

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Cleveland Thermal Steam Distribution, )  
LLC for Approval of an Amendment )  
to the Steam Supply and Distribution )  
Agreement with 800 Superior LLC. )

Case No. 15-0032-HT-AEC

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**APPLICATION FOR APPROVAL OF AN AMENDMENT OF  
AN EXISTING INTERRUPTIBLE STEAM SERVICE  
AGREEMENT**

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**January 7, 2015**

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

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Pursuant to Section 4905.31, Revised Code, Cleveland Thermal Steam Distribution, LLC (“Cleveland Thermal”) submits an amendment to an Interruptible 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) The Commission approved the Agreement between Dominion Cleveland Thermal, LLC, the predecessor in interest of Cleveland Thermal and IPC McDonald Properties, LLC, predecessor in interest to 800 Superior LLC (“800 Superior”) in Case No. 02-2760-HT-AEC. The Agreement is attached hereto as Attachment A.

3) This Application seeks approval of an amendment to the Agreement (“Amendment”). The Amendment is attached hereto as Attachment B.

4) The Amendment is the result of ongoing negotiations between the parties while the parties are reviewing changes in the scope of services provided by Cleveland Thermal to 800 Superior.

5) The Amendment provides for the following:

- a) References to Customer in the Agreement shall refer to the customer referred to in the Amendment; references to Company or Dominion shall refer to Cleveland Thermal; the term "Agreement" shall refer to the Agreement, including the Amendment; and "Mlb" shall refer to "MMbtu" as defined in the Amendment.
- b) Paragraph 2 of the Agreement is amended in its entirety and states that the term of the Agreement shall continue to December 31, 2015.
- c) Paragraph 5 is amended in its entirety and states pricing terms consistent with Cleveland Thermal's current pricing terms of a Consumption Rate, Purchased Steam Cost Recovery Charge, GRT Charge, Late Charge, Regulatory Recovery Charge, and Rate Ceiling in lieu of the current structure of charges. In Case No. 13-2369-HT-AEC (pricing terms other than the Rate Ceiling) and in the case approving the Agreement (the Rate Ceiling), the Commission previously approved similar pricing.
- d) Paragraph 8.0 is amended in its entirety to identify the parties to which notice is to be provided.

6) The provision of steam service by Cleveland Thermal to 800 Superior would be a continuation of existing service and will not impair or reduce the quality of

service to other Cleveland Thermal customers. There is no revenue not collected under this proposed Amendment that would be recovered from other customers of Cleveland Thermal.

7) The Agreement as amended by the Amendment is lawful, just, and reasonable.

**WHEREFORE**, Cleveland Thermal respectfully requests the Commission to approve the Amendment of the Agreement between Cleveland Thermal and 800 Superior.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (Reg. No. 0025469)

Counsel of Record

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willing to accept service by e-mail

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

## **ATTACHMENT A**

## INTERRUPTIBLE STEAM SERVICE AGREEMENT

This Steam Service Agreement (the "Agreement") is made and entered into this September 15 of, 2004 between **DOMINION CLEVELAND THERMAL, LLC** ("COMPANY") and **IPC McDonald Properties, LLC** ("Customer"), located at 800 Superior Avenue, Cleveland, Ohio 44114-2601 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 generally described in this Agreement.

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 and/or cooling 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, 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.
  - (a) Service is provided on an "interruptible" basis, meaning, that, with prior notice of 24 hours to Customer, Company may, depending on its system condition and without liability to Customer, temporarily suspend steam service, until such time as Company determines service shall be restored.
  - (b) Annually Customer will demonstrate the capability to provide, independent of Company's service, steam service to the Premises. In the event Customer is not able to provide steam service to the Premises, the rates for Standard Steam Service are immediately in effect and charged accordingly. In the event Customer cannot provide on-site steam service as requested by Company, Customer will be invoiced at the difference between the Standard Steam Service rates and the Interruptible steam service for the current month service is requested and previous

month. If within any 12-month period, Customer fails on three occurrences to demonstrate acceptable "interruptible" capability; the rate for steam will be permanently increased to the Standard Steam Service rate.

