

FILE
NC

18

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Cleveland Thermal Steam Distribution,)
LLC for Approval of a Standard Steam)
Service Agreement with MMP1)
Cleveland Development LLC.)

1933
Case No. 11- -HT-AEC

APPLICATION

PUCO

2011 MAR 31 PM 5:22

RECEIVED-DOCKETING DIV

Gretchen J. Hummel (Trial Attorney)
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: 614-469-8000
Telecopier: 614-469-4653
ghummel@mwncmh.com

March 31, 2011

Attorney for Cleveland Thermal Steam
Distribution, LLC

{C33795:}

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician SM Date Processed APR 01 2011

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Cleveland Thermal Steam Distribution)	
LLC for Approval of a Standard Steam)	Case No. 11- -HT-AEC
Service Agreement with MMP1)	
Cleveland Development LLC.)	

APPLICATION

Pursuant to Section 4905.31, Revised Code, Cleveland Thermal Steam Distribution, LLC ("Cleveland Thermal") submits a Standard Steam Service Agreement ("Agreement") for the Public Utilities Commission of Ohio's ("Commission") review and approval.

In support of this Application, Cleveland Thermal states that:

1) Cleveland Thermal is a public utility and a heating company pursuant to Section 4905.03(A)(8), Revised Code, providing steam service to consumers in Cleveland, Ohio, and is subject to the jurisdiction of this Commission.

2) This Application seeks approval of a special contractual arrangement and an accompanying rider that would permit Cleveland Thermal to provide steam service to MMP1 Cleveland Development LLC ("MMP1") for a property commonly known as Cleveland Medical Mart and Convention Center. The Agreement and Rider are attached hereto as Exhibit A and B, respectively.


3) The provision of steam service by Cleveland Thermal to MMP1 shall not impair or reduce the quality of service to other Cleveland Thermal customers.

4) Cleveland Thermal requests confidentiality for the base rate contained on Page 2 of Exhibit A of this Agreement as described in the Motion for Protective Order filed contemporaneously with this Application.

Through the Agreement, Cleveland Thermal and MMP1 have agreed to provisions regarding the termination of this arrangement. Cleveland Thermal and MMP1 both seek the Commission's approval to make the Agreement's termination provisions operable without obtaining any Commission approval that may be required prior to ending this special arrangement.

WHEREFORE, Cleveland Thermal respectfully requests the Commission to approve the Standard Steam Service Agreement and Rider between Cleveland Thermal and MMP1.

Respectfully Submitted,



Gretchen J. Hummel
McNees, Wallace & Nurick
Fifth Third Center
21 East State Street, 17th Floor
Columbus, Ohio 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
ghummel@mwncmh.com

**Attorney for Cleveland Thermal Steam
Distribution, LLC**

EXHIBIT A

STANDARD STEAM SERVICE AGREEMENT

This Steam Service Agreement (the "Agreement") is made and entered into as of December 12, 2010 between CLEVELAND THERMAL STEAM DISTRIBUTION, LLC ("Company") and MMP1 CLEVELAND DEVELOPMENT LLC ("Customer"), with an office at 222 Merchandise Mart Plaza, Suite 470 Chicago, IL 60654 with respect to the property commonly known as the Cleveland Medical Mart and Convention Center ("Premises"), and sets forth the terms and conditions pursuant to which Company will provide steam utility service to Customer and Customer will use that service for space heating and process purposes in the Premises.

WHEREAS, Company is a public utility steam company providing utility steam service to premises located within the City of Cleveland, Ohio, under contracts and approved schedules filed with the Public Utilities Commission of Ohio ("PUCO");

WHEREAS, Customer desires to use Company's steam utility service for Customer's heating purposes at the Premises and Company intends to provide such service for such purposes to Customer;

WHEREAS, Company and Customer recognize the benefits of having customers committed to the steam utility and Customer is willing to use and pay for steam utility service in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and subject to the terms and provisions of the Agreement, the parties agree as follows:

1. Service. Company will provide to Customer, and Customer will use, Company's steam utility service for Customer's heating and process purposes at the Premises throughout the term specified in Paragraph 2.
2. Term. The term during which Company will provide and Customer will use Company's steam utility service is January 1, 2011 (the "Effective Date") and, unless earlier terminated by either party pursuant to Paragraph 9 and/or 10 hereof, shall continue thereafter until September 30, 2027.
3. Premises. This Agreement relates to the provision of steam utility service to the Premises identified in the initial Paragraph hereof. Other premises may be added to this Agreement by mutual agreement of the parties. Any such addition shall be set forth in a new schedule to be executed by both parties and attached to this Agreement.
4. Sole Source of Heating Energy and Steam Service. The utility steam service provided by Company shall be the sole source of Customer's space heating energy requirements for the Premises and the sole source of steam service to the Premises throughout the term of this Agreement.

