

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Cleveland Thermal Steam Distribution)	
LLC for Approval of a Standard)	Case No. 11-5764-HT-AEC
Interruptible Steam Supply and)	
Distribution Agreement with PNC)	
Realty Services.)	

APPLICATION

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November 15, 2011

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

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Cleveland Thermal Steam Distribution)	
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APPLICATION

Pursuant to Section 4905.31, Revised Code, Cleveland Thermal Steam Distribution, LLC ("Cleveland Thermal") submits a Standard Interruptible Steam Supply and Distribution 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 that would permit Cleveland Thermal to provide steam service to PNC Realty Services ("PNC"), a division of The PNC Financial Services Group, Inc., for a property commonly known as The PNC Center. The Agreement is attached hereto as Attachment A.

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

4) Through the Agreement, Cleveland Thermal and PNC have agreed to provisions regarding the termination of this arrangement. Cleveland Thermal and PNC 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 Interruptible Steam Supply and Distribution Agreement between Cleveland Thermal and PNC.

Respectfully submitted,

/s/ Gretchen J. Hummel
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**Attorney for Cleveland Thermal
Steam Distribution, LLC**

ATTACHMENT A

**STANDARD
INTERRUPTIBLE STEAM SUPPLY AND DISTRIBUTION AGREEMENT**

BY AND BETWEEN

CLEVELAND THERMAL STEAM DISTRIBUTION, LLC

AND

**PNC REALTY SERVICES
(A DIVISION OF THE PNC FINANCIAL SERVICES GROUP, INC.)
RELATING TO THE PNC CENTER**

**STANDARD
INTERRUPTIBLE STEAM SUPPLY AND DISTRIBUTION AGREEMENT
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**STANDARD
INTERRUPTIBLE STEAM SUPPLY AND DISTRIBUTION AGREEMENT**

This Standard Interruptible Steam Supply and Distribution Agreement (hereinafter, the *Agreement*) is entered into as of the 30 day of September, 2011, between PNC REALTY SERVICES, a division of The PNC Financial Services Group, Inc., with an office located at 1900 East 9th Street, Cleveland, Ohio 44114 (hereinafter the *Customer*) and CLEVELAND THERMAL STEAM DISTRIBUTION, LLC, located at 1921 Hamilton Avenue, Cleveland, Ohio 44114 (hereinafter, the *Company*).

WHEREAS, Company is a district energy company engaged in the business of distributing steam and hot water to owners of buildings located in certain areas of the City of Cleveland, Ohio (hereinafter, the *City*) in accordance with reasonable arrangements or otherwise applicable tariff schedules filed with the Public Utilities Commission of Ohio (hereinafter, *PUCO*); and

WHEREAS, Customer is the owner of that certain Building, as defined below, located in the City and desires that Company obtain for and distribute processed steam to Customer to meet the Building's heating and other energy needs.

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and provisions hereof, Company and Customer, intending to be legally bound, agree as follows:

1. GENERAL PERFORMANCE OBLIGATIONS

- A. Subject to the more specific identification of Customer's requirements set forth herein, Company shall obtain for and distribute to Customer and Customer shall receive from Company's existing distribution system at the *Point of Delivery* (as specified in accordance with this Agreement) the total steam and heating requirements of the building or premises identified on Appendix A attached hereto and incorporated herein by reference (hereinafter, the *Building*). However, service provided under this Agreement is provided on an "interruptible" basis, meaning that, with prior notice to Customer, Company, at its sole discretion and without liability to Customer, may temporarily interrupt or suspend steam service until such time as Company determines service shall be restored and Customer acknowledges, by executing this Agreement, that Customer's service may be interrupted or suspended by Company, for such purposes as Company shall determine, including but not limited to making any necessary repairs or connections to its system or mains. In general, Company intends to give Customer twenty-four (24) hours advance notice but, in the event of an emergency or an interruption resulting from Force Majeure, as hereinafter defined, Company will give Customer as much advance notice as practical. Company shall also provide Customer with periodic invoices stating the charges Customer owes Company for service provided under this Agreement and, notwithstanding any other provision in this Agreement, Company may discontinue service under this Agreement in the event that Customer has not made full payment for any Billing Period (as defined below) invoice within the period specified in Paragraph 5.A below. Company shall furnish, install, own and maintain, at its expense, isolation valves and such metering equipment as it deems appropriate to measure the steam distributed to Customer for the Building.
- B. Customer shall use commercially reasonable efforts to receive steam from Company's distribution system for the Building, meet the conditions established by Company to receive steam and distribution service from Company and timely pay Company for service provided pursuant to this Agreement. Upon Company's reasonable request and at no cost to Company, Customer shall provide adequate space and any interest in real property reasonably suitable to

Company on Customer's property and within the Building to permit Company to meet its initial and ongoing service obligations under this Agreement or otherwise and shall allow Company reasonable access thereto at all times upon request by Company. By executing this Agreement, Customer authorizes Customer's property manager (if the Building is a part of a larger property complex), or such other person that may have the ability to do so, to permit Company to enter the Building for the purpose of performing this Agreement. By executing this Agreement, Customer acknowledges that it is individually responsible for establishing and maintaining such facilities, pumps and other equipment as may be required to redistribute steam within the Building and to install and operate such equipment, plant and facilities as may reasonably be necessary to avoid the actions or inactions of Customer, its tenants and other occupants of the Building from negatively affecting Company's ability to safely and adequately meet the needs of its other customers. Upon request, Customer shall furnish Company with information that is sufficient to demonstrate that Customer has installed plant, facilities, and equipment and implemented operating procedures to avoid imposing under pressure or pressure-related shocks on Company's distribution system. Beyond such steam redistribution as Customer may need to perform to meet the steam and heating needs within the Building, Customer shall not redistribute steam for any other purpose without prior written consent of Company. Unless otherwise specifically agreed to by Company, Customer shall design, own, construct, install, operate and maintain, at its own expense, piping necessary to receive steam from Company at the Point of Delivery.

