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**INFRASTRUCTURE AGREEMENT**

**by and between**

**FLAGBOROUGH L.L.C.**

**and**

**CORIX UTAH CITY HEATING AND COOLING, LLC**

**Dated as of January 16, 2025.**

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## INFRASTRUCTURE AGREEMENT

**THIS INFRASTRUCTURE AGREEMENT** (“**Agreement**”) dated as of January 16, 2025, is entered into by and among **FLAGBOROUGH L.L.C.**, a Delaware limited liability company (“**Developer**”) and **CORIX UTAH CITY HEATING AND COOLING, LLC**, a Delaware limited liability company (“**Corix**”).

### WHEREAS:

- A. Corix is in the business of developing, constructing, operating and maintaining Thermal Energy services and will ultimately become a public utility regulated by the Utah Public Service Commission (“**PSC**”);
- B. The Developer wishes to design, build, and operate a development called Utah City, located north of Vineyard Connector Road and west of Front Runner Commuter Rail tracks in Vineyard, Utah, in order to, among other things, construct certain improvements including, without limitation, residential towers and commercial and retail units (the “**Project**”) and will require Thermal Energy services in connection with the Project;
- C. The Developer owns the land on which the Project is located;
- D. The Developer and Corix have been engaged in negotiations and discussions with respect to the feasibility and initial design of a thermal energy production facility and distribution system in respect of the Project since early 2024;
- E. The Developer and Corix intend that Corix would be the exclusive provider for Services as described herein to the Project area.

**NOW THEREFORE** in consideration of the mutual agreements set out below and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties covenant and agree with each other as follows:

## 1. INTERPRETATION

### 1.1 Definitions

In this Agreement, the following terms have the meanings set out below:

“**Affiliate**” with respect to any person, shall mean a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or under common control with such person. For purposes of this definition, “control” means the possession, directly or indirectly, or the power to direct or cause the direction of management or policies of a person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement Date**” means the date of this Agreement first set out above.

“**Ancillary Equipment**” means all equipment owned by Corix and forming part of the Infrastructure, including the cooling towers, but excluding any equipment forming part of the CEP.

“**Building**” or collectively “**Buildings**” means any permanent structure identified in the Master Plan where DE is to be installed.

“**Building Permit**” means any building permit to be obtained from any local government entity in the

State of Utah.

**“Building System”** means the in-building mechanical systems, pipes, heat exchangers and controls downstream of the Energy Transfer Station (which is excluded) for each building, for the purpose of delivering heating, cooling, and hot water services to units inside each building within the Project.

**“Building System Plans”** has the meaning ascribed to it in Section 3.2.

**“Business Day”** means any day except a Saturday, Sunday, statutory holiday in the State of Utah or any other day on which public offices are generally not open for business in Vineyard, Utah.

**“CEP”** means the central energy plant, including the building space housing such plant, natural gas fired and electric boilers, chillers, heat pumps and all associated pumping, piping, valves, fittings, and all other equipment and facilities, which during early phases may include temporary locations, as further described in Schedule 11.

**“CEP Area”** means that portion of the Project Lands in, on or under which the CEP is to be constructed, which may include temporary locations, as shown on the Project Map or as designated by agreement of the Parties pursuant to the terms of this Agreement.

**“Changes of Law”** means any change in, or the introduction of new, applicable Laws, industry standards or conditions affecting the performance, operation, maintenance or routine repair of the Infrastructure.

**“City”** means the City of Vineyard, Utah.

**“Contaminants”** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, hazardous waste, waste, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or Release into the Environment of which is now or hereafter prohibited, controlled, or regulated under any Environmental Laws.

**“Corix Default”** has the meaning ascribed to it in Section 9.2a).

**“Corix Parent Guaranty”** has the meaning ascribed to it in Section 13.2(b).

**“Corix Rates”** means the rates payable by Customer for Thermal Energy services in accordance with the Lease.

**“Corix Users”** means Corix and its contractors, subcontractors, agents, employees, and representatives.

**“CPCN”** means a certificate of public convenience and necessity granted by the Utah PSC to Corix pursuant to the Utah Public Utilities Statutes and Public Service Commission Rules authorizing Corix to construct and operate the Infrastructure.

**“Customers”** means members of the public at large who obtain service from Corix as the result of an approved CPCN and not as lessees under a lease arrangement with Corix.

**“Delay Termination”** shall have the meaning set forth in Section 4.4.

**“DES”** means the district energy system in respect of the Project, including without limitation the Infrastructure.

**“Developer Default”** has the meaning ascribed to it in Section 9.3a).

**“Developer Group”** means the Developer and its Affiliates and its and their respective officers, directors, shareholders, employees, contractors, agents, successors and permitted assigns.

**“Developer Parent Guarantees”** has the meaning ascribed to it in Section 13.2(a).

**“Distribution Piping System”** means the system of distribution pipes and all Ancillary Equipment and facilities comprising the Project’s Thermal Energy distribution system owned and operated by Corix, including all pipes, valves, flanges, connections and other equipment and facilities constructed and installed by Corix for the Developer pursuant to Section 4 and necessary to connect the system of distribution pipes to the Energy Transfer Stations to the CEP.

**“Energy Transfer Stations”** means the heat exchangers and all pumps, pipes, valves, flanges, connections and other equipment and facilities to be housed within the Project necessary to transfer Thermal Energy to and from the CEP to the Distribution Piping System. For certainty, the Energy Transfer Stations form part of the Infrastructure to be installed by Corix.

**“Environment”** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and **“Environmental”** has a corresponding meaning.

**“Environmental Credit”** shall mean any incentives, investment tax credits, production tax credits, contract for differences, and other incentives that Governmental Authorities may provide arising from the construction and operation of the Facilities.

**“Environmental Laws”** means any and all applicable statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority now or hereafter in force relating to or in respect of the Environment or its protection, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity.

**“Force Majeure”** has the meaning ascribed to it in Section 15.2.

**“Functional”** means, in relation to each of the CEP, the Distribution Piping System, and the Energy Transfer Stations, that such component of the Infrastructure:

- a) has been constructed and installed in accordance with Sections 4.1 and 4.2 and the detailed design prepared by Corix, subject to any changes to such design specifications pursuant to Section 4.3;
- b) has satisfied the applicable commissioning testing and has been commissioned in accordance with industry practice; and
- c) is otherwise capable of performing the function for which it is designed.

**“Governmental Authority”** means any federal, state, regional, municipal, local, or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board, or authority thereof, including the Utah PSC and the City.

**“Infrastructure”** means, collectively, the CEP, the Distribution Piping System, the Energy Transfer

Stations, as well as any other components within the Project that are specifically and wholly attributable to any of the foregoing such as, without limitation, emergency generators and the Ancillary Equipment.

**“Infrastructure Costs”** means certain costs incurred or expected to be incurred by Corix in respect of the Infrastructure, as identified in Schedule 10.

**“Infrastructure Lands”** means the CEP Area and any other lands within the Project which Corix is allowed to use under this Agreement, collectively.

**“Intellectual Property”** has the meaning ascribed to it in Section 4.6.

**“Laws”** means any law, statute, regulation, bylaw, Permit, order, or legal requirement of or issued by or under the direction or authority of any Governmental Authority having jurisdiction.