2. Term. The term during which Company will provide and Customer will use steam utility service for the Premises under this Agreement shall commence on November 1, 2004 (the "Effective Date") and, unless earlier terminated by either party pursuant to Paragraph 6 hereof, shall continue thereafter until December 31, 2014. This agreement may be renewed for one additional term of ten years by mutual agreement.

3. Premises. This Agreement relates to the provision of steam utility service to the Premises identified in the initial Paragraph hereof. Those Premises may be added to 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 should be the sole source of Customer's 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 paragraphs 5 A, B and C of this agreement:

- A. Steam Heating Service. The Base Rate for Steam Heating Service will be the lesser of the current Standard Steam Service Rate or the BOMA Steam Service rate, whichever is applicable, or it's equivalent, a copy of which is included in this document, multiplied by a "Multiplier", which in the initial year shall be 51%. The Multiplier shall be adjusted in the manner provided in Section 5.E.
- B. Fuel Adjustment Rider. Dominion shall ascertain the weighted average cost of fuels burned by Dominion for steam utility service for each month (including all direct costs incurred by Dominion 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 17 of the PUCO approved tariffs of Dominion) for each full 0.1¢ of the monthly cost of fuel per million BTU. Notwithstanding anything contained in Paragraph 5.B of this Agreement or in any PUCO approved tariffs to the contrary, the amount by which the Customer rates shall be increased during the term hereof shall never be less than \$5.60, nor more than \$6.60 per 1,000 pounds of

steam service used by Customer during any billing month, but in the event either of the foregoing limits shall apply, the actual amount by which the Customer rates would be increased or decreased if such limits were inapplicable shall be furnished to Customer with or as a part of its monthly billing.

- a. The Fuel Adjustment Rider will remain fixed at \$6.60 per Mlb until March 31, 2007.

C. The Tax Rider. The current applicable Ohio gross receipts tax rate is 4.75%. The Customer's rates and charges under Paragraphs 5.A and 5.B above shall be increased by applying a 4.75% surcharge to recover the Ohio gross receipts tax for so long as Dominion shall be required to pay such gross receipts tax. There is currently no other tax, fee, levy, surcharge or similar cost imposed on the amount of steam sold to or consumed by Customer. If any other tax, fee, levy, surcharge or similar cost is imposed on Dominion or Customer during this Agreement, the Base Rates and Fuel Adjustment Charges will not be adjusted to alter Customer's charges, nor will Customer be assessed any such tax, fee, levy, surcharge or similar cost; provided, however that such other tax, fee, levy, surcharge or similar cost, if intended by the applicable governmental entity to be imposed upon and paid by Customer based upon Customer's consumption or usage of steam, will be assessed to Customer to the extent required under state law. If such other tax, fee, levy, surcharge or similar cost is imposed upon Customer and is required under state law to be paid directly by Customer, Dominion shall reimburse such amount to Customer on Customer's monthly bill as such amounts are assessed to Customer.

D. Rate Ceiling. Notwithstanding anything contained in Paragraph 5 of this Agreement to the contrary, it is agreed that the rates charged for steam service shall in no event exceed the PUCO approved tariff rates during the term of this Agreement.

E. Inflation Indexing Adjustment. On January 1<sup>st</sup> of each year subsequent to the first year, the Multiplier will increase by .05. For example, in the first year, the Multiplier is .51; in the second year the Multiplier will be .56; in the third year, the Multiplier will be .61 and so on until a maximum of .85 is reached.

6. Termination Charges This Agreement may be terminated by customer upon twelve months prior written notice or payment upon effective date of termination of the following:

- A. A lump sum amount, which shall be equal to the following:



- (1) A lump sum, determined by multiplying the total of the last 12 months steam usage in Mlbs. by \$4.00 per Mlb., or a maximum of \$50,000. If twelve months written notice is provided by certified mail, this charge will be \$1.00 per Mlb.

plus;

- (2) A disconnect charge equal to the sum of all reasonable costs incurred by Company in disconnecting its central system from Customer's steam system.