- C. In order to qualify for the Interruptible Rate, as hereinafter defined, Customer annually shall demonstrate to Company's satisfaction the capability to provide, independent of Company's service, steam service to the Building. In the event Customer is not able to provide steam service to the Building during any Event of Interruption, as hereinafter define, the Base Rate, as hereinafter defined, shall immediately be effective and Customer shall be charged and billed accordingly for the then current Billing Period and the prior Billing Period. If, within any 12 month period, Customer fails twice to demonstrate acceptable "interruptible" capability, the rate for Company's service shall be permanently increased to the Base Rate. The parties agree that any interruption of service lasting up to 24 hours shall be an *Event of Interruption*. Any portion of an interruption of service lasting beyond 24 hours shall be considered a separate Event of Interruption. Company shall provide Customer at least 12 hours notice prior to any Event of Interruption, unless the interruption is caused by an emergency or is the result of Force Majeure. Company agrees that it shall not cause Customer to experience more than 12 Events of Interruption during any *Heating Season*, which, for purposes of this Agreement shall be defined as the period commencing October 1 of any year and concluding April 30 of the following year.
- D. Each party shall, respectively, design, construct, operate and maintain its plant, facilities, equipment and piping in an efficient, safe and reliable manner so that the purpose of this Agreement may be fulfilled. Prior to commencing service under this Agreement and throughout the Term, as defined below, Company shall have the right, but not the duty, to inspect, review and approve the connection of Customer's equipment and piping to Company's steam distribution system. Company's right of inspection shall in no way impose a duty or liability on Company with respect to the lawful, safe or proper operation of Customer's equipment and piping. By executing this Agreement, Customer represents to Company that it is not relying upon Company's expertise or knowledge in connection with the design or operation of Customer's equipment and the redistribution or use of steam within the Building.
- E. Throughout the Term, as defined below, the utility steam service provided by Company shall be the sole source of Customer's space heating and domestic hot water energy requirements for the Building and the sole source of steam service to the Building. Company acknowledges and agrees that the use by Customer of its on-site capability to provide steam to the Building during

an Event of Interruption shall not cause Customer to be in violation of the first sentence of this subparagraph E.

2. TERM OF AGREEMENT AND EARLY TERMINATION

- A. The initial term of this Agreement (such initial term, together with any extension or renewal thereof, the *Term*) shall commence on the *Service Commencement Date*, which for purposes of this Agreement shall be the date hereof, and end on December 31, 2016.
- B. At the end of the initial term, this Agreement shall automatically renew for one five (5) year period, unless either party provides not less than six (6) months prior written notice to the contrary.
- C. If at any time a local regulatory authority, other regulatory authority, or Company judges that Customer's plant or equipment may be unsafe, Company may withhold or discontinue service until Customer has completed corrective actions and the actual or potential unsafe condition has been eliminated. Except in the case of an emergency, Company will attempt to provide Customer with reasonable notice prior to discontinuing or suspending service due to an unsafe condition.
- D. Customer may cancel this Agreement at any time by providing the Company with written notice at least twelve (12) months prior to the effective date of such cancellation and by making, no later than fifteen (15) days after the effective date of the termination of the Agreement, a lump sum early cancellation charge payment to Company equal to the sum of: (1) eight dollars (\$8.00) times the last twelve (12) months invoiced steam use measured in 1,000s of pounds (*Mlbs*), (2) all costs incurred by Company in disconnecting the Building from Company's steam distribution system; (3) an amount equal to all amounts, if any, due with respect to unamortized costs from the date of termination to the end of the amortization period as shown on any then current Schedule, as defined below, with interest thereon as may be set forth in the Schedule or as otherwise determined by Company, and (4) the balance, if any, of any deferred and unpaid FAR (as defined below) charges in Customer's account. Such cancellation charge shall be reduced by any credit balance in Customer's FAR account. Such early cancellation charge shall be in addition to the charges for service received by Customer to the date of termination.
- E. Company may terminate this Agreement upon fifteen (15) days prior written notice to Customer in the event of any default by Customer which default continues for a period of more than fifteen (15) days following a written demand by Company to cure such default. Any cure right that Customer may have pursuant to this Paragraph shall not extend to any default that arises as a result of Customer's failure to make timely payment. In the event of such termination, Customer shall pay to Company a cancellation charge equal to the sum of: (1) eight dollars (\$8.00) times the last twelve (12) months invoiced steam use measured in *Mlbs*, (2) all costs incurred by Company in disconnecting the Building from Company's steam distribution system; (3) an amount equal to all amounts, if any, due with respect to unamortized costs from the date of termination to the end of the amortization period as shown on any then current Schedule, as defined below, with interest thereon as may be set forth in the Schedule or as otherwise determined by Company, and (4) the balance, if any, of any deferred and unpaid FAR charges in Customer's account. Such cancellation charge shall be reduced by any credit balance in Customer's FAR account. This cancellation charge shall be in addition to any other damages incurred by Company as a result of Customer's default, including but not limited to reasonable attorneys' fees and litigation costs, and Company reserves the right to seek such damages from Customer. In lieu of terminating the Agreement upon a default by Customer, Company shall have the right, and may elect, in its sole discretion, to discontinue or suspend service to Customer and the Building upon the giving of such notice as may then be required by law (or upon fifteen

(15) days prior written notice if no notice is then required by law). In the event that Company suspends or discontinues service pursuant to this paragraph, Company reserves the right to seek damages from Customer to compensate Company for all losses, costs, damages and expenses, including but not limited to reasonable attorneys' fees and litigation costs, suffered by Company as a result of Customer's default.

- F. In the event of any suspension or discontinuance of service or cancellation of the Agreement pursuant to this Section 2, Company shall discontinue providing steam and distribution services hereunder, and Customer shall provide Company with such access to Customer's Building and property as Company may reasonably request to remove Company's plant, equipment, facilities and piping, if any. Customer's obligation to provide Company with such access for the purpose of removing such equipment and piping shall survive the termination of this Agreement for so long as Company may reasonably require to remove such equipment and piping.
- G. By executing this Agreement, Customer assents to Company's receipt, in advance, of any such regulatory authority as Company may need to suspend, discontinue, cancel or terminate service pursuant to this Agreement either at the end of the Term of this Agreement or upon early cancellation.
- H. All obligations of Customer that arose prior to the cancellation of this Agreement, including, without limitation, the obligation to pay in full any cancellation charge and any unpaid invoices plus late charges for service provided by Company prior to cancellation, shall survive the cancellation or termination of this Agreement. No eminent domain or condemnation proceedings with respect to the Building's premises shall relieve Customer of its obligations hereunder.
- I. By executing this Agreement, Customer acknowledges that Company's service obligations pursuant to this Agreement involve the incurrence of fixed costs associated with long-lived assets and that cancellation charges specified herein are designed to require Customer to provide Company with sufficient revenue upon early termination to approximate Customer's just and reasonable contribution of a return of and return on the capital invested to make service available pursuant to this Agreement. Customer and Company have agreed to the cancellation charges with the understanding that the calculation of the actual fixed costs incurred by Company to meet Customer's service needs is subject to judgment and assumptions, as it is in any situation involving network utility service and costs incurred to meet the needs in common of multiple customers, and that the method of computing the cancellation charges set forth in this Agreement is appropriate and reasonable.