5. Charges. Customer shall pay Company an amount per 1000 pounds of steam ("Mlb.") delivered under this Agreement equal to the sum of:
- a) the "Base Rate for Steam Heating Service" (set forth in Paragraph 6, plus
 - b) the "Fuel Adjustment Charge" (set forth in Paragraph 7), plus
 - c) the "Tax Rider" (set forth in Paragraph 8).

Base Rates.

6. Steam Heating Service. Under this Agreement the Base Rate for Steam Heating Service shall be the rate which is below.

RATES PER MLB. OF STEAM

Effective
01/1/11

All Mlbs.

\$ [REDACTED] per Mlb

The rate per 1,000 pounds of steam reflected in Paragraph 6 above for each of the usage blocks set forth above will be increased on January 1, 2012 and on each January 1st thereafter by 3%.

7. Fuel Adjustment Rider. Company shall ascertain the weighted average cost of fuels burned by Company for steam utility service for each month (including all direct costs incurred by Company to place fuel at the point of burning in the boilers at plants in which steam is generated for sale under this Agreement) and will file that cost (expressed as cents per million BTU) with PUCO on a monthly basis. The Customer's rates shall be increased each month by applying the fuel adjustment rider schedule ratio (contained in Sheet 16 of the PUCO approved tariffs of Company) for each full 0.1¢ of the monthly cost of fuel per million BTU on an average annual basis. Notwithstanding anything contained in this paragraph or in any PUCO approved tariff, the monthly fuel adjustment rider may also include a portion of the Customer's individual fuel account balance as of the date of this Agreement.
8. Taxes & Other Impositions.
- a. Gross Receipts Tax. For so long as the State of Ohio or any other taxing authority or authorities impose or assess a tax on Company's gross receipts, the Customer's rates and charges under Paragraphs 6 and 7 above shall be increased by an amount equal to

the total rate of the gross receipts tax(es) imposed or assessed by all such taxing authorities multiplied by the total of such charges.

- b. **Other Impositions.** In the event that any tax, fee, levy, surcharge, imposition or similar charge (other than a gross receipts tax as referred to in subparagraph A above) is imposed or assessed by any taxing authority on Company or Customer (but only to the extent that such charge is required to be collected by Company from Customer and remitted to such taxing authority), which tax or other charge is identifiable to, or measured by, Customer's use, consumption or purchase of Company's products or services (or the sale thereof by Company to Customer), the Customer's rates and charges under Paragraphs 6 and 7 above shall be increased by an amount equal to the amount necessary for Company to recover such charge(s) imposed or assessed on Company or which it is responsible to collect.
 - c. **Direct Impositions on Customer.** In the event that any tax, fee, levy, surcharge, imposition or similar charge is imposed or assessed by any taxing authority directly on Customer, which tax or other charge is identifiable to, or measured by, Customer's use, consumption or purchase of Company's products or services (or the sale thereof by Company to Customer), Company shall have no obligation at any time to reimburse to Customer any such tax or other charge, or any portion thereof.
 - d. **Method of Payment.** Any charges imposed by Company on Customer pursuant to subparagraphs a. and b. above shall be included on Customer's monthly bill as such amounts are assessed to Customer.
9. **Termination Charges.** This Agreement may be terminated by Customer upon not less than six (6) months prior written notice to Company and by payment upon the effective date of termination of a lump sum amount which shall be equal to the following:

(A) The total of the last twelve (12) months steam usage by Customer in Mlbs. multiplied by \$8.00 per Mlb.

plus;

(B) A disconnect charge equal to the sum of (i) all documented unamortized costs (as determined in accordance with Company's accounting procedures and reflected in its books and records for Customer) associated with originally connecting Customer to the central steam system and (ii) all costs incurred by Company in disconnecting such system from Customer's steam system. See Schedule A attached to this Agreement.

Upon written request, given by Customer not more than twice during the term of this Agreement, Company shall furnish the amount of the unamortized cost described in Paragraph 9B)(i) above.