Plus;

- (3) All unpaid or unamortized connection/conversion costs referenced in Schedule A of this Agreement.

#### 7. Termination.

A. If Customer fails to pay any charges properly billed to Customer by Company within the 30-day period referenced in Paragraph 8.C or fails to perform any of Customer's obligations to Company, Company shall have the right to discontinue its service upon 30 days' written notice to Customer; provided, however, that in the case of a payment default, Customer may avoid termination by bringing his account current prior to the expiration of said 30-day notice period. In the event that Company discontinues service to Customer pursuant to this Paragraph 7.A, 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, provided however, Customer shall not be liable for indirect or consequential damages.

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 either party Company shall have the right to discontinue the supply of steam and terminate this Agreement forthwith. Either party will provide notice to the other party of any termination of the Agreement under this Paragraph 7.B as promptly as practicable.

C. Upon termination of the Agreement under this Paragraphs 6 and 7, Company shall have the right to enter the Premises and remove all of Company's equipment, including without limitation, all meters installed therein. Company shall repair all damages caused to the premises by such reentry and removal to the Customer's reasonable satisfaction.

#### 8. Miscellaneous.

A. 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. Provided that such rules and regulations shall at all time be reasonable and the same shall be applied uniformly to all customers.

B. 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 the Customer in his presence if desired by him 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, the 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, no fees or expense shall be paid by the Customer and Company shall furnish a new meter or repair the existing meter without charge to the 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.

C. Company shall render bills on a monthly basis unless Company determines that a different billing period is necessary or convenient. In the event, a billing period other than the existing range is necessary, written notice will be give to customer. All bills shall be due and payable upon presentation. If Company has not received payment on any bill within 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.

D. 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 12 months, plus thirty percent of the monthly estimated charge. Company shall accrue and pay interest at the annual rate of 4% on deposits held more than 180 days and shall: (a) refund such deposit including interest accrued to date to a Customer who has paid all bills for service for 12 consecutive months without having had service discontinued for nonpayment of his bill and without having had more than two occasions on which his bill was not paid by the time specified by the regulations of Company regarding prompt payment of bills and

the Customer is not then delinquent in the payment of his bills; or (b) promptly apply the Customer's deposit, including interest accrued to date, to the final bill for service upon termination or discontinuance of service. If after 12 consecutive months the Customer has not paid its bill on time on three or more occasions or the Customer's service has been discontinued for non-payment of service, Company shall retain the deposit for another 12 months, accruing interest during that time, and shall reevaluate the Customer's status again at the end of a second 12-month period. Any remaining deposit in excess of the final bill for service shall be promptly refunded or credited to the Customer. If the Customer cannot be located, any unclaimed deposit, plus accrued interest, shall be disposed of in conformity with Chapter 169 of the Ohio Revised Code.

E. 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 24 hours advance notice. In the event of an emergency, Company will give Customer as much advance notice as practical.

F. 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.

G. Subject to the limitation on the liability of Company for interruptions in the delivery of steam service as provided in Paragraph 8.G, Company agrees to indemnify and hold Customer 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 negligence of Company, its employees, and agents. Customer agrees to indemnify and hold Company, its employees, and agents 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 negligence of Customer, its employees, or agents. Customer agrees to pay Company for any repairs to or loss of Company's personal property or fixtures in the Premises when such repairs are necessitated, or loss occasioned, by negligence on the part of the Customer, its agents, tenants, employees, or invitees, or by its failure to comply with the aforementioned rules and regulations.

H. Customer hereby grants Company permission to enter the Premises during normal business hours, with prior notification, 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.

I. Customer shall not supply steam to anyone or allow anyone to take steam from its system, except for use on the Premises for space heating and cooling use.