3. INSTALLATION OF EQUIPMENT

- A. Company shall design, locate, own, construct and install, at its own expense, all equipment and piping necessary for Customer to receive steam from Company at the Point of Delivery in such amounts as may be reasonably required to meet Customer's heating needs as specified herein.
- B. If the Point of Delivery is located within the Building or other structure, then Customer shall provide Company with suitable pipe penetrations through the Building's or structure's wall or foundation or other improvements to provide for suitable space for the installation and maintenance of Company's piping, metering and other plant, facilities or equipment associated with the provision of service to Customer. However, upon Customer's request, Company may elect, in its sole discretion, to install, on behalf of Customer, such pipe penetrations or other improvements for Customer, provided that Customer's request for Company to act in such capacity on behalf of Customer shall obligate Customer to hold Company harmless from any claim or liability arising from Company's actions and provided that Customer first properly executes and delivers to Company the form of release attached hereto as Appendix 3, the terms

and provisions of which, if and when executed and delivered, shall automatically be incorporated into this Agreement. Any costs incurred by Company in undertaking such installation shall be subject to the provisions of Paragraph 5.E below.

4. STEAM USAGE

The initial amount of steam estimated to be needed for Customer's annual use under this Agreement shall be the amount identified in Appendix A attached hereto and incorporated herein (hereinafter, the *Estimated Usage*). In order to assist Company with steam acquisition and distribution capacity planning efforts, Customer shall notify Company of any anticipated changes in Customer's Estimated Usage promptly at such time and from time to time as such Estimated Usage is anticipated to change. By executing this Agreement, Customer acknowledges that failure to provide Company with information identifying anticipated changes in Customer's Estimated Usage may negatively affect Company's ability to timely obtain and distribute sufficient steam to meet Customer's needs.

5. RATES, CHARGES AND BILLING

- A. Customer shall be billed by Company on a billing cycle basis (herein, the *Billing Period*) with approximately twelve (12) Billing Periods in each calendar year and each Billing Period approximating one service month. Company's invoices shall be based on the rates, charges and fees stated herein as applied to Customer's billing determinants during the Billing Period. Customer shall pay Company's invoice within ten (10) days of the invoice date. Any invoice unpaid in full within thirty (30) days of the invoice date shall be deemed late and subject to an additional charge of one and one-half percent (1.5%) per month multiplied by the balance not timely paid or two dollars (\$2.00), whichever is higher. Company's invoice for service supplied to Customer pursuant to this Agreement shall include the following:
- a. *Base Rate*. The *Base Rate* shall be the rate charged to a customer not qualifying for the Interruptible Rate for its monthly metered consumption of steam as set forth in Appendix 1 hereto and shall be multiplied on a bills rendered basis by the total number of Mlbs of steam distributed to such customer by Company during the Billing Period. The *Interruptible Rate* shall be the rate charged to a customer qualifying for the Interruptible Rate for its monthly metered consumption of steam as set forth in Appendix 1 hereto and shall be multiplied on a bills rendered basis by the total number of Mlbs of steam distributed to such customer by Company during the Billing Period.
 - b. *Fuel Adjustment Rider*. The *Fuel Adjustment Rider (FAR)* shall be expressed as a monthly charge per Mlbs or an equivalent value and applied to Customer's monthly consumption so as to permit Company to collect revenue sufficient to recover the cost of fuel obtained and used to produce steam for distribution by Company to its customers. The FAR shall be reconciled periodically by Company, but not more often than once per Billing Period, in the manner specified in Appendix 1 and applied on a bills rendered basis to Customer's consumption for each Billing Period. The FAR may be determined based on estimated consumption information and forward-looking cost and fuel mix estimates provided that such estimates are reconciled with the actual consumption, cost and mix experience. For purposes of this Agreement the cost of fuel subjected to recovery through this charge includes the cost of all forms of energy purchased or otherwise obtained to deliver such fuel, and to maintain and operate the in-plant fuel handling and storage equipment and facilities to deliver fuel to the point of burning, necessary to produce steam for Company's steam distribution system so as to meet Customer's supply and distribution needs.

- c. *GRT Charge.* The total amount of all rates and charges shown on each Billing Period invoice shall be adjusted upwards by a *GRT Charge* specified in Appendix 1. The value of the GRT Charge shall be specified as a percentage calculated so as to permit the billing and collection of incremental revenue sufficient for Company to recover the amount of any gross receipts, sales or other charges to which Company may, from time to time, be subject under the laws and regulations of the State of Ohio or other taxing authority, excluding taxes imposed on net income by federal, state and other taxing authorities. Company shall have the right to amend the GRT Charge from time to time to account for changes in the taxes imposed by the applicable taxing authorities.
 - d. *Regulatory Recovery Charge.* In the event that Company incurs any cost or charge as described in subparagraph D below, the prorated amount determined in accordance with such subparagraph shall be included on customer's invoice for each Billing Period as a *Regulatory Recovery Charge*.
 - e. *Late Charge.* Company shall render invoices to Customer for service for each Billing Period and such invoices shall be due and payable when issued by Company. The *Late Charge* shall be equal to the monthly interest rate specified herein times the balance not timely paid.
- B. *Metering and Billing.* Company shall install metering equipment sufficient to measure Customer's usage of steam and to bill and collect for service provided by Company pursuant to this Agreement. Such metering equipment shall permit Company to measure and, over time, record steam flow and convert this relationship to Mlbs. No person, except a duly authorized employee or agent of Company, shall be authorized herein to alter or interfere with the operation of any Company meter, or its connections, regulators or any other item of plant, facilities or equipment furnished by Company. In the event of an emergency, Customer may operate stop valves and meter stop valves provided that such operation is warranted based on emergency conditions, Customer notifies Company of such operation as quickly as possible, the operation is limited to the duration of the emergency, and provided that the emergency does not arise after Company has discontinued or suspended service to Customer.
- (i) A meter shall be deemed accurate if it is measuring within three percent (3%), more or less, of actual quantities. When a meter fails to accurately register the quantity of steam consumed or returned, Company will change or repair the meter and invoice Customer for the relevant Billing Period(s) based on either of the following methods:
 - a. Estimates of the steam consumed on the basis of past usage during a similar period and under similar conditions; or
 - b. Estimates of the steam consumed on the basis of usage registered by the new or repaired meter during a subsequent period.
 - (ii) Company may inspect and maintain its metering equipment located within the Building, as Company may determine to be reasonably necessary. In the event Customer believes that the meters located within the Building are not operating properly, Customer may request, in writing, a test of the meters, whereupon Company shall conduct a test upon the meters located in the Building. If the results of such test show that the meters have overstated the amount of product used by Customer by at least three percent (3%), then Company shall bear the costs of such test and shall either repair or replace the defective meters at its own expense. In all other cases, Customer shall bear the costs of such test. Customer and Company agree to negotiate in good faith the amount of any billing adjustment, if any, made by Company as a result of any meter test, whether such adjustment would result in payments by, or credits issued to, Customer.