10. Termination.

- a. If Customer fails to pay any charges properly billed to Customer by Company within a thirty (30)-day period or fails to perform any of Customer's obligations to Company, Company shall have the right to discontinue its service upon thirty (30) days' written notice to Customer; provided, however, that in the case of a payment default, Customer may avoid termination by bringing its account current prior to the expiration of said thirty (30) day notice period. In the event that Company discontinues service to Customer pursuant to this Paragraph 10, Company reserves the right to seek damages from Customer to compensate Company for all losses, costs, expenses and damages suffered by Company as a result of Customer's breach of this Agreement.
- b. If the rights and privileges that Company now has or may obtain, without additional cost to it, in and through any premises, streets, avenues, alleys or places public or private, are withdrawn or are not obtained; if any governmental authority essential for the furnishing by Company of steam service substantially as required under the provisions of this Agreement is withdrawn; if any governmental authority enforces any rule or regulation that prevents Company from furnishing steam service substantially as required under the provisions of this Agreement; or if PUCO, any other governmental authority, or any court of competent jurisdiction disapproves or materially changes, alters, or modifies this Agreement, then Company shall have the right to discontinue the supply of steam and terminate this Agreement forthwith. Company will provide notice to Customer of any termination of the Agreement under this Paragraph 10 as promptly as practicable.
- c. Upon termination of the Agreement under Paragraphs 9,10 and/or 17, Company shall have the right to enter the Premises at a reasonable time designated by Customer and remove all of Company's equipment, including without limitation, all meters installed therein.

11. Rules and Regulations. Company's standard rules and regulations for steam service as in effect during the term of this Agreement shall be applicable to the provision of steam service under this Agreement and are incorporated herein by this reference.

12. Meter Installation, Maintenance and Testing. Company shall install and maintain such meters as may be required to determine the quantity and rate of taking of steam which is supplied by Company. Such meters shall be installed and maintained upon the Premises at a point or points most convenient for Company's service. Steam meters in use may be tested at the request of Customer in its presence if desired by it with a tested and sealed meter-tester by an officer or employee of Company. If the meter is found to be accurate within three percent (3%), Customer requesting the inspection shall pay Company for the expense of removing it for the purpose of being tested. The fact of reinspection shall be stamped and dated upon the meter. If the meter is proved inaccurate by more than three

percent (3%), no fees or expense shall be paid by Customer and Company shall furnish a new meter or repair the existing meter without charge to Customer. If Company maintains more than one meter or set of meters for the Premises, the steam service metered through each such meter may be billed separately as Company determines; provided, however, that such bills shall be aggregated for the purpose of determining all charges under this Agreement.

13. Monthly Bills and Due Date. Company shall render bills on a monthly basis unless Company determines that a different billing period is necessary or convenient. All bills shall be due and payable upon presentation. If Company has not received payment on any bill within thirty (30) days from the date thereof, interest shall accrue on the unpaid balance on a daily basis at the rate of one and one half percent per month from the date of the bill until the date of payment.
14. Failure to Make Timely Payments; Deposits. In the event Customer has failed to make payment on any bills within thirty days (30) from date thereof on two or more occasions in any calendar year, Company may thereafter require a cash deposit in an amount not in excess of 1-12th of the estimated charges for all steam for the ensuing twelve (12) months, plus fifty percent of the monthly estimated charge. Company shall accrue and pay interest at the annual rate of four percent (4%) on deposits held more than one hundred eighty (180) days and shall: (a) refund such deposit including interest accrued to date to Customer if it has paid all bills for service for twelve (12) consecutive months without having had service discontinued for nonpayment of its bill and without having had more than two (2) occasions on which his bill was not paid by the time specified by the regulations of Company regarding prompt payment of bills and Customer is not then delinquent in the payment of his bills; or (b) promptly apply Customer's deposit, including interest accrued to date, to the final bill for service upon termination or discontinuance of service. If after twelve (12) consecutive months Customer has not paid its bill on time on three (3) or more occasions, or Customer is delinquent at any time, or Customer's service has been discontinued for non-payment of service, Company shall retain the deposit for another twelve (12) months, accruing interest during that time, and shall reevaluate Customer's status again at the end of a second twelve (12)-month period. Any remaining deposit in excess of the final bill for service shall be promptly refunded or credited to the Customer. If Customer cannot be located, any unclaimed deposit, plus accrued interest, shall be disposed of in conformity with Chapter 169 of the Ohio Revised Code.
15. Service Valve Installation. Company shall furnish and install a service valve on the Premises and with prior review and written approval by Customer of designated pipe locations shall have permission to install additional service pipes on the Premises and through the walls of Customer's building to serve other customers of Company. Company shall make any such installation entirely at its own expense and will indemnify Customer for any damage done to the Premises on account of making such installation. Upon termination of this Agreement, Company shall remove such service pipes and restore the Premises if required by Customer.