J. 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.

K. 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. In the event Customer (i) conveys fee title to the Premises to a third party and (ii) assigns its interest in this Agreement to the same third party and if that third party executes a written agreement in a form reasonably satisfactory to Company (wherein such third party assumes and agrees to keep and perform promptly all of the Customer's obligations under this Agreement to be kept and performed from and after the 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. In the event the Company fails to approve the assignee, the Customer may terminate this agreement with payment of all steam service invoices applicable and the unamortized fees and charges as described in Schedule A of this Agreement. In the event Company (I) conveys fee title to substantially all of its assets used in the production of steam to a third party and (II) assigns its interest in this Agreement to the same third party, and if that third party executes a written agreement wherein such third party assumes and agrees to keep and perform promptly all of Company's obligations under this Agreement to be kept and performed from and after the date of assignment, then Company shall be relieved of all its obligations under this Agreement not having theretofore accrued. Notwithstanding any other provision of this Agreement, Company and Customer agree that Company's performance under this Agreement shall be solely for the benefit of Customer. This Agreement shall not be construed as to confer any rights of a third party beneficiary upon any person or entity.

L. 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.

M. 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 mutually agreeable alternative dispute resolution techniques, or arbitration 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. 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 at the election of the parties at the time of the dispute.

N. 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.

- 1) In the event such a surcharge is applied as stated in paragraph O of this agreement, and the average annual charge for steam service as referenced in paragraph 5 of this agreement, is increased over 15% of the previous annual average charge for steam service, Customer may terminate this agreement by providing written notice, payment for steam service delivered, and the unamortized fees and charges as described in Schedule A of this Agreement.

O. 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:

**DOMINION CLEVELAND THERMAL, LLC:**

Dominion Cleveland Thermal, LLC  
1801 East 12th Street  
Suite 201  
Cleveland, Ohio 44114  
Attention: President  
(216) 241-363

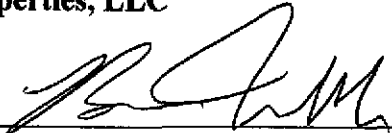
**IPC REAL ESTATE MANAGEMENT, LLC**  
**Agent For: IPC McDonald Properties, LLC**

IPC McDonald Properties, LLC  
800 Superior Ave., Suite 1  
Cleveland, OH 44114  
Attention: Property Director  
(216) 241-8365

Q. This Agreement is subject to all federal, state and local laws and to the regulations or orders of any governmental agency with jurisdiction over it, but the Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

**IPC REAL ESTATE  
MANAGEMENT, LLC.**


**Agent For: IPC McDonald  
Properties, LLC**

By:   
Bruce Wibbels

Title: \_\_\_\_\_  
President

Date: \_\_\_\_\_ 9/15/04 \_\_\_\_\_

**DOMINION CLEVELAND THERMAL, LLC**

By:   
Marc G. Davis

Title: \_\_\_\_\_  
General Manager

Date: \_\_\_\_\_



## **ATTACHMENT B**



## SCHEDULE A

### 1. AMENDMENT TO STEAM SERVICE AGREEMENT

This Amendment ("Amendment") is dated September, 15 2004 and amends the Steam Service Agreement dated the same between the **IPC McDonald Investment Center** ("Customer") and Dominion Cleveland Thermal, LLC, "Company". This Amendment will be attached to the Agreement as Schedule A.

Only those terms and conditions specifically amended below will supersede the existing terms and conditions of the Agreement. All other terms and conditions in the existing Agreement not inconsistent herewith will remain in full force and effect. Effective on the date of this executed Amendment.

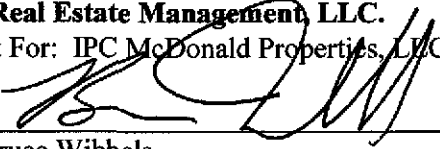
P. Company agrees to provide a turnkey steam connection/conversion to Customer, a value of \$650,000. Upon completion and commencement of steam service to building, Customer agrees to pay \$ 200,000 of the final connection/conversion costs. Company agrees to invoice monthly over the next 24 months at annual interest rate of 8%, and as a separate line item appearing on the monthly steam invoice

Q. In the event this agreement is terminated prior to December 31, 2014, the unamortized portion of the steam service connection/conversion cost not participated by Customer, will be due, and if applicable, the unpaid balance remaining as described in paragraph R of this Amendment. See sample schedule below for paragraph S amortization.