- (iii) Company may, at its option, estimate Billing Period invoices. Differences between estimated bills and actual amounts due for the Billing Period(s) subject to estimated invoices shall be reconciled in the first subsequent invoice that is based on actual meter data. In no event shall Company estimate meter readings for more than three (3) consecutive months unless it is unable to read Customer's meter for reasons beyond Company's control.
 - (iv) Upon request by Customer, Company may, in its discretion, provide Customer with one or more additional Points of Delivery. Unless otherwise specifically agreed by Company, service provided to each Point of Delivery shall be separately metered and billed separately by Company and paid for by Customer.
- C. Other Charges. In the event that any tax, fee, levy, surcharge, assessment, imposition or similar charge (other than a gross receipts tax or other charge included in the GRT Charge set forth 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, invoice, or purchase of products or services supplied or distributed by Company to Customer (or the sale thereof by Company to Customer), the Customer's rates and charges established herein 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 Company is required to collect. In the event that Company is required to collect any such charge or imposition imposed on Customer, Company shall have no obligation at any time to reimburse Customer for any such amount collected or any portion thereof.
- D. Governmental Authority or Insurance Company Mandated Changes or Modifications. Changes or modifications as mandated, from time to time, by any governmental authority or insurance company and required for Company to produce, obtain or distribute steam for its customer's needs are not a part of this Agreement. In the event that Company must incur financial costs for compliance with such requirements, a prorated amount of the total expense from time to time outstanding will be applied by Company to each Mlbs. of steam sold to customers over a reasonable period so as to permit Company to recover the cost thereof.
- E. Mutually Agreed Charges. Upon the mutual agreement of the parties hereto, Company may elect to provide assistance to Customer in installing equipment and/or improvements to the Building related to the use of Company's products or service or the commencement of service to the Building. The type and amount of such assistance to be provided by Company, and the manner of repayment of such costs by Customer, if any, shall be set forth in a supplemental schedule to Appendix 4 to this Agreement (*Schedule*) mutually agreed to by the parties and attached to this Agreement. In the event that Company shall provide such assistance, Customer shall cooperate with Company and execute any instruments, certificates and other documents reasonable requested by Company in connection with providing such assistance, including but not limited to any consents to assignment by Company of this Agreement or any part hereof, or of any revenues hereunder, including any amounts to be paid by Customer pursuant to the Schedule, to any lender providing funds to Company for such assistance or other party.

6. CONDITIONS TO RECEIVE AND MAINTAIN SERVICE AND CHANGES IN CONDITIONS

Customer's rights and Company's obligations under this Agreement are contingent on Customer satisfying the Conditions to Receive Steam Distribution Service (hereinafter, *Conditions*) attached hereto as Appendix 2 and incorporated herein. Customer agrees that Company may, with written notice to Customer change the Conditions to the extent that Company reasonably determines that such changes are necessary for proper, efficient, and safe operation of Company's system provided that such changes shall have effect on a prospective basis commencing thirty (30) days following the

date of Company's written notice. All such changes shall, to the extent practicable, be applied uniformly and shall, on their effective date, automatically become a part of this Agreement without need for Customer and Company to formally execute an amendment or otherwise modify this Agreement.

7. MISCELLANEOUS

- A. Company shall use all commercially reasonable efforts to secure and maintain all necessary permits, easements, ordinances and licenses over private and public property and any other approvals that may be required to operate its distribution system. Company and Customer agree that all obligations of Company to perform under this Agreement are contingent upon and subject to securing and maintaining all such permits, easements, ordinances, licenses and approvals; otherwise, unless specifically agreed to by the parties hereto in writing, this Agreement shall terminate and neither party shall have any further obligation hereunder. Customer agrees to assist and cooperate with Company, and further agrees to permit the installation, operation, maintenance and replacement of service lines and valve pits within and on Customer's property or within the Building, and hereby grants to Company, at no cost to Company, the right to access and use such property and Building for the purpose of performing the actions required or permitted by this Agreement. Company shall provide advance notice and coordinate the installation of such service lines and valve pits with Customer.
- B. Except with regard to Customer's obligation to make payment(s) due pursuant to this Agreement, neither party shall be liable to the other for failure to perform an obligation to the extent such failure was caused by *Force Majeure*. The term *Force Majeure* as employed herein means any cause not reasonably within the control of the party claiming the suspension as further defined herein. Force Majeure shall include, but not limited to the following: (1) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes or tornadoes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, plant or equipment or lines or pipe; (2) weather related events affecting an entire geographic region, such as low temperatures which cause freezing of lines or pipes; (3) interruption or curtailment of steam supply to Company's distribution system; (3) acts of others such as strikes, lockouts, or other industrial disturbances, riots, sabotage, insurrections or wars; and (4) governmental action such as the necessity for compliance with any court order, law, statute, ordinance, regulation or policy having the affect of law promulgated by a governmental authority having jurisdiction. Customer and Company shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance. The party whose performance is prevented by Force Majeure must provide prompt notice thereof to the other party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event and to the extent and duration of Force Majeure.
- C. This Agreement shall inure to the benefit of and be binding upon the parties' respective successors and assigns; provided, however, that Customer shall not be relieved of its obligations and liabilities hereunder, except as set forth below. If there occurs any act (by a transfer of assets, stock or other equity interests, long term lease, management or operating agreement, or otherwise) whereby a third party acquires the right to control the Building or its operations, Customer shall be relieved of its obligations and liabilities hereunder for any obligations not having theretofore accrued only if (i) Customer and such third party execute, respectively, assignment and assumption agreements

substantially in the forms set forth in Exhibits A and B hereto or as otherwise satisfactory to Company in its sole discretion, and (ii) such third party provides evidence reasonably satisfactory to Company of such third party's financial ability to discharge the obligations of this Agreement. Company may assign this Contract upon 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 the assignment shall be a collateral assignment in favor of a secured lender, any such assignment shall relieve Company of all its obligations under this Contract provided that Company obtains any such regulatory approvals for such assignment as may be required. Customer agrees 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 Company may reasonably request in writing in order to evidence Customer's acknowledgment of such assignment and to implement the provisions of this subparagraph. This Agreement does not, and shall not be construed as to confer any rights of a third party beneficiary upon any person or entity.