16. Notice of Interruption of Service. Company reserves the right, upon reasonable advance notice to Customer, to interrupt the supply of steam to enable Company to make any necessary repairs or connections to its system or mains. In general, Company will give Customer twenty-four (24) hours advance notice. In the event of an emergency, Company will give Customer as much advance notice as practical.
17. No Guarantee of Uninterrupted Service. Company will endeavor at all times to provide a regular and uninterrupted supply of service throughout the year on a twenty-four-hour-a-day basis except as interruptions may be required to make any necessary repairs or connections to its system or mains, but Company does not warrant or guarantee uninterrupted service, and shall not be liable for any special, direct, indirect or consequential damages relating to or arising from an interruption in service including, without limitation, damages for lost rents or lost profits. In the event of any interruption of service, both parties shall be prompt and diligent in attempting to remove and overcome the cause of the interruption, and nothing contained herein shall be construed as permitting Company to refuse to deliver, or Customer to refuse to accept, steam service after the cause of interruption has been removed. Notwithstanding anything to the contrary herein, in the event that service to Customer is interrupted for a period in excess of forty-eight (48) hours more than three (3) times in any given ten (10) day period or more than five (5) times in any calendar month for reasons other than a scheduled maintenance or an emergency event, Customer shall have the right, in its sole discretion, to terminate this Agreement upon giving sixty (60) days written notice to Company and by payment of an amount equal to the amounts due in accordance with subparagraphs 9A and 9B. In the event of such termination, Customer shall remain liable for payments for services rendered prior to the effective date of termination.
18. Indemnification. Subject to the limitation on the liability of Company for interruptions in the delivery of steam service as provided in Paragraph 17, Company agrees to indemnify, defend and hold Customer, the County of Cuyahoga, Ohio ("County," and together with Customer the "Protected Parties") and each of their respective employees, agents and representatives harmless against any loss, damage, expense (including reasonable attorney's fees), or claim for personal injury, death, property damage, or otherwise arising from or incidental to the sale and delivery of steam service to the Premises pursuant to this Agreement, to the extent such loss, damage, expense, or claim is caused by the willful conduct or negligence of Company, its employees, agents or representatives. Customer agrees to indemnify, defend and hold Company, its employees, agents and representatives harmless from any loss, damage, expense (including reasonable attorney's fees), or claim for personal injury, death, property damage, or otherwise arising from or incidental to the sale and delivery of steam service pursuant to this Agreement, to the extent such loss, damage, expense, or claim is caused by the willful conduct or negligence of either of the Protected Parties or their respective employees, agents or representatives.
19. Permission for Company to Enter Premises. Customer hereby grants Company permission to enter the Premises during normal business hours, with prior notification (but subject to Customer's security procedures), for the purpose of inspecting and keeping

in repair or removing any or all of its apparatus used in connection with the supply of steam, and Customer hereby authorizes and requests Customer's landlord, if any, to permit Company to enter Premises for that purpose.

20. No Resale of Steam Service. Customer shall not supply steam to anyone or allow anyone to take steam from its system, except for use on the Premises.
21. Customer Provided Cooling Equipment. Customer shall provide and connect suitable cooling equipment to cool the condensate before discharging the condensate to the condensation meter or sewer if the temperature of the condensate would otherwise exceed the temperature allowed by local code.
22. Assignment. See attached Rider.
23. No Waiver for Failure or Delay to Exercise any Right. No failure or delay on the part of either party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. The remedies herein are cumulative and not exclusive of any remedies provided by law.
24. Arbitration. Any claim or dispute involving an amount in controversy less than \$200,000 that arises out of or is related to this Agreement or any breach thereof shall be resolved by arbitration in Cleveland, Ohio and the rules of the American Arbitration Association shall apply. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notice of demand for arbitration shall be in writing and served on the other party to the Agreement. A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall be made after the expiration of this Agreement. Reasonable discovery shall be permitted in any such arbitration subject to the control of the arbitrators and shall include, but not be limited to, depositions of the parties and production of documents. Claims or disputes involving an amount in controversy in excess of \$200,000 may be resolved by arbitration only if mutually agreed to in writing by the parties at the time of the dispute.
25. Governmental Authority or Insurance Company Mandated Changes or Modifications. System changes or modifications as mandated by any governmental authority or insurance company, are not a part of this service agreement. In the event that Company must incur significant financial costs to comply with such requirements, a prorated amount of the total expense will be applied to each Mlb. of steam sold over a reasonable period.
26. Notices. Notices, requests, demands, statements, billings or other matters which Company or Customer desire or are required to provide to each other shall be in writing, where possible, and shall be considered as delivered when mailed post-paid and addressed as follows:

COMPANY

Cleveland Thermal Steam Distribution, LLC
1921 Hamilton Avenue
Cleveland, Ohio 44114
Attention: President
(216) 241-3636

CUSTOMER: See attached Rider

27. Regulatory Approval. Company, at its sole cost and expense, shall make such filings for approval with the PUCO as may be required in connection with this Agreement, and shall use its best efforts to secure such approval.

28. Ohio Law Governs This Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

SEE ATTACHED RIDER FOR ADDITIONAL PARAGRAPHS 29 - 31.

CLEVELAND THERMAL STEAM DISTRIBUTION, LLC

By:  President


Marc G. Divis, President

Printed Name & Title

2-2-11

Date

CUSTOMER

By: 
Name

Myron Mannon - SVP

Printed Name & Title

1/28/11

Date

Schedule A

Amortization of Connection Costs

Amortization Formula

The actual connection costs incurred by Company pursuant to the foregoing Agreement shall be amortized using on a straight-line basis and at a rate of ten percent (10%) per annum applied to the starting balance. Upon Company's final determination of the actual connection costs, Company shall provide Customer with written notice of such actual costs. For purposes of determining the amount of the unamortized balance that is outstanding on the date of early termination, each annual amortization installment shall be deemed to occur on the last business day of each year of the Agreement. Below, for illustration purposes only, is an example of an amortization schedule that assumes the actual connection and carrying costs total \$50,000.

Amortization Schedule

Amortization Schedule:

Principle:	\$	50,000
Interest:		10%
Term in years:		14

	Remaining Principle
Principle remaining in year:	
One	\$ 50,000
Two	\$ 48,213
Three	\$ 46,247
Four	\$ 44,084
Five	\$ 41,705
Six	\$ 39,088
Seven	\$ 36,210
Eight	\$ 33,043
Nine	\$ 29,561
Ten	\$ 25,729
Eleven	\$ 21,515
Twelve	\$ 16,879
Thirteen	\$ 11,780
Fourteen	\$ 6,170

CLEVELAND THERMAL STEAM DISTRIBUTION, LLC

By: Marc G. Davis President

Marc G. Davis, President

Printed Name & Title

Date 2-2-11



CUSTOMER

By: _____

Michael Manner - SVP

Printed Name & Title

Date

EXHIBIT B

**RIDER TO CLEVELAND THERMAL STEAM DISTRIBUTION, LLC ("Company")
STANDARD STEAM SERVICE AGREEMENT ("Agreement") WITH MMPI
CLEVELAND DEVELOPMENT LLC ("Customer")
DECEMBER 12, 2010**

The provisions contained in this Rider supplement the provisions contained in the Agreement and are hereby incorporated in the Agreement as if originally set forth therein. Defined terms used in this Rider but not defined herein shall have the meanings ascribed to them in the Agreement unless the context clearly requires otherwise.

22. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns; provided, however, that neither party shall be relieved of liability in the event of an assignment of this Agreement except as set forth below. Customer may assign its interest in this Agreement to a third party if the third party executes a written assignment agreement in a form reasonably satisfactory to Company (wherein such third party assumes and agrees to keep and perform promptly all of Customer's obligations under this Agreement to be kept and performed from and after the effective date of assignment), and provides evidence reasonably satisfactory to Company of its financial ability to discharge the obligations of this Agreement, then Customer shall be relieved of all its obligations under this Agreement not having theretofore accrued. Notwithstanding anything to the contrary herein, Customer may assign this Agreement at any time upon thirty (30) days written notice to Company to the County or its designated agent, or an affiliate or subsidiary, including but not limited to Cleveland Operator LLC, without any consent of Company and Customer shall be relieved of all its obligations under this Agreement not having theretofore accrued. Company may assign this Agreement upon obtaining any regulatory approval as may be required for such assignment and giving not less than thirty (30) days prior written notice to Customer of its intent to make such assignment. Except in any instance in which an assignment by either party shall be a collateral assignment in favor of a secured lender, any assignment meeting the requirements of this paragraph shall relieve the assigning party of all its obligations under this Agreement. Each of the parties agree that, at any time and from time to time, it will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the assigning party reasonably requests in order to evidence and acknowledge any required consents to any such assignment and to implement the provisions of this paragraph. Except as otherwise stated herein, this Agreement shall not be construed as to confer any rights of a third party beneficiary upon any person or entity.