**“Lease”** means the equipment lease defined in Section 17(a).

**“Master Plan”** means the Developer’s master plan for the development of the Project as described in Schedule 11 (including Phase 1), as it may be amended or modified from time to time.

**“Material Permits”** means the Permits described in Schedule 4 - Material Permits.

**“MOU”** has the meaning ascribed to in Recital C.

**“Party”** means either the Developer or Corix and **“Parties”** means both of them.

**“Permits”** means all permits, licences, certificates, approvals, authorizations, consents and the like required to be issued from any Governmental Authority in respect of the Infrastructure (including its design, construction and installation) and the supply of Thermal Energy or the provision of Thermal Energy services. Permits does not include a CPCN.

**“Person”** means an individual or his or her legal personal representative, an unincorporated organization or association, or a corporation, partnership, trust, trustee, syndicate, joint venture, limited liability company, union, Governmental Authority or other entity or organization.

**“Phase 1”** means the first phase of the Project as defined in Schedule 12.

**“Project”** has the meaning ascribed to it in Recital B.

**“Project Documents”** means, collectively, this Agreement; the Lease; the ROW Agreement(s); and each other document now or hereafter executed and delivered by any Party in connection with the Infrastructure or any of the foregoing, with references in the Project Documents to a particular Project Document to mean such Project Document, as it may be amended, restated, supplemented, extended or renewed from time to time. Each Exhibit, Schedule, Table, or Appendix attached to a Project Document is an integral part of such Project Document, the same as if set forth in full in the body thereof.

**“Project Lands”** means the lands owned by the Developer which comprise the Project, which lands are shown within the boundary identified on Schedule 1.

**“Project Timeline”** means the Project timeline set out in Schedule 3 – Project Timeline.

**“Release”** includes any release, spill, leak, pumping, pouring, emission, emptying or discharge, injection, escape, leaching, migration, disposal, or dumping.

**“ROW Agreements”** or **“ROW Agreement”** means a recordable agreement substantially in the same form attached as Schedule 5, which grants Corix Users access to property necessary for service to the Project.

**“Services”** means performance of actions including labor, transportation, design, delivery, installation, inspection, testing, commissioning, operating, maintenance, assistance as specified under a lease according to parameters negotiated and agreed to between Developer and Corix, or as allowed under a CPCN.

**“Service Commencement Date”** means the date on which the Infrastructure is Functional as specified in the notice given by Corix to the Developer.

**“Tenants”** means the residential and commercial tenants and licensees of premises in the Project.

**“Thermal Energy”** means thermal energy for space heating, cooling, and ventilation, and for domestic hot water heating.

**“Utah PSC”** means the Public Service Commission of Utah or any successor thereto.

**“Utah PSC CPCN Application”** means an application to the Utah PSC for a CPCN.

**“Utah Public Utilities Statutes and Public Service Commission Rules”** refers to Utah Code Title 54 and implicated rules and regulations, as may be amended or supplemented from time to time and including any legislation enacted in substitution therefor.

**“Work”** means all obligations, duties, and responsibilities assigned to or undertaken by Corix under this Agreement with respect to the Project, including all design, procurement, manufacturing, construction and erection, installation, equipment, training, and testing. Where this Agreement describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any incidental work that is customarily included in projects of the type contemplated by this Agreement.

## **1.2 Interpretation**

Unless otherwise expressly provided, in this Agreement:

- a) “this Agreement” means this Agreement as it may from time to time be supplemented or amended by the Parties, and includes the attached Schedules;
- b) all references in this Agreement to a designated “Article”, “Section” or “Schedule” is to the designated Article or Section of or Schedule to this Agreement;
- c) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular portion hereof;
- d) the headings are for convenience only, do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- e) the singular of any term includes the plural, and vice versa; the use of any term is equally applicable to any gender and, where applicable, a body corporate;
- f) the word “including” is not limiting whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto;

- g) references to time of day or date mean the local time or date in Vineyard, Utah; and
- h) all references to amounts of money mean lawful currency of the United States of America.

### **1.3 Governing Law**

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed, and interpreted exclusively in accordance with, the laws of the State of Utah, without giving effect to conflicts of laws principles or provisions.

### **1.4 Severability**

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any jurisdiction, the illegality, invalidity, or unenforceability of that provision will not affect:

- a) the legality, validity, or enforceability of the remaining provisions of this Agreement; or
- b) the legality, validity, or enforceability of that provision in any other jurisdiction,

except that if:

- c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and
- d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this section, the basic intentions of the Parties in this Agreement are entirely frustrated, the Parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

### **1.5 Time of Essence**

Time is of the essence of this Agreement.

### **1.6 Statutory References**

Unless otherwise specified, each reference to a statute is deemed to be a reference to that statute and to the regulations made under that statute as amended or re-enacted from time to time.

### **1.7 Schedules and Exhibits**

The following are the Schedules attached hereto and incorporated by reference and deemed to be part hereof:

<u>Schedule</u>		<u>Description</u>
Schedule 1	-	Project Map
Schedule 2	-	Base Building Provisions
Schedule 2.3(d)	-	Termination Fee Calculation
Schedule 3	-	Project Timeline
Schedule 4	-	Material Permits

Schedule 5	-	Form of ROW Agreements
Schedule 6	-	Not Used
Schedule 7	-	Not used
Schedule 8	-	Developer's Construction Schedule
Schedule 9	-	Responsibility Matrix
Schedule 10	-	Infrastructure Costs
Schedule 11	-	Master Plan
Schedule 12	-	Definition of Phase 1
Schedule 13	-	Design Specification, Layout and Components of Infrastructure
Exhibit A	-	Lease Agreement
Exhibit B	-	Parent Guarantees
Exhibit C	-	SWMUs

## **2. DEVELOPER OBLIGATIONS**

### **2.1 Developer Obligations**

### **2.2 Development Plans**

The Developer intends to develop the Project including, without limitation, the designing and constructing of Buildings, in accordance with the Master Plan and this Agreement, in each case as amended from time to time.

The parties acknowledge and agree that:

- a) the Developer intends to develop the Project in phases in accordance with the Master Plan and that, as of the date of this Agreement, not all phases of the Project have been approved by the Developer. However, Phase 1 has been approved and the Developer agrees to proceed with Phase 1; provided, Corix agrees that it will not proceed with building out any additional Infrastructure beyond what is needed for Phase 1 in anticipation of any future phase until the commencement of such phase has been unanimously approved by the Operations Committee (as defined herein). Developer shall be entitled at any time and from time to time to change the configuration of Buildings specified in Phase 1 of the Master Plan, and Corix agrees to work collaboratively with Developer to consummate such change; provided, however, such change may not deviate from the agreed-upon capacity load specified in **Schedule 12** of this Agreement; and
- b) Corix intends to design and construct the Infrastructure in a scalable manner reflective of the phases of the Project as may be approved by the Developer from time to time.

### **2.3 Amendments to Master Plan**

- a) The Developer reserves the right to change the configuration and size of the Project and to alter the boundaries of the Project at any time, including the addition or subtraction of constructed or future Buildings from the Project. Developer will notify Corix, as far in advance as is reasonably possible of any amendment of, or any application to amend, the Master Plan or Project (including changes to the scope, phasing and/or timing of the Project, addition of Buildings, or addition of adjacent properties) or any other plan, document, contract or Law (each, a "**Development Amendment**") if such amendment would reasonably be expected to have a material impact on Corix.
- b) Reserved.