Year one	\$ 450,000	Year six	225,000
Year two	\$ 405,000	Year seven	\$180,000,
Year three	\$ 360,000	Year eight	\$ 130,000,
Year four	\$ 315,000	Year nine	\$ 90,000
Year five	\$ 270,000	Year ten	\$ 45,000

Executed by:

**IPC Real Estate Management, LLC.**  
Agent For: IPC McDonald Properties, LLC.

By:  (Name)  
Bruce Wibbels (Title)  
President

Date: \_\_\_\_\_

**Dominion Cleveland Thermal, LLC**

By:  (Name)  
Marc G. Davis (Title)  
General Manager

Date: \_\_\_\_\_

## SCHEDULE B

### AMENDMENT TO STEAM SERVICE AGREEMENT

This Amendment ("Amendment") is dated September, 15 2004 and amends the Steam Service Agreement dated the same between the **IPC McDonald Investment Center** ("Customer") and Dominion Cleveland Thermal, LLC, "Company". This Amendment will be attached to the Agreement as Schedule B.

### Letter of Memorandum

Considering the best interests of the Customer and Company are served by maintaining efficient operating conditions, Customer agrees to provide sufficient notice of start up or shut down of steam drive chillers on a daily basis, when applicable. Sufficient notice is agreed to be a phone call to the Control Room Operator/s about 60 minutes prior to each occurrence, or best efforts under abnormal circumstances or conditions. Current phone numbers, cell phones and pages are listed below.

Lead Operator - Canal Road Control Room (216) 241-5987

Canal Road Plant Operations Manager

Cell Phone: (216)-559-0018

Pager: (216) 573-0174

Lead Operation - Hamilton Avenue Control Room (216) 241-7943

Hamilton Ave. Plant Operations Manger

Cell Phone: (216)-559-0018

Pager: (216) 573-0174

Executed by:

**IPC Real Estate Management, LLC.**

**Agent For: IPC McDonald Properties, LLC**

By:

  
Bruce Wibbels

(Name)

(Title)

President

Date:

**Dominion Cleveland Thermal, LLC**

By:

  
Marc G. Divis  
General Manager

(Name)

(Title)

Date:

## **Third Amendment to Interruptible Steam Service Agreement**

This THIRD AMENDMENT TO INTERRUPTIBLE STEAM SERVICE AGREEMENT (hereinafter, this *Third Amendment*) is entered into as of the 1st day of January, 2015, between 800 Superior LLC, located at 800 Superior Avenue, Cleveland, Ohio 44114 (hereinafter, the *Customer*), and Cleveland Thermal Steam Distribution, LLC (hereinafter, *Company*), located at 1921 Hamilton Avenue, Cleveland, Ohio 44114, for the purpose of amending and supplementing that certain Interruptible Steam Service Agreement dated September 15, 2004, (as previously amended, the *Original Agreement*, and together with this Third Amendment and any further amendment and supplements, the *Agreement*) between Cleveland Thermal, LLC (the parent and sole member of Company formerly known as Dominion Cleveland Thermal, LLC) on behalf of Company and IPC McDonald Properties, LLC, predecessor owner of the Premises and assignor of the Original Agreement to Customer, as assignee and successor owner of the Premises.

### **RECITALS**

- A. Capitalized terms used herein shall have the respective meanings ascribed thereto in the Original Agreement unless otherwise defined in this Third Amendment or the context shall otherwise require.
- B. The Recitals contained in the Original Agreement are incorporated into this Third Amendment.
- C. The parties hereto have determined that it is in the best interests of the Customer and the Company to amend and supplement the Original Agreement to provide, among other things, for an extension of the term of the Agreement.

**NOW, THEREFORE**, for the foregoing reasons and 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. **Incorporation of Recitals.** The Recitals to this Third Amendment are incorporated into this Section 1 of this Third Amendment.