- D. Customer and Company agree, upon the written request of the other party, to execute and deliver to the other party, or to such person or entity as may be designated by the other party, a certificate which: (a) identifies this Agreement and any amendments and states that this Agreement as so amended is in full force and effect and has not been further amended as of the date of such certificate; (b) specifies the date through which amounts owing under this Agreement have been paid; and (c) states that, to the best of the knowledge of the party delivering such certificate, neither Company nor Customer are in default of any of its respective obligations under this Agreement (or, if any such default is claimed, identifying the same).
- E. This Agreement, including all attachments hereto, sets forth all the understandings between the parties with respect to the Building and any prior contracts or agreements with respect to the Building are superseded by this Agreement, including but not limited to the Interruptible Steam Service Agreement relating to the Building between Dominion Cleveland Thermal, LLC and BRE/City Center, LLC dated March 3, 2002. Except as otherwise specified herein, this Agreement may be amended only by a writing executed by both parties. The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement and shall not be used to construe or interpret the provisions of this Agreement.
- F. If any provision in this Agreement is deemed to be invalid, void or unenforceable by any court or other tribunal having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision of this Agreement and this Agreement shall automatically be modified or reformed to give effect to all remaining provisions hereof.
- G. No waiver of breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
- H. The interpretation and performance of this Agreement shall be governed by the laws of Ohio excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.
- I. Each party to this Agreement represents that it has full and complete power and authority to enter into and perform this Agreement. Each person who executes this Contract on behalf of either party represents and warrants that he, she or it has full and complete power and authority to do so and such party will be bound thereby.
- J. All notices, demands, requests, reports and statements provided for in this Agreement shall be made in writing and sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, hand delivered, or by regular mail addressed as follows:

To Company:

Cleveland Thermal Steam Distribution, LLC

1921 Hamilton Avenue
Cleveland, Ohio 44114
Attention: President

To Customer: PNC Realty Services, a division of
The PNC Financial Services Group, Inc.
1900 East 9th Street
Cleveland, Ohio 44114
Attn: [TITLE]

or to such other address and person as either party may, from time to time, notify the other in writing delivered to the address stated above. Notice will be given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile or other electronic means shall be deemed to have been received upon the sending party's receipt of its facsimile or other transmission machine's confirmation of successful transmission. If the day on which such facsimile or other electronic communication is received is not a business day or is after five p.m. on a business day, then the communication shall be deemed to have been received on the next following business day. Notice by overnight mail or courier shall be deemed to have been received on the business day after it was sent or such earlier time as is confirmed by the receiving party. Notice via regular mail shall be considered delivered five (5) business days after mailing.

- K. Each remedy under this Agreement shall be cumulative and in addition to any other remedy provided by law. The failure of either party to insist on strict performance of any provision under this Agreement, or to take advantage of any right hereunder shall not be construed as a waiver of such provision or right. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege. Any suspension or waiver of a default or other provision under this Agreement shall not suspend, waive or affect any other default or other provision under this Agreement, and shall not be construed as a bar to any right or remedy that a party would otherwise have had on any future occasion.
- L. Any claim or dispute involving an amount in controversy less than \$300,000 that arises out of or related to this Agreement or any breach thereof, shall be resolved by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any arbitration shall be conducted in Cleveland, Ohio. 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 \$300,000 may be resolved by arbitration, but only at the election of the parties at the time of the dispute.
- M. If Company has reasonable grounds for insecurity regarding Customer's performance of any obligation under this Agreement (whether or not then due), including, without limitation, the occurrence of a material change in creditworthiness, Company shall have the right to require that Customer provide adequate assurance of performance and provide sufficient security in the form, amount and for the term reasonably acceptable to Company, including but not limited to a cash security deposit, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty.
- N. Company agrees to indemnify and hold Customer harmless against any loss, damage, expense (including reasonable attorney's fees and litigation costs), or claim for personal injury, death,

property damage, or otherwise arising from Company's distribution of steam to the Point of Delivery pursuant to this Agreement to the extent such loss, damage, expense or claim is determined to be the direct result of a final determination by the PUCO that Company violated its public utility obligations. Customer agrees to indemnify and hold Company harmless against any loss, damage, expense (including reasonable attorney's fees and litigation costs), or claim for personal injury, death, property damage, or otherwise arising from Customer's receipt of steam at the Point of Delivery, Customer's utilization of such steam and Customer's return of water, if any, to Company's distribution system pursuant to this Agreement to the extent such loss, damage, expense or claim is caused by negligence of Customer, its employees or agents.

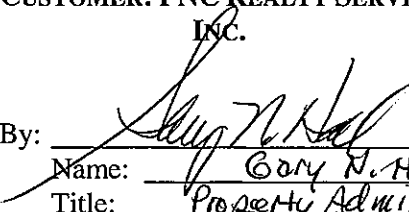
- O. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT AND ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT TO THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT THAT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

[SIGNATURE PAGE FOLLOWS]

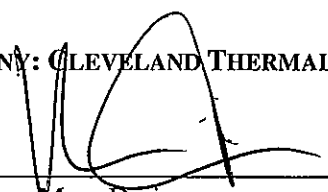
Execution Copy

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date first above written.

CUSTOMER: PNC REALTY SERVICES, A DIVISION OF THE PNC FINANCIAL SERVICES GROUP, INC.