- c) Corix shall inform the Developer if a material modification or change to the Master Plan or Project could reasonably be expected to result in an increase or decrease in the Infrastructure Costs and provide Developer with supporting detail documenting the purpose of any increase and a basis for the price. Developer shall not object to such increases that are a result of Developer's changes; provided, however, that Corix has used its best efforts to control and reduce such costs to avoid the need to increase prices.
- d) In the event Developer chooses to alter the Master Plan by removing a Building or area from the Project prior to any buildings being connected to the Infrastructure or execution of a lease for a given building, Developer shall inform Corix in advance in writing and Developer shall be required to pay Corix a fee calculated for such a Building removed as described and shown in Schedule 2.3(d).
- e) In connection with any Development Amendment, the Parties will use commercially reasonable efforts to review and agree on any amendments to this Agreement that are necessary to effect such Development Amendment and:
  - (i) reflect necessary or desired, consequential alterations to any part of the Infrastructure;
  - (ii) adjust the timing of any of the Infrastructure construction and installation;
  - (iii) address compensation, if any, payable to Corix for any excess costs actually incurred by it in connection with such Development Amendment and not ultimately recoverable from Customers in accordance with the terms of this Agreement, using a formula similar to that provided in Schedule 2.3(d);
  - (iv) address any reduction in costs to Corix as a result of such Development Amendment and realization of such reduction by Developer; and
  - (v) address any other material adverse effect of the Development Amendment on the DES or Corix's rights and obligations under this Agreement.

If the Parties are unable to agree on any such amendment to this Agreement, such dispute will be resolved in accordance with Section 16.

## **2.4 Term of this Agreement**

This Agreement, absent a termination pursuant to Section 9 herein, shall conclude and terminate by its own terms thirty (30) years from the date of Agreement. Upon mutual agreement the Parties may choose to extend the term of this Agreement for one (1) subsequent option term of thirty (30) years, provided that the Developer provides Corix with notice of its intention to exercise this option one hundred eighty (180) days prior to the Agreements anticipated termination.

## **2.5 No Alternate System or Service Provider**

The powers and rights granted to Corix under this Agreement are exclusive to Corix and the Developer will not itself install the Infrastructure or operate the DES or allow any other Person (except subcontractors and agents of Corix) to do so within the Project Lands, as contemplated in the Master Plan, and, so long as there is no outstanding and uncured Corix Default, Corix shall be the exclusive provider of the Services to all Buildings within the Project during the Term of this Agreement.

## **2.6 Incorporating Other Sources of Energy**

If either Party identifies options for incorporating other sources of energy or other energy supply systems into the DES, that Party will first raise such option with the other Party, to determine whether such source or system can be incorporated on mutually acceptable terms, subject to applicable approval by any Governmental Authority.

## **2.7 Reserved.**

## **2.8 Corix Obligations**

(a) Performance of Work. Corix shall perform and complete all of the Work, without any defects, in accordance with the terms of this Agreement and in compliance with industry standards and applicable laws. In order for Corix to complete the Work, Corix shall:

- (i) Obtain all required Permits;
- (ii) Perform all inspection, quality surveillance, and other like services required for performance of the Work, including inspecting all materials and equipment that comprise the Infrastructure or that are to be used in the performance of the Work.
- (iii) Maintain the Project site clear of debris, waste material, and rubbish.
- (iv) Within ten (10) days after request by Developer, remove from the Project and performance of the Work, and cause any subcontractor to remove from the Project site and performance of the Work, and as soon as reasonably practicable, replace, any person performing the Work whom Developer reasonably believes to be creating a safety hazard or a material risk of either (i) non-achievement of final completion or (ii) material non-performance by Corix in accordance with this Agreement.
- (v) Corix will comply with and take all reasonable safety precautions and otherwise at all times maintain the Infrastructure consistent with all applicable laws pertaining to the health and safety of persons and real and personal property.

(b) In addition to Corix's obligations under Section 2.8(a), if Developer believes any of the Work is not in material accordance with the requirements of the Plans and Specifications, or being completed with reasonable promptness and diligence, it shall notify Corix in writing. If Corix agrees with Developer, Corix shall correct any Work promptly. Developer shall give such notice promptly after discovery of the condition. If Corix disagrees, it shall notify Developer, and Developer may engage an independent engineer who shall review the Work and determine (i) whether such identified Work is material out of accordance with the requirements of the Plans and Specifications, and (ii) if such Work is materially out of accordance, then prescribe the changes required and a reasonable timeline for completion by Corix and Corix shall use commercially reasonable efforts to complete the work in a prompt and timely manner in accordance with the independent engineer's determination.

(c) Books and Records. Corix shall keep, or cause to be kept, accurate, full and complete books of account on a calendar year basis showing assets, liabilities, income, operations, transactions and the financial condition of Corix, as they relate to the Infrastructure. Corix shall maintain the books and records for a period of three (3) years after expiration of the Term.

(d) Reports by Corix to Developer. Corix shall prepare and deliver reports regarding the progress of the design, development, construction and schedule of the Infrastructure, including cost savings and cost

increases against the Infrastructure Costs. The reports shall be prepared semi-annually from the Effective Date until the end of the Term or earlier termination of this Agreement and provided to the Operations Committee for review. Corix's reports required under this Section shall include a monthly cash flow projection incorporating the projected costs which are obtained by Corix from all contractors, subcontractors, engineers, and architects for their work or services in connection with the design, development and construction of the Infrastructure. Developer shall have access, upon prior written notice to Corix and during reasonable business hours, to all information (including documents, reports, computer printouts and similar information) of Corix and its affiliates regarding the Project and shall have the right to copy or otherwise re-produce all such materials.

### **3. BUILDING SYSTEMS**

#### **3.1 Design, Engineering and Construction of Building Systems**

Notwithstanding Section 3.2, the Developer acknowledges and agrees that it will be solely responsible for the design, engineering, construction, installation, maintenance, alteration, replacement, and operation of each Building System. Corix's preliminary conceptual design of the Infrastructure is attached as Schedule 13. The Parties acknowledge and agree that they will continue to work collaboratively in good faith to pursue any and all additional tax credits associated with Corix's development and ownership of the Infrastructure.

#### **3.2 Approval of Specifications by Corix and Professional Engineer**

The Developer will provide Corix with the plans and specifications for each Building System (including all design and engineering components) (collectively, the "**Building System Plans**"), so that Corix may ensure its Plans and Specifications (as defined in Section 4.2 below) are created to be compatible with the Building System Plans. Corix will be given at least thirty (30) days to provide comments to the Building System Plans. Developer and Corix will reasonably coordinate and cooperate to adjust the Building System Plans to maximize efficiencies and benefits to both Parties where commercially reasonable to do so.