2. **Amendments to the Original Agreement.** The parties hereto agree that the Original Agreement is hereby amended and supplemented as follows:

(a) All references in the Original Agreement to: (i) "Customer" shall mean and refer to Customer as defined in this Third Amendment; (ii) "Company" or "Dominion" in the Original Agreement shall mean and refer to Company as defined in this Third Amendment; (iii) "Agreement" shall mean and refer to Agreement as defined in this Third Amendment; and (iv) "Mlb" shall mean and refer to MMbtu as defined in this Third Amendment; and from and after the date of this Third Amendment, the Agreement shall incorporate such terms as if fully set forth in the Original Agreement.

(b) Paragraph 2 of the Original Agreement is amended in its entirety to read as follows:

"2. **Term.** The term during which Company will provide and Customer will use steam utility service for the Premises under this Agreement shall commence on November 1, 2004 and, unless earlier terminated by either party as permitted under this Agreement, shall continue until December 31, 2015."

(c) Paragraph 5 of the Original Agreement is amended in its entirety to read as follows:

**“5. Charges.** Subject to Paragraph 8.C. below, Customer shall be billed by Company on a monthly basis. Company’s invoices shall be based on the rates, charges and fees stated herein as applied to Customer’s billing determinants during a billing period. Company’s invoices for service supplied to Customer pursuant to this Agreement shall include the following:

(i) *Consumption Rate.* The Consumption Rate shall be either the Base Rate or the Interruptible Rate, as applicable, and shall be multiplied on a bills rendered basis by the total number of 1,000,000 British Thermal units (*MMbtu*) of steam distributed to such customer by Company during the billing period. 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 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.

(ii) *Purchased Steam Cost Recovery Charge.* The *Purchased Steam Cost Recovery Charge* shall recover the dollar-for-dollar delivered cost of the steam which Company purchases to meet Customer’s steam requirements at the point of delivery of steam to the Premises. The Purchased Steam Cost Recovery Charge shall be adjusted and reconciled periodically based on such delivered cost in accordance with the formula specified in Appendix 1 and multiplied, as adjusted on a bills rendered basis, to the total number of MMbtus of steam distributed to Customer by Company during each billing period.

(iii) *GRT Charge.* The total amount of all rates and charges shown on each monthly 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.

(v) *Late Charge.* The *Late Charge* shall be equal to the monthly interest rate specified in Paragraph 7.C for late payment times the balance of any invoice not timely paid.

(vi) *Regulatory Recovery Charge.* In the event that Company incurs any cost or charge as described in Paragraph 8.N. below, the prorated amount determined in accordance with such Paragraph shall be included on Customer’s monthly invoice as a *Regulatory Recovery Charge*.

(vi) *Rate Ceiling.* Notwithstanding anything contained in this Paragraph 5 to the contrary, it is agreed that the rates charged for steam service during the term of this Agreement shall in no event exceed the Company’s PUCO approved tariff rates.”

(d) Paragraph 8.O. is amended in its entirety to read as follows:

“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  
Fax: 216-241-6486

To Customer: 800 Superior LLC  
c/o Guggenheim Commercial Real Estate Group  
23215 Commerce Park, Suite 214  
Beechwood, OH 44122  
Attn: Michael Guggenheim  
Fax: 216-765-1719

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."

(e) The Original Agreement is amended and supplemented by adding thereto Appendix 1 attached as an exhibit to this Third Amendment.

### 3. Miscellaneous.

(a) This Third Amendment shall be construed in connection with, and as part of, the Agreement, and, except as modified and expressly amended by this Third Amendment, all terms, conditions and covenants contained in the Original Agreement are hereby ratified and shall be and remain in full force and effect.

(b) Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Third Amendment may refer to the Agreement without making specific reference to this Third Amendment but nevertheless all such references shall include this Third Amendment unless the context otherwise requires.

(c) The descriptive headings of the various paragraphs or parts of this Third Amendment are for convenience only and shall not affect the meaning for construction of any of the provisions hereof.

(d) This Third Amendment shall be governed by and construed in accordance with laws of the State of Ohio.