By: 
Name: Gary N. Hall
Title: Property Administrator
Phone: 216-222-1900
Fax: 216 222 0112

COMPANY: CLEVELAND THERMAL STEAM DISTRIBUTION, LLC

By: 
Name: Marc Divis
Title: President
Phone: 216 241-4274
Fax: 216 241-6486

APPENDICES & EXHIBITS

APPENDIX A

THE BUILDING

1. Description of the Building: A 35 story commercial office building located at the intersection of Euclid Avenue and East 9th Street (1900 East 9th Street), Cleveland, Ohio 44114 , commonly known as the PNC Center (formerly the National City Center).
2. Service Commencement Date: Date of Agreement
3. Estimated Usage: 12,000 Mlbs/yr

APPENDIX 1

RATE SCHEDULE FOR STEAM SUPPLY AND DISTRIBUTION SERVICE

Steam Service. Any charge specified below as having a zero value shall not apply. Any charge otherwise identified below or resulting from the foregoing Agreement shall be in addition to the Base Rate. Defined terms used in this Appendix but not defined herein shall have the meanings set forth in the foregoing Agreement unless the context clearly requires otherwise.

Under the foregoing Agreement the *Base Rate* shall be as set forth in the Monthly Base Rate Charge schedule below.

MONTHLY BASE RATE CHARGE PER MLBS OF STEAM

The first 250 Mlbs.	\$13.62
The next 250 Mlbs.	\$11.83
The next 500 Mlbs.	\$ 11.07
The next 2,000 Mlbs.	\$ 10.30
The next 2,000 Mlbs	\$ 9.15
All over 5,000 Mlbs.	\$ 7.50

From and after January 1, 2012 the Base Rate per Mlbs of steam set forth above shall be increased on each January 1 until the end of the Term by a percentage equal to the greater of the Consumer Price Index-All Urban Consumers (*CPI-AUC*) published by the United States Bureau of Labor Statistics for the immediately preceding calendar year (or its equivalent, as determined in the sole discretion of the Company, if such CPI-AUC is no longer published) or 3.00%.

The *Interruptible Rate* shall be the Base Rate stated above times a *Multiplier*, which Multiplier shall be equal to 0.75 for the period extending from the Service Commencement Date through and including December 31, 2011, and thereafter shall be 0.80 for the remainder of the Term. The Interruptible Rate shall be applicable only for so long as Customer qualifies for such Rate in accordance with the Agreement, otherwise the Base Rate shall apply.

FUEL ADJUSTMENT RIDER

- a. The FAR shall be expressed as a monthly charge per Mlbs or an equivalent value and applied to Customer's monthly consumption so as to permit Company to collect revenue sufficient to recover the cost of fuel obtained and used to produce steam for distribution by Company to its customers. The FAR shall be reconciled periodically, but not more often than once per Billing Period, in the manner specified in subparagraph b below and applied on a bills rendered basis to Customer's consumption for each Billing Period.
- b. For the purposes of calculating the FAR, the following shall apply:
Company shall ascertain the weighted average cost of fuels (expressed as cents per million British Thermal Units (*BTU*)) burned in the boilers at plants in which steam is generated for sale under this Agreement (including all direct costs incurred to place fuel at the point of burning in such boilers) from fuel reports filed on a monthly basis with PUCO. The Customer's rates shall be increased each month by applying the average FAR schedule ratio (contained in Sheet 16 of

the PUCO approved tariff of Company) for each full 0.1¢ of the monthly cost of fuel per million BTU. Notwithstanding anything contained in this paragraph or in any PUCO approved tariff, the monthly FAR may also include a portion of the Customers' individual fuel account balance as of the date of this Agreement.

LATE CHARGE

Customer shall pay each invoice rendered by Company within ten (10) days of the date of the invoice. Any invoice unpaid in full by the thirtieth (30th) day after the invoice date shall be deemed late and subject to an additional charge of one and one-half percent (1.5%) per month multiplied by the balance not timely paid or \$2.00, whichever is higher.

GRT CHARGE

The total amount of all rates and charges shown on the invoice from Company to Customer for each Billing Period shall be adjusted upward by .04986 (4.986 percent) to reflect the currently applicable taxes and other charges included in the GRT Charge as of the date of the Agreement to compute the total Billing Period invoice.

APPENDIX 2**CONDITIONS TO RECEIVE AND MAINTAIN SERVICE**

As stated in Paragraph 6 of the foregoing Agreement, Customer's rights and Company's obligations under this Agreement are contingent on Customer satisfying the Conditions to Receive Steam Distribution Service (*Conditions*) set forth in this Appendix and incorporated in such Agreement. Customer agrees that Company may, with written notice to Customer change the Conditions to the extent that Company reasonably determines that such changes are necessary for proper, efficient, and safe operation of Company's system provided that such changes shall have effect on a prospective basis commencing thirty (30) days following the date of Company's written notice. All such changes shall, to the extent practicable, be applied uniformly and shall, on their effective date, automatically become a part of this Agreement without need for Customer and Company to formally execute an amendment or otherwise modify this Agreement.

Company shall use its best efforts to obtain and distribute steam to Customer at sufficient pressure for Customer's needs. Company shall use commercially reasonable efforts to provide Customer with continuous steam distribution service

1. Customer shall give immediate notice to Company of any leakage or escape of steam.
2. All repairs to or replacements of Customer's piping and equipment shall be made promptly by the Customer at Customer's expense and shall not interfere with Company's ability to meet the service needs of its other customers.
3. Customer shall provide Company's duly authorized representatives with access at all reasonable times and to all of Company's property on the premises of Customer and on all other premises which Customer may own or control for the purposes of meeting Company service responsibilities to Customer and its other customers. Company shall attempt to provide Customer with reasonable notice prior to accessing such property provided that the access sought by Company is not related to an existing or impending emergency condition.
4. On or prior to the Service Commencement Date, Company shall furnish shut-off valves and cathodic protection isolation flanges when, in Company's judgment, such equipment is needed to efficiently and safely meet Customer's service needs. Company shall also furnish the meter flow element, the meter proper and the necessary electronics and recorders and Customer shall properly install such items. Customer shall provide to Company, at Customer's expense and at a location or locations Company determines to be suitable, 120-volt, 60-cycle, single-phase and reliable electricity supply. Customer shall also provide to Company, at Customer's expense and at a location or locations Company determines to be suitable, secure land phone line, Ethernet, LAN, cable or WAN access communications capability suitable to meet Company's metering, monitoring and data collection needs.
5. Customer shall provide the temperature control indicated for the control valves in accordance with Company's specifications.