#### **3.3 CEP Area**

The Developer will provide the CEP Area, suitable to house the CEP in accordance with the design and specifications to be developed by Corix in consultation with the Developer ("**CEP Area Plans**"), for the purpose of permitting Corix to perform Corix's obligations under this Agreement. Prior to commencement of construction, the Developer will provide CEP Area Plans to Corix for its review and approval to confirm the CEP Area is suitable for Corix's needs and so that Corix may ensure its Plans and Specifications (as defined in Section 4.2 below) are created to be compatible with the CEP Area Plans. Within thirty (30) days of receipt of the CEP Area Plans, Corix shall inform Developer if Corix believes a modification or change to the CEP Area Plans is necessary and provide the Developer with the details thereof in a form suitable for review by the Developer's consultants. Corix shall inform Developer if such modification or change could reasonably be expected to result in an increase in costs. Any such modification or change shall be submitted by Corix for Developer's approval and the Parties shall follow the submission and approval process designated in Section 4.2 below. In the event any CEP is meant to be temporary, transfer, relocation, or reconstruction of a permanent CEP and a permanent CEP Area will be provided by Developer at the time contemplated by the plans.

## **4. INFRASTRUCTURE**

### **4.1 Design, Engineering, and Construction of Infrastructure**

Subject to Section 8, and Corix's right to recover under a Lease or pursuant to approval of a CPCN, Corix will, at its sole cost, design, engineer, permit, procure, test, inspect, construct, install, commission, operate, maintain, repair and replace the Infrastructure (including, for certainty, all equipment and systems associated therewith or forming part thereof) in a good and workmanlike and professional manner, consistent with industry standards and in compliance with the Plans and Specifications, and all applicable Laws, all in accordance with this Agreement.

### **4.2 Approval of Specifications by Developer**

Corix will be solely responsible for developing and finalizing the planning, design and engineering specifications for the Infrastructure (including, without limitation, the CEP layout and the scope of and performance standards for the Infrastructure (collectively, the "**Plans and Specifications**"), which Plans and Specifications shall be approved by Developer and comply with its reasonable requirements to avoid aesthetic or other conflicts with the design and function of the Building System Plans and Project. Developer shall respond with approval or disapproval to any Plans and Specifications submission by Corix within ten (10) business days after Developer's receipt thereof. If Developer fails to respond to any such submission within such ten (10) business day period, which failure continues for more than two (2) business days after Corix gives Developer a written notice (the "**Deemed Approved Notice**") advising Developer that such Plans and Specifications submission shall be deemed approved within two (2) business days of Developer's receipt of the Deemed Approved Notice, then such Plans and Specifications submission shall be deemed approved hereunder. In the event Developer's approval of Corix's Plans and Specifications is withheld or conditioned, Developer shall send prompt written notification thereof to Corix and include a reasonably detailed statement identifying the reasons for such refusal or condition, and Corix shall promptly have the Plans and Specifications revised to incorporate all reasonable objections and conditions presented by Developer and shall resubmit such Plans and Specifications to Developer. Developer shall respond (with approval or disapproval) to any Plans and Specifications re-submission by Corix within ten (10) business days after Developer's receipt thereof. Such process shall be followed until the Plans and Specifications shall have been approved by Developer. If the parties are unable to agree on the Plans and Specifications, such dispute will be resolved in accordance with Section 16. Without limiting the foregoing, Corix shall be responsible for all elements of the design of Corix's Plans and Specifications and Developer's approval of the Plans and Specifications shall in no event relieve Corix of the responsibility for such design. Corix agrees it shall be solely responsible for the timely preparation and submission of all such Plans and Specifications and for all elements of the design of such Plans and Specifications and for all costs related thereto.

### **4.3 Changes to Specifications**

Corix shall inform Developer if Corix believes a modification or change to the Plans and Specifications is necessary as a result of a Force Majeure event or unforeseen geotechnical issues or site conditions and provide the Developer with the details thereof in a form suitable for review by the Developer's consultants. Corix shall inform Developer if such modification or change could reasonably be expected to necessitate any change in the base building design or result in an increase or decrease in Infrastructure Costs. Any such modification or change shall be submitted by Corix for Developer's approval and the Parties shall follow the submission and approval process designated in Section 4.2 above.

All such change or modifications must be sealed by a professional engineer, unless otherwise agreed by the Developer. Corix will use commercially reasonable efforts to mitigate the impacts of any modifications or changes to the Plans and Specifications.

#### 4.4 Compliance with Construction Schedule

- a) Corix will work in a reasonable and timely manner compatible with the Developer's construction schedule attached hereto as Schedule 8 in respect of all phases (as such schedule may change from time to time by mutual agreement), including the installation of municipal services and other utility services, and will comply with such construction schedule (as such schedule may change from time to time by mutual agreement) and achieve the milestone dates set out therein.
- b) Each Party will achieve the milestones set out in Schedule 8 in respect of all phases (as such schedule may change from time to time by mutual agreement) by the applicable milestone dates (the "**Milestone Dates**"). Each Milestone Date will designate one of the parties hereto as being responsible for such. Milestone Dates will be adjusted by any extension of the schedule as a result of Force Majeure events applicable to the Party responsible for meeting such and by any delays that are the responsibility of the other Party.
- c) If Corix determines that there is a reasonable likelihood that it will not meet a particular milestone by the applicable Milestone Date, Corix will:
  - (i) provide the Developer with written notice of same within a reasonable time;
  - (ii) diligently and expeditiously make its commercially reasonable efforts at its cost (including, without limitation, by paying additional amounts to its contractors and/or requiring its contractors to expend additional amounts) to accelerate its work so as to ensure that the applicable Milestone Date is achieved or that any delay is minimized;
  - (iii) provide a recovery plan showing the steps that will be implemented to fulfill (b); and
  - (iv) work and cooperate with the Developer as may reasonably be required to avoid any such delay or mitigate the impact of such delay.
- d) To the extent that Corix fails to achieve a Milestone Date for which it is responsible, the Developer will be entitled to a reasonable extension of the Milestone Dates for which the Developer is responsible.
- e) If the Developer determines that there is a reasonable likelihood that it will not meet a particular milestone by the applicable Milestone Date, the Developer will forthwith provide Corix with written notice of same. To the extent that the Developer fails to achieve a Milestone Date for which it is responsible, Corix will be entitled to a reasonable extension of the Milestone Dates for which Corix is responsible. If the Developer's delay to completion of an applicable Milestone Date is greater than 24 months, Corix may in its sole discretion invoke its termination rights under Section 9.3(iii) "**Delay Termination**". Notwithstanding the foregoing, Corix shall not be entitled to an extension of any Milestone Date or to exercise a Delay Termination if the Developer is delayed by any act of Corix, including but not limited to a delay, change, addition, deletion or modification in the Work or any omission, neglect, or default of Corix. Additionally, Corix shall not be entitled to exercise a Delay Termination if the Developer is delayed for any cause beyond the Developer's reasonable control, none of which are due to any fault, neglect, act, or omission on the Developer's part.
- f) If Corix fails to meet a Milestone Date for the commencement of service for an Energy Transfer Station by more than ninety (90) days (each an "**ETS Longstop Date**"), it shall be considered a material default of the Agreement and Section 9.2 shall apply. Corix will provide the Developer and such engineer, forthwith upon request from time to time, with all such information and documentation

(including information and documentation regarding construction contracts, scheduling, and progress) as such engineer may require in order to provide his or her opinion.