26. Notices:

If delivered to Customer:

MMPI Cleveland Development LLC
c/o Merchandise Mart Properties, Inc.
222 Merchandise Mart Plaza, Suite 470
Chicago, IL 60654
Attn: Lloyd Davidson, Vice President
Facsimile: (312) 321-4551

with copies to:

Merchandise Mart Properties, Inc.
222 Merchandise Mart Plaza, Suite 470
Chicago, IL 60654
Attn: General Counsel
Facsimile: (312) 321-4551

Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606
Attn: Michael F. Csar, Esq.
Facsimile: (312) 569-3223

29. Third Party Beneficiaries. Nothing contained herein shall be deemed to give any third party any claim or right of action against Customer or Company that does not otherwise exist without regard to this Agreement. Notwithstanding the foregoing, however, the County, Cleveland MMCC LLC ("Cleveland MMCC") and Merchandise Mart Properties, Inc. ("MMPT") are expressly third party beneficiaries of this Agreement. All covenants and indemnifications of Company, and all rights and interests granted by Company under this Agreement, are for the joint benefit of, and may be enforced by, the County, Cleveland MMCC and MMPI. Upon receipt by Company of written notice from the County that Customer has defaulted under its agreement with the County with respect to the Premises and that the County (or its designee) has assumed Customer's rights and obligations under this Agreement, then Company agrees to attorn to the County (or County's designee) with respect to its performance under this Agreement. Prior to any such assignment, Company shall have no rights, remedies or other recourse against the County arising out of or relating to this Agreement. To the extent any warranties, representations or indemnifications are provided by Company to Customer hereunder, Company hereby further provides to the County, Cleveland MMCC and MMPI any and all warranties, guarantees and indemnifications provided to Customer hereunder.

30. Limitations on Liability. MMPI is authorized as "Development Manager" to act on behalf of Customer with respect to all matters in respect of the Premises arising under this Agreement. MMPI shall have authority and responsibility to give all notices, directions, authorizations, approvals and notices of disapproval on behalf of Customer as

may be contemplated or permitted hereunder; provided, however, MMPI is not authorized to amend this Agreement. In accordance with the foregoing, it is acknowledged that MMPI is not acting as principal in connection with this Agreement but only as agent in a representative capacity on behalf of Customer. Company agrees to look only to Customer for the performance of Customer's obligations under this Agreement and for the satisfaction of any right of Company for collection of any claim, judgment or other judicial determination (whether at law or in equity) or arbitration award requiring the payment of money. Neither MMPI nor any of its shareholders, officers, directors, employees, agents or affiliates, nor any of their respective assets or property, shall be subject to any claim, judgment, levy, lien, execution, attachment or other enforcement procedure (whether at law or in equity) for the satisfaction of Company's rights and remedies under or with respect to this Agreement. No covenant, obligation or agreement under this Agreement shall be deemed to be a covenant, obligation or agreement of any member or manager of Customer other than in such capacity as member or manager, and neither any member, manager, affiliate or agent of Customer (or any member, manager, partner, officer, director, employee or shareholder of any such member, manager, affiliate or agent) nor any individual person executing this Agreement on behalf of Customer shall be liable for or by reason of the covenants, obligations or agreements of Customer contained in this Agreement.

31. Insurance. Each of the parties shall purchase and maintain, with companies lawfully authorized to business in Ohio, property and liability insurance with respect to the respective party's facilities and operations in such amounts and with such coverages as such party deems reasonably prudent or as otherwise required, if greater, to comply with the requirements of regulatory authorities or lenders to such party.

CLEVELAND THERMAL
STEAM DISTRIBUTION, LLC

BY _____

TITLE: President

MMPI CLEVELAND
DEVELOPMENT, LLC

BY _____

TITLE: SVP