APPENDIX 3

CUSTOMER RELEASE PIPE PENETRATIONS

This CUSTOMER RELEASE PIPE PENETRATIONS (*Release*) is attached to that certain Standard Interruptible Steam Supply and Distribution Agreement, dated as of the _____ day of _____, 20, (*Agreement*) between Cleveland Thermal Steam Distribution, LLC (*Company*) and _____ (*Customer*) and, when executed by Customer, shall automatically be incorporated into the Agreement. Defined terms used but not defined in this Release shall have the meanings set forth in the Agreement.

By executing this Release, Customer acknowledges and agrees that, pursuant to Paragraph 3.B of the Agreement, it has requested Company to install pipe penetrations through the Building's or structure's wall or foundation or other improvements to provide for suitable space for the installation and maintenance of Company's piping, metering and other plant, facilities or equipment associated with the provision of service to Customer and Company has elected, subject to the execution of this Release by Customer, to install such pipe penetrations.

Customer, for and in consideration of the installation by Company of the wall sleeves for the pipe penetrations in the Building or other improvements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does for itself and all of its affiliates and related business entities, and each of their present and former parents, subsidiaries, affiliates, officers, directors, partners, shareholders, employees, agents, representatives, successors and assigns, hereby remises, releases and forever discharges, and covenants not to sue, the Company and anyone acting in concert or participation with it, whether acting individually or otherwise through any other person or entity, and all of their affiliates and related business entities, and each of their present and former parents, subsidiaries, affiliates, officers, directors, partners, shareholders, employees, agents and representatives, successors and assigns, from any and all actions and causes of action, damages, suits, debts, accounts, bonds, contracts, promises, judgments, costs, claims and demands whatsoever, of any nature, kind or description, at law or in equity, which they had, now have or which they or any of them may have in the future, by reason of anything done or omitted by any person or entity, or by reason of any matter, cause, thing or event whatsoever, from the beginning of time, whether known or unknown at the present time, arising out of or in any way relating to or connected with, directly or indirectly, Company's provision of wall sleeves for the pipe penetrations in the Building.

Customer:

By: _____
Name: _____
Title: _____

Date: _____, 20____

APPENDIX 4

Amortization of Costs

In accordance with Paragraph 5.E of the foregoing Agreement between Customer and Company, Company may elect to incur certain costs in connection with the construction and installation of certain improvements on behalf of Customer, which costs Customer would be obligated to repay to Company, with interest, as mutually agreed by the parties or upon early termination of such Agreement. The purpose of this Appendix is to identify how such costs shall be amortized for purposes of such repayment, including the determination of any unamortized balance of such costs that Customer shall pay Company upon early termination of such Agreement.

The estimated costs to be incurred by Company pursuant to Paragraph 5.E of the foregoing Agreement shall be determined by Company and Company shall provide Customer with written notice of such estimated costs, whereupon Company and Customer shall mutually agree upon the schedule and manner of repayment and applicable interest rate and include such calculation in the Schedule to be attached hereto. If the actual costs of such improvements, as determined upon completion thereof, differ from the initial estimates included in the Schedule, the Schedule shall be modified to reflect such actual costs. Upon any early termination pursuant to Paragraph 2 of the foregoing Agreement, any unpaid and unamortized costs as shown on the then current Schedule as of the effective date of termination shall be due and owing from Customer to Company as part of the cancellation charge set forth in the applicable provision in Paragraph 2.

Notwithstanding anything contained in this Appendix, the Agreement or elsewhere, nothing shall obligate Company to incur any costs pursuant to Paragraph 5.E or this Appendix until the Schedule has been agreed to by Company and Customer and attached hereto.

Appendix 5
TYPICAL INTERCONNECTION DIAGRAM

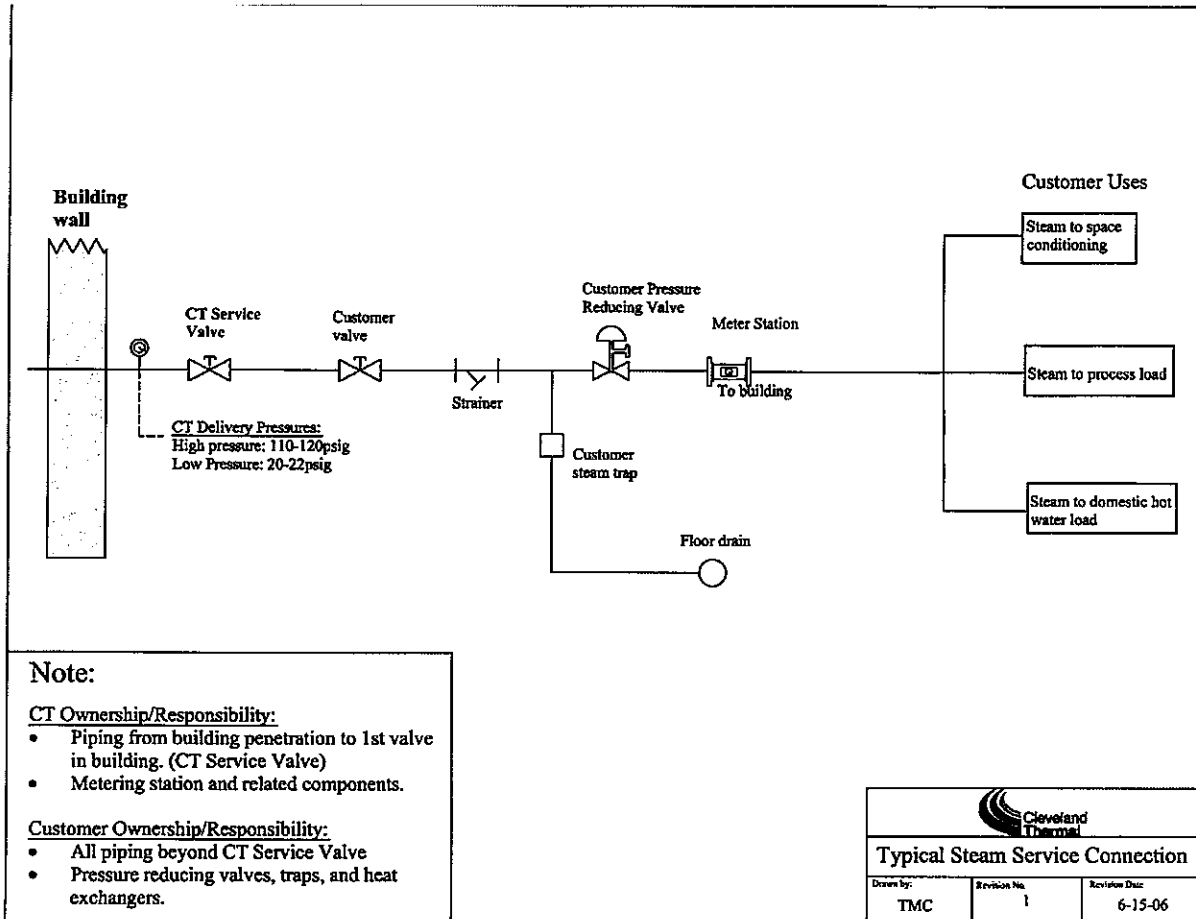


Exhibit A

[Letterhead of Assignor]