#### **4.5 Ownership of Infrastructure**

Notwithstanding any degree of annexation or affixation, rule of law or equity to the contrary, or termination of this Agreement, the Developer acknowledges and agrees that all components of the Infrastructure and all additions or extensions thereto will be and remain the property of and vest in Corix during the term of this Agreement and after Termination. Subject to the terms and conditions of this Agreement and the Lease Agreements, Corix shall, at its own expense, maintain, preserve and keep the Infrastructure in good repair, working order and condition, and shall make all repairs and replacements necessary to keep the Infrastructure in such condition, and in compliance with state and federal laws. In the event that any parts or accessories forming part of the Infrastructure become worn out, lost, destroyed, damaged beyond repair or otherwise rendered unfit for use, Corix, at its own expense and expeditiously, will replace or cause the replacement of such parts or accessories by replacement parts or accessories free and clear of all liens and encumbrances and with a value and utility at least equal to that of the parts or accessories being replaced. Developer shall not be responsible for any improvements or additions to the Infrastructure except to the extent the costs for such improvements or additions are chargeable under a Lease Agreement or as part of utility cost recovery.

#### **4.6 Ownership of Intellectual Property**

The Developer acknowledges and agrees that Corix will own all designs, copyrights, materials, drawings, plans, specifications, reports and all other work product prepared by Corix or its sub-consultants in connection with the Infrastructure (the "**Intellectual Property**"). Notwithstanding the foregoing, Corix hereby grants Developer an irrevocable, non-exclusive, world-wide license to use the Intellectual Property, in both written and electronic form. For clarity, "Intellectual Property" does not include any calculation, proprietary information, model (engineering or otherwise) or methodology which may be of a proprietary or commercially valuable nature. Corix shall use commercially reasonable efforts to secure for the benefit of Developer, an irrevocable, non-exclusive, world-wide license to use all work product that is prepared, produced or developed for Corix in connection with the Infrastructure (the "**Consultant Intellectual Property**") promptly thereafter. Any license to use the Intellectual Property granted under this Agreement is limited to (a) uses reasonably related to Developer's development of the Project, and (b) is subject to Developer's acknowledgement and agreement that it may not use the Intellectual Property to compete with Corix in any manner within the State of Utah.

#### **4.7 Delivery of Plans and Specifications re: Infrastructure Interface**

Corix will deliver to the Developer, in both hard copy and in an electronic format acceptable to the Developer, copies of all drawings, designs, plans, specifications and related information prepared by or on behalf of Corix pertaining to the interface between the Building Systems and the Infrastructure (at the point of demarcation in the Energy Transfer Stations for each of the Buildings) and the Distribution Piping System. Developer is hereby granted a non-exclusive license to use information and information provided by Corix for all purposes reasonably related to Developer's development, permitting, and construction of Building Systems or construction of additional buildings which will be connected to the Infrastructure.

#### **4.8 Permits and Authorizations**

Unless otherwise delegated in this Agreement, Corix will obtain and maintain all requisite Permits for the construction and installation of the Infrastructure and the DES and for the operation of the Infrastructure and the DES, as applicable. A non-exhaustive list of Permits which are likely to be required, along with likely timelines for obtaining such Permits and the Party responsible is provided on Schedule 4.

#### **4.9 Grants**

Any grants received by Corix or by the Developer on behalf of Corix from any Governmental Authority or non-Governmental Authority that may be derived from a reduction in costs for consumption of heat, cooling and hot water by the Buildings will be reflected through a decrease in charges to the Lessee under the Lease, and will be used by Corix for the sole benefit of existing and future Lessees or Customers or as otherwise directed by the Utah PSC.

#### **4.10 Environmental Credits**

Notwithstanding any other provision of this Agreement, all right, title and interest now or hereafter existing to and in the potential or actual commercial value of any Environmental Credit that may arise or accrue by virtue of the construction or operation of the Infrastructure will accrue to the benefit of Corix and will be reflected through a decrease in charges to the Lessee under the Lease, and will be utilized by Corix for the sole benefit of existing and future Lessees or Customers or as otherwise directed by the Utah PSC.

#### **4.11 Signage**

Corix will not erect, affix, install or maintain any signs, lettering, identification, promotional or other written materials on the Project Lands or any improvements thereon unless Corix complies with all applicable laws in connection therewith and obtains the prior written consent of the Developer, which consent will not be unreasonably withheld.

#### **4.12 Responsibility Matrix**

In order to provide additional certainty regarding the respective responsibilities of the Parties for the design, installation, operation and maintenance of certain components of the Infrastructure and the Building Systems, as listed in Schedule 9 hereto, the Parties acknowledge and agree that their respective responsibilities for such components will be as set out in such schedule.

### **5. COOPERATION AND COORDINATION**

#### **5.1 Operations Committee**

- a) To facilitate communication and coordination in the construction and development of the Project the Parties shall, prior to commencement of Work on the Project, create an "Operations Committee." The Operations Committee shall review ongoing performance under this Agreement, resolve issues pertaining to interface between Parties' systems, determine when to commence Work on future phases of the Project, review estimated and actual costs, make decisions regarding substantial deviations from Project plans, and address other related matters as may arise. The Operations Committee will further seek to make all decisions in line with industry best practices.
- b) The Operations Committee shall be comprised of 4 members, of which 2 shall be nominated or replaced by the Developer and 2 shall be nominated or replaced by Corix;
- c) Each person nominated by a Party to the Operations Committee shall be someone with sufficient skill and authority to represent such Party on the Operations Committee and shall either have authority to make binding decisions on a Party, or have reasonable access and ability to obtain such authority as is necessary to accomplish the efficient and effective completion of tasks delegated to the Operations Committee under this Agreement;
- d) The Operations Committee shall meet as often as determined reasonable and necessary by the

Operations Committee members, but not less than once per quarter.

- e) Members of the Operations Committee shall develop a communication protocol whereby personnel from both parties will share with the Operations Committee key information related to ongoing Project work; the Operations Committee will work collaboratively and share all information between Parties as necessary to facilitate streamlined and effective operations.
- f) While Corix will afford significant weight to recommendations made by the Operations Committee, ultimate authority for operational decisions regarding the subject Infrastructure will rest with Corix, provided such decisions are made in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, prior to a final decision by Corix, recommendations of the Operations Committee will be furnished directly to the Developer. The Developer will have one week to review such decisions and provide comments. Should the Developer fail to provide comments within the one-week period, the Developer will be deemed as approving of the Operations Committee's decision. Corix will consider all comments submitted by Developer in approving a final decision of the Operations Committee. Notwithstanding the foregoing, any final determination to commence Work on a future phase of the Project beyond Phase 1 will require unanimous approval of the Operations Committee.

## **5.2 Cooperation and Coordination**

The Parties, using commercially reasonable efforts, will cooperate and coordinate with each other and with any applicable Governmental Authority to permit each Party to perform its obligations under this Agreement. Without limiting the generality of the foregoing:

- (a) the Developer will work and cooperate with Corix as may be reasonably required to, at Corix's sole cost (to the extent such costs are recoverable by Corix, as a regulated utility, by way of rates charged to Customers or otherwise):
  - (i) secure from the City and any third parties all property access rights required pursuant to this Agreement; and
  - (ii) apply to the City and other applicable Governmental Authorities for all exemptions, reductions and other relief from property taxes related to the Infrastructure as may be available from time to time;
  - (iii) lobby the Utah legislature to amend provisions of the Utah Utility Code to allow for regulation of cooling systems concurrently with a heat corporation;
  - (iv) Submit the Utah PSC CPCN Application and participate in the approval process for a CPCN.
- (b) the Parties will work and cooperate with each other as may reasonably be required to:
  - (i) meet the Project Timeline, as it may be amended from time to time;
  - (ii) obtain and maintain Permits, including Material Permits; and
  - (iii) apply to the City and other applicable Governmental Authorities for all exemptions, reductions and other relief from property taxes related to the Infrastructure as may be available from time to time.



