curtailment):	15.0 MLb/Hr.
Minimum Summer Demand:	6.0 MLb/Hr.

Quality:

Acceptable Pressure Range:	124 psig to and including 131 psig
Steam Quality:	99.5%
Chemical Addition:	pH: 7.4-8.0 at condensate discharge Rate: not to exceed average 10 ppm or permit limits Chemicals used: Cyclohexylamine and Diethylaminoethanol or equivalent

Condensate Received from Complex and Phase II:

Quantity:	Not to exceed Maximum Demand (one hour integrated basis) (above)
Temperature:	Maximum of 180 degrees F
Pressure:	18 psig
Contains only condensate and chemicals added as per above	

Condensate Disposal:

To River Water:	Tempering, if required, with river water
-----------------	--

Schedule 11

[NOT USED]

Schedule 12

[NOT USED]

Schedule 13

[NOT USED]

Schedule 14

[NOT USED]

Schedule 15

[NOT USED]

Schedule 16
NON-REDUNDANT EQUIPMENT

The following equipment items are identified as non-redundant and the failure of one or more of these items could result in the inability of Seller to meet the requirements of Sections 9.01, 9.02 and Schedule 10 Specifications.

STEAM

Main steam piping, including B6 extension
Condensate return equipment
Condensate piping
Steam separator
Shut off and isolation valves

Schedule 17

[NOT USED]

Schedule 18

[NOT USED]

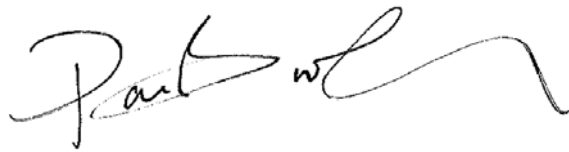
PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-18128

County of Ingham)

Paige Bialke being duly sworn, deposes and says that on July 22, 2016 A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.



Paige Bialke

Subscribed and sworn to before me
this 22nd day of July 2016



Steven J. Cook
Notary Public, Ingham County, Michigan
As acting in Eaton County
My Commission Expires: April 30, 2018

Service List U-18128

Detroit Thermal LLC
541 Madison Avenue
Detroit MI 48226

Arthur J. Levasseur
Fischer Franklin & Ford
500 Griswold Sreet, Suite 3500
Detroit MI 48226