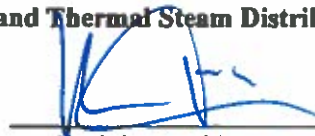
(e) This Third Amendment may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one agreement. Delivery of an executed counterpart of a signature page to this Third Amendment by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this Third Amendment.

(f) The parties hereto have participated jointly in the negotiation and drafting of this Third Amendment. In the event an ambiguity or question of intent or interpretation arises, this Third Amendment shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any provisions of this Third Amendment.

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the date first above written.

**Cleveland Thermal Steam Distribution, LLC**

By:



Mark Divis, President

**800 Superior LLC**

By: Guggenheim Commercial Real Estate Group,  
Property Manager

By:



Name: Michael Guggenheim

Title:

## APPENDIX 1

### RATE SCHEDULE FOR INTERRUPTIBLE STEAM 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 Consumption Rate. Defined terms used in this Appendix but not defined herein shall have the meanings set forth in the Agreement unless the context clearly requires otherwise.

Under the Agreement the Consumption Rate shall be either the Interruptible Rate or the Base Rate set forth below, as may be applicable.

#### MONTHLY CHARGE PER MMBTUS OF STEAM

From the date of the Third Amendment, the monthly Interruptible Rate shall be \$4.75 per MMBtu of steam consumed during any period that the Building qualifies for the Interruptible Rate. At any time that the Building does not qualify for the Interruptible Rate, Company's then current Standard Service rate per MMBtus of steam shall apply as the Base Rate and Customer shall be billed and charged as set forth in Paragraph 1.C of the Agreement.

#### PURCHASED STEAM COST RECOVERY CHARGE

Base Charge: \$12.57 per MMBtus consumed.

The Base Charge specified shall be adjusted up or down at least quarterly by Company to recover the delivered cost of steam purchased by Company to meet the steam needs of Customer at the point of delivery of steam to the Premises and reconciled on Customers' monthly invoices over not less than three (3) monthly periods to avoid abrupt adjustments and substantial swings or volatility in customers' invoices but to ensure that the revenues obtained by Company match the Company's delivered cost of purchased steam. Company shall forecast its actual delivered cost of purchased steam on at least a quarterly basis, net of any prior period over or under recovery, and the MMBtus subject to the Purchased Steam Cost Recovery Charge and compute a new quarterly (or other period not to exceed a quarter) Purchased Steam Cost Recovery Charge based on such forecasts. The new Purchased Steam Cost Recovery Charge shall be computed by dividing the forecasted MMBtus subject to such Charge into the forecasted period's delivered cost of purchased steam net of any prior period over or under recovery. The Base Charge specified above shall be adjusted up or down for the forecasted period by the positive or negative difference between each newly computed Purchased Steam Cost Recovery Charge. Company shall notify Customer of the as adjusted Purchased Steam Cost Recovery Charge thirty (30) days prior to the effective date of such Charge. Should events or circumstances (for example, significant market volatility in fuel costs or extreme weather conditions) indicate to Company that actual purchased steam costs or actual MMBtus subject to said Charge may be substantially different than the amounts forecasted, Company may adjust the Base Charge more frequently than quarterly.

#### LATE CHARGE

Customer shall pay a Late Charge for the balance of any invoice not timely paid.

#### **GRT CHARGE**

The total amount of all rates and charges shown on the invoice from Company to Customer for each monthly 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 (as currently amended) to compute the total monthly invoice. Such GRT Charge currently equates to \$0.88 per MMBtu.

#### **REGULATORY RECOVERY CHARGE**

Customer shall pay the Regulatory Recovery Charge from time to time as invoiced by Company pursuant to the Agreement. The Regulatory Recovery Charge is currently \$0.23 per MMBtu.



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 15-0032-HT-AEC**

Summary: Application Cleveland Thermal Steam Distribution LLC's Application for Approval of an Amendment to the Steam Supply and Distribution Agreement with 800 Superior LLC electronically filed by Ms. Vicki L. Leach-Payne on behalf of Darr, Frank P. Mr.