## **6. UTAH PSC REGULATION**

### **6.1 Regulation as Public Utility**

Corix, in connection with the Project, intends to apply to become a public utility under the Utah Public Utilities Act of 1917, regulated by and under the oversight of the Utah PSC, and Corix will comply with all directives and orders of the Utah PSC and regulatory requirements set out in the Utah Public Utilities Act and the regulations thereunder. Developer will use commercially reasonable efforts to provide support and cooperation to Corix in its efforts to obtain approvals of the Utah PSC that are necessary to fulfill its obligations under this Agreement.

### **6.2 CPCN Application**

Corix will be responsible for preparing and submitting to the Utah PSC application(s) for one or more CPCNs as required and for approval of the Corix Rates. If a CPCN is not granted or is granted but contains conditions that are objectionable to Corix, then the parties will work together diligently and in good faith to achieve a CPCN that is acceptable.

## **7. ACCESS TO LANDS**

### **7.1 Access Rights**

The Developer will grant to Corix and its subcontractors, agents, employees, and representatives, by way of licenses, recorded rights of way, easements, or other agreements, and for nominal consideration, non-exclusive access to, on, over and under the Project Lands or portions thereof where necessary to permit Corix to perform its obligations under this Agreement, or the Lease. In addition, the Developer will use reasonable efforts to cause the City to grant, at Corix's sole cost, to Corix and its subcontractors, agents, employees and representatives, by licenses, recorded rights of way, easements or other agreements, and for nominal consideration, non-exclusive access to, on, over and under any part of the Project Lands (and any other lands) owned by the City from time to time, as may be required so that Corix may perform its obligations under this Agreement, or the Lease. Access rights granted hereunder shall survive termination of this Agreement and shall be perpetual unless use of such rights or agreements is no longer required to provide Services to any customer through the Infrastructure. In such an event, Corix will, promptly upon request by the Developer, execute and deliver to the Developer a release of any recorded interest (including the ROW Agreements) from any portions of the Project that are no longer required to provide Services through the Infrastructure.

### **7.2 Rights of Way**

Concurrently with the execution and delivery of this Agreement, the Developer will cause to be executed and delivered the ROW Agreements and a licence agreement (in a form to be reasonably agreed between the parties) in favour of Corix. The ROW Agreements and any other right of way or recorded interest granted to Corix pursuant to this Section 7 shall be superior in priority to any other interest, and Developer shall obtain subordination agreements as necessary to obtain such priority in interest.

Corix will, promptly upon request by the Developer, execute and deliver to the Developer a discharge of any recorded interest (including the ROW Agreements) from any portions of the Project that are subdivided out of the Project Lands and that are not necessary for Corix to access in order to perform its obligations under this Agreement or the Lease.

### **7.3 Property Taxes**

If property and/or municipal taxes are owing in respect of the Infrastructure or Corix's ownership thereof, or in respect of any access rights granted by the Developer or the City in connection therewith, Corix will, subject to Article 4, be required to pay same to the City or otherwise be responsible therefor.

### **7.4 Limited Liability of Developer**

Corix and Developer acknowledge and agree that Corix is being delivered the Project Lands for the purposes of undertaking the obligations set forth in this Agreement with the understanding that the Project Lands are in its "as is," where is," with all faults," condition and Developer is under no obligation to perform any duties with respect to the Project Lands whatsoever, unless and except as otherwise expressly provided by this Agreement, without limitation including Developer's Representations and Warranties in Section 11.1 of this Agreement.

## **8. MUTUAL CONDITIONS PRECEDENT**

The obligations of Corix pursuant to this Agreement, other than the obligations in Sections 4.1 (relating to design and engineering only), 5.1(b), 9.4, 19 and 19.2, which will commence on the Agreement Date, and the obligations of the Developer pursuant to this Agreement, other than the obligations in Sections 5.1(b), 9.4, 19 and 19.2, which will commence on the Agreement Date, are subject to the following conditions:

- (a) all approvals and consents shall have been obtained or waived;
- (b) The Representations and Warranties in Section 11 hereof are correct in all material respects on and as of the Agreement Date; and
- (c) approval of the Agreement has been issued by the board of directors (and owners, as applicable) of the respective Parties (a through c, collectively, the "**Conditions Precedent**").

A Party is not entitled to benefit from a condition precedent to the extent that they have caused a delay in such. If such conditions are not satisfied on or before the applicable dates set out above, then unless the Parties agree otherwise in writing, each Party will have a right to terminate this Agreement.

## **9. TERMINATION**

### **9.1 Termination Events**

This Agreement may be terminated:

- a) by mutual written agreement of the Parties;
- b) by Corix on written notice to the Developer:
  - (i) if any of the conditions contained in Section 8 have not been fulfilled or waived by Corix by the respective deadlines specified therein; or
  - (ii) at any time during a period of 30 days following the date the Utah PSC issues its decision in respect of the Utah PSC CPCN Application if the terms and conditions on which the Utah PSC approves the Utah PSC CPCN Application render uneconomic Corix's

continued involvement in the implementation and operation of the DES (as determined by Corix, acting reasonably) by reference to the approvals requested in the Utah PSC CPCN Application, notwithstanding anything herein to the contrary, this termination will not impair any previously executed Lease for operation of Infrastructure.

- c) by the Developer on written notice to Corix if any of the conditions contained in Section 8 have not been fulfilled or waived by the Developer by the respective deadlines specified therein;
- d) by the Party that receives written notice from the other Party invoking Force Majeure, but only if the Force Majeure event or occurrence is not remedied within 365 days after such notice and the receiving Party delivers written notice of termination to the other Party after the 365-day period has expired;
- e) by the Developer, pursuant to Section 9.2, or 4.4(f); or
- f) by Corix, pursuant to Section 9.3, or Section 4.4(e).