[Date]

Cleveland Thermal Steam Distribution, LLC
1921 Hamilton Avenue
Cleveland, Ohio 44114
Attention: President

Re: Assignment of Standard Interruptible Steam Supply and Distribution Agreement

Ladies and Gentlemen:

Cleveland Thermal Steam Distribution, LLC ("Company") and _____ ("Assignor") entered into a Standard Interruptible Steam Supply and Distribution Agreement ("Agreement") dated _____, 20____, pursuant to which Company agreed to provide steam utility service to Assignor. Assignor now desires to transfer its right, title, interest and obligations in the Agreement to _____ ("Assignee"), pursuant to the terms and conditions of this Assignment of Standard Interruptible Steam Supply and Distribution Agreement (this "Assignment").

1. Assignor hereby irrevocably assigns, conveys, transfers and sets over to Assignee all of Assignor's right, title, interest and obligations in and to the Agreement.

2. Assignor represents and warrants to Company as follows: (i) this Assignment has been duly and validly executed and constitutes the legal, valid and binding obligation of each the Assignor and Assignee, enforceable against each of the Assignor and the Assignee in accordance with its terms; (ii) the Agreement remains in full force and effect and is enforceable against Assignor and Assignee; (iii) the execution, delivery, performance and effectiveness of this Assignment shall not operate, nor be deemed to be nor construed as, a waiver of any right, power or remedy of the Company under the Agreement, any term, provision, representation, warranty or covenant contained in the Agreement, or any other documentation executed in connection therewith; (iv) none of the provisions of this Assignment shall constitute, be deemed to be or construed as, a waiver of any event of default under the Agreement; and (v) Assignor and Assignee are in compliance with all of the terms and provisions set forth in the Agreement on their part to be observed or performed, and no event of default specified the Agreement, nor any event which upon notice or lapse of time or both would constitute such an event of default, has occurred and is continuing.

3. The terms, covenants, conditions and warranties herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns; subject, however, to all limitations on further assignment or transfer contained in the Agreement. In the event any provision of this Assignment should be invalid, the validity of the other provisions hereof and of the Agreement shall not be effected thereby. This Assignment shall be governed by and construed in accordance with the laws of the State of Ohio.

Execution Copy

ASSIGNOR:

By: _____

Name: _____

Title: _____

Accepted:
Cleveland Thermal Steam Distribution, LLC

By: _____

Name:

Title:

Date:

Exhibit B

[Letterhead of Assignee]

[Date]

Cleveland Thermal Steam Distribution, LLC
1921 Hamilton Avenue
Cleveland, Ohio 44114
Attention: President

Re: Assumption of Standard Interruptible Steam Supply and Distribution Agreement

Ladies and Gentlemen:

Cleveland Thermal Steam Distribution, LLC ("Company") and _____ ("Assignor") entered into a Standard Interruptible Steam Supply and Distribution Agreement ("Agreement") dated _____, 20____, pursuant to which Company agreed to provide steam utility service to Assignor. _____ ("Assignee") now desires to assume and comply with all of the terms, provisions, conditions, warranties and covenants contained in the Agreement, pursuant to the terms and conditions of this Assumption of Standard Interruptible Steam Supply and Distribution Agreement (this "Assumption").

1. Assignee hereby assumes, agrees and covenants with the Assignor and Company to perform and comply with all of the terms, provisions, conditions, warranties and covenants contained in the Agreement, under the terms thereof, as are to be performed and complied with by the Assignor. This Assumption by Assignee is specifically made for the benefit of Company, and from and after the date of the execution of this Assumption. Assignee acknowledges, covenants and agrees that Company may enforce all the terms, conditions and provisions of the Agreement against Assignee to the extent as if Assignee were originally named as the Customer in the Agreement.

2. Assignee represents and warrants to Company as follows: (i) this Assumption has been duly and validly executed and constitutes the legal, valid and binding obligation of each the Assignor and Assignee, enforceable against each of the Assignor and the Assignee in accordance with its terms; (ii) the Agreement remains in full force and effect and is enforceable against Assignor and Assignee; (iii) the execution, delivery, performance and effectiveness of this Assumption shall not operate, nor be deemed to be nor construed as, a waiver of any right, power or remedy of the Company under the Agreement, any term, provision, representation, warranty or covenant contained in the Agreement, or any other documentation executed in connection therewith; (iv) none of the provisions of this Assumption shall constitute, be deemed to be or construed as, a waiver of any event of default under the Agreement; and (v) Assignor and Assignee are in compliance with all of the terms and provisions set forth in the Agreement on their part to be observed or performed, and no event of default specified the Agreement, nor any event which upon notice or lapse of time or both would constitute such an event of default, has occurred and is continuing.

3. The terms, covenants, conditions and warranties herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns; subject, however, to all limitations on further assignment or transfer contained in the Agreement. In the event any provision of this Assumption should be invalid, the validity of the other provisions hereof and of the Agreement shall not be effected thereby. This Assumption shall be governed by and construed in accordance with the laws of the State of Ohio.

ASSIGNEE:

By: _____

Name: _____

Title: _____

Accepted:
Cleveland Thermal Steam Distribution, LLC

By: _____

Name:

Title:

Date:

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/15/2011 1:10:41 PM

in

Case No(s). 11-5764-HT-AEC

Summary: Application In the Matter of the Application of Cleveland Thermal Steam Distribution LLC for Approval of a Standard Interruptible Steam Supply and Distribution Agreement with PNC Realty Services electronically filed by Ms. Vicki L. Leach-Payne on behalf of Hummel, Gretchen J. Ms. and Cleveland Thermal Steam Distribution LLC