## **9.2 Termination for Corix Default**

- a) Corix will be in default under this Agreement (an “**Corix Default**”) if:
  - (i) It passes a resolution for its winding-up or dissolution and its right, title and interest in this Agreement are not assigned to another entity, or it is adjudged bankrupt or insolvent by a court of competent jurisdiction, commences or consents to the institution of bankruptcy proceedings, proposes a compromise or an arrangement, files any petition seeking reorganization, arrangement, composition, liquidation or similar relief for itself, has a receiver or a receiver-manager appointed with respect to its affairs, or makes a general assignment for the benefit of its creditors under any Law relating to bankruptcy, insolvency or other relief for or against debtors generally;
  - (ii) It is in breach of any material term, covenant, representation, warranty, agreement, condition or obligation under this Agreement, or it is in breach of multiple terms, covenants, agreements, conditions or obligations under this Agreement, which in the aggregate are material, and fails to cure such default within 30 days after receipt of written notice thereof from the Developer or, if such default is not capable of being cured within such 30 day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of written notice thereof from the Developer or, having so commenced, fails to diligently pursue the curing of such default until cured;
  - (iii) Corix fails to comply with any deadlines provided by an independent engineer under Section 2.8(b);
  - (iv) There exists gross negligence or willful misconduct perpetrated by Corix against Developer in connection with construction and development of the Infrastructure;
  - (v) There exists fraud, material theft or embezzlement by Corix against Developer.
- b) In the event of a Corix Default under Sections 9.2a(i), 9.2a(ii), (a)(iii), or 9.2(a)(iv), the Developer shall deliver written notice of the same to Corix and:
  - (i) Corix will remedy such Corix Default referred to in such notice (if it is continuing) within 20 Business Days of such notice; or

- (ii) if either Developer (as set out in its notice) or Corix reasonably considers that a Corix Default cannot reasonably be remedied within 20 Business Days of such notice, Corix will deliver to Developer within 10 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Corix Default. The program will specify in reasonable detail the manner in, and the latest date by, which the Corix Default is proposed to be remedied.
  - (iii) If Corix puts forward a program in accordance with paragraph (ii) above, Developer will have 10 Business Days from receipt of the program within which to notify Corix that Developer, acting reasonably, does not accept the program, failing which Developer will be deemed to have accepted the program. If Developer notifies Corix that it does not accept the program as being reasonable, the Parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program to put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Corix Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred to either Party for resolution in accordance with the dispute resolution procedure in this Agreement.
  - (iv) Subject to the terms of the guaranty, Developer may exercise any of its rights under the Corix Parent Guaranty described in Section 13.2(b).
- c) The rights and remedies of the Developer provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
  - d) Unless otherwise provided herein, any amount due to Developer hereunder shall be paid by Corix within thirty (30) days of demand or request therefor. If Corix does not timely pay any such amount, then interest at the then applicable prime rate plus 1% shall accrue on the amount due from the thirty-first day after the due date until the date payment is received by Developer.

### 9.3 Termination for Developer Default

- a) The Developer will be in default under this Agreement (a “**Developer Default**”) if:
  - (i) It passes a resolution for its winding-up or dissolution and its right, title and interest in this Agreement are not assigned to another entity, or it is adjudged bankrupt or insolvent by a court of competent jurisdiction, commences or consents to the institution of bankruptcy proceedings, proposes a compromise or an arrangement, files any petition seeking reorganization, arrangement, composition, liquidation or similar relief for itself, has a receiver or a receiver-manager appointed with respect to its affairs, or makes a general assignment for the benefit of its creditors under any Law relating to bankruptcy, insolvency or other relief for or against debtors generally;
  - (ii) It is in breach of a material term, covenant, agreement, condition or obligation under this Agreement, or it is in breach of multiple terms, covenants, agreements, conditions or obligations under this Agreement which in the aggregate are material, and fails to cure such default within 30 days after receipt of written notice thereof from Corix or, if such default is not capable of being cured within such 30 day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of written notice thereof from Corix or, having so commenced, fails to diligently pursue the curing of such default until cured;

- (iii) If it fails to meet an applicable Milestone Date in accordance with Section 4.4. of this Agreement;
  - (iv) There exists gross negligence or willful misconduct perpetrated by Developer against Corix in connection with construction and development of the Project;
  - (v) There exists fraud, material theft or embezzlement by Developer against Corix.
- b) In the event of a Developer Default, Corix may, at its option and without liability therefor, terminate this Agreement by written notice to the Developer.
  - c) Subject to the terms of the guaranty, Corix may exercise any of its rights under the Developer Parent Guarantees as described in Section 13.2.

#### **9.4 Payment of Amounts Upon Termination**

##### **a) Payments to Corix**

If a termination occurs pursuant to Section 9.1(b) or (c), the only compensation of any kind payable by either Party to the other will be a payment by the Developer to Corix of the engineering and development costs incurred from the date of this Agreement to the date of termination. For clarity, these costs will not include any costs related to the Utah PSC CPCN application or any costs incurred prior to the date of this Agreement.

If the Developer terminates this Agreement pursuant to Section 9.1(d), then neither Party shall be obligated to make any payments to the other Party other than any amounts owing at the time of such termination.

If this Agreement is terminated by Corix pursuant to Section 9.1(d) or Section 9.3, then Corix may deliver to the Developer an invoice for the final amounts owing, calculated in accordance with a formula similar to that provided in Schedule 2.3(d) for any Building not completed and not subject to an existing Lease.

Corix will provide the Developer with monthly updates in respect of the Infrastructure Costs incurred by Corix and will provide invoices and such other documentation as is reasonably requested by the Developer as evidence of such costs and that they have been reasonably incurred.

##### **b) Payments to Developer**

If this Agreement is terminated by Developer pursuant to Section 9.2, for any Building that is at the time of termination within 24 months of occupancy under Schedule 8 and not subject to an existing Lease, to the extent necessary to allow the supply of comparable Thermal Energy services to any such Building, then at Developer's election, Developer may (i) require Corix to provide revised design and engineering or (ii) deliver to Corix an invoice with supporting documentation for any reasonable amounts Developer has incurred to obtain such revised design and engineering. Corix agrees to promptly pay any such reasonable invoiced amount to Developer, up to \$[REDACTED] per such Building. Additionally, Corix shall forego recovery of any and all amounts necessary to ensure that all existing Customers do not incur an increase in rates for the operation of the DES to the extent directly resulting from the Corix Default causing the termination of this Agreement. To the extent applicable, the amounts that Corix is agreeing to forego pursuant to this Section 9.4(b) shall be calculated in accordance with a formula similar to that provided in Schedule 2.3(d).

## **9.5 No Other Termination Payments**

Except as expressly set forth in this Agreement and the Project Documents, neither Party will have any liability for paying or reimbursing the other Party for any costs, fees or expenses, whether internal or external, incurred by that other Party in connection with the termination of this Agreement.

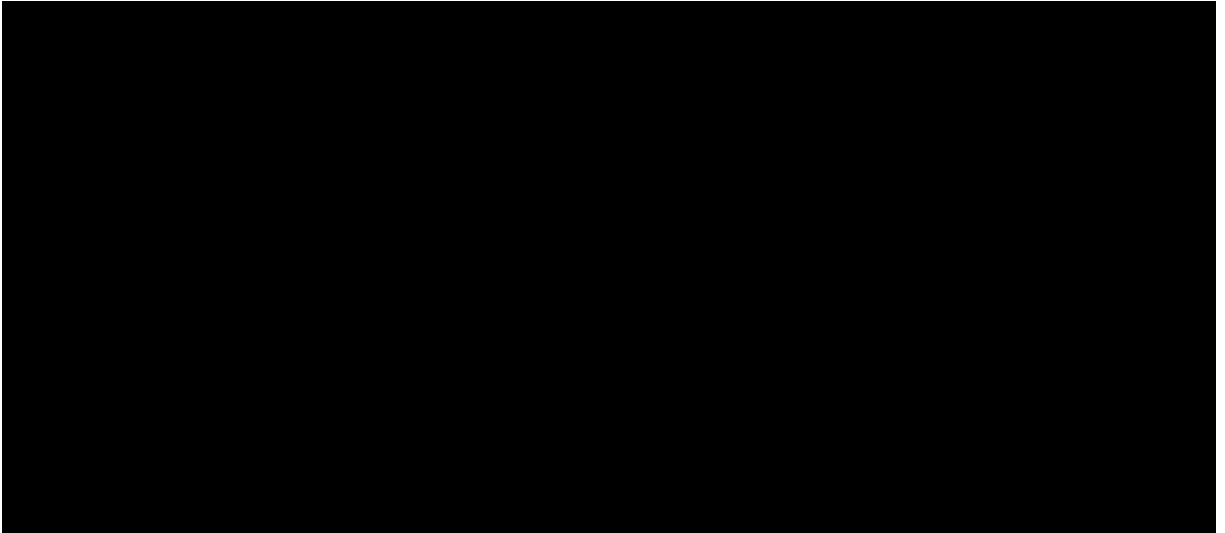
## **9.6 Survival**

Any terms of this Agreement or the Project Documents that by their nature extend beyond the expiration or termination of this Agreement shall remain in effect until fulfilled. A termination of this Agreement does not automatically terminate any provision of any other Project Documents unless expressly provided for in such Project Document.

## **10. ENVIRONMENTAL MATTERS**

### **10.1 Developer Environmental Covenants**

a)



b) Except as otherwise provided in this Agreement, including, but not limited to, Section 10.1(a), the Developer is not aware of any environmental contamination or condition within the Project Lands that would reasonably be anticipated to impair, impact, increase the cost of, or create liability in any way for, Corix's construction, use, maintenance, or related activities within the Project Lands for acts pursuant to, related to, or arising out of or in connection with this Agreement. Further, Developer represents and warrants that, to its knowledge, the Project Lands are in material compliance with all Environmental Laws, and Developer has not received a notice of a material violation of an Environmental Law, or any action pending or threatened in connection to the Project Lands.

c) The Developer will comply with Environmental Laws in its use and occupancy of the Infrastructure Lands and will use commercially reasonable efforts to cause Tenants, contractors, subcontractors and other occupants and users of the Infrastructure Lands (excluding Corix and any Affiliates) to comply with Environmental Laws in their respective use and occupancy of the Infrastructure Lands. Without limiting the generality of the foregoing, the Developer will not, except in compliance with Environmental Laws:

- (i) install or use or allow to be installed or used on, in or under such part of the Infrastructure Lands as the Developer owns from time to time any materials, equipment or apparatus,

the installation, use or storage of which is likely to cause the generation, accumulation or migration of any Contaminants; or

- (ii) use or allow to be used such part of the Infrastructure Lands as the Developer owns from time to time to dispose of, handle or treat any Contaminants in a manner in whole or in part that violates Environmental Laws or causes the Infrastructure Lands to become contaminated,
- d) provided that the Developer will not be responsible for any such installation, use, storage, disposal, handling, or treatment by Corix or any Affiliate or those for whom they are responsible in law.
- e) The Developer will remediate (including by way of risk assessment), and will be responsible (at the sole cost and expense of the Developer or other responsible party) for the remediation (including by way of risk assessment) of, in accordance with Environmental Laws, any and all Contaminants relating to such part of the Infrastructure Lands as the Developer owns from time to time, except where such remediation is Corix's responsibility pursuant to Section 10.4a)(ii).
- f) Consistent with and in addition to the obligations under Section 10.2 below the Developer will indemnify, defend, and hold Corix, together with its contractors, agents, and employees (the "Indemnified Parties") harmless from and against any and all claims and liabilities arising out of, resulting from, or in connection with any Contaminant on the Project Lands, except to the extent such Contaminant was released or deposited on the Project Lands by Corix.

## **10.2 Developer Environmental Liability**

- a) The Developer acknowledges and agrees that Corix will not under any circumstances whatsoever be liable for any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Infrastructure Lands and any affected adjacent property) which may be paid by, incurred by or asserted against Corix or any Affiliate to the extent attributable to:
  - (i) any breach of or non-compliance with the provisions of Section 10.1 by the Developer;
  - (ii) any Release or alleged Release of any Contaminants at or from the Infrastructure Lands related to or as a result of the presence of any pre-existing Contaminants at, on, under or in the Infrastructure Lands, including surface and ground water, as at the Agreement Date, or as a result at any time of the operations of the Developer or any act or omission of the Developer or any Person for whom the Developer is at law responsible; or
  - (iii) the presence of any Contaminants on, in or under the Infrastructure Lands except to the extent that such presence arises from any breach of or non-compliance with the provisions of Section 10.3 by Corix.
- b) The Developer hereby releases and forever discharges Corix and any Affiliates from and against any and all claims, claims for remediation costs, demands, actions, causes of action and suits which any member of the Developer Group has or may hereafter have or bring against Corix or any Affiliates for or by reason of, or arising from, any of the matters referred to in Section 10.2a).

### **10.3 Corix Environmental Covenants**

- a)** Corix will comply with Environmental Laws in its use and occupation of the Infrastructure Lands and, without limiting the generality of the foregoing, Corix will not, except in compliance with Environmental Laws:
  - (i) install or use in the Infrastructure or on, in or under the Infrastructure Lands or any adjacent property any materials, equipment or apparatus, the installation, use or storage of which is likely to cause the generation, accumulation or migration of any Contaminants; or
  - (ii) use the Infrastructure Lands to dispose of, handle or treat any Contaminants in a manner in whole or in part that violates Environmental Laws or causes the Infrastructure Lands or any adjacent property to become a Contaminated Site.
- b)** Corix will remediate, and will be responsible (at its sole cost and expense) for the remediation of, in accordance with Environmental Laws, any and all Contaminants relating to the Infrastructure Lands for which Corix is liable pursuant to Section 10.4a)(ii).

### **10.4 Corix Environmental Liability**

- a)** Corix acknowledges and agrees that the Developer is not and will not under any circumstances whatsoever be liable for any liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Infrastructure Lands and any affected adjacent property) which may be paid by, incurred by or asserted against the Developer to the extent the same arise from:
  - (i) any breach of or non-compliance with the provisions of Section 10.3 by Corix; or
  - (ii) any Release or alleged Release of any Contaminants at or from the Infrastructure Lands as a result at any time of the operations of Corix or any act or omission of Corix or any person for whom Corix is at law responsible, provided that Corix will not in any way be responsible for the presence of any Contaminants on, in or under the Infrastructure Lands, or any migration thereof, except to the extent arising from a breach of or non-compliance with the provisions of Section 10.3 by Corix.
- b)** Corix hereby releases and forever discharges the Developer Group from and against any and all claims, claims for remediation costs, demands, actions, causes of action and suits the Developer has or may hereafter have or bring against Corix or any Affiliate for or by reason of, or arising from, any of the matters referred to in Section 10.4a).

### **10.5 Survival**

Notwithstanding anything to the contrary in this Agreement, the covenants, acknowledgements, agreements, and releases granted in this Article 10 will survive the expiry or termination of this Agreement. Any rights granted for access or ownership under this Agreement and any license, easement, or lease granted to Corix shall be governed according to their terms which may include survival beyond the term of this Agreement.



## **11. REPRESENTATIONS AND WARRANTIES**

### **11.1 Representations and Warranties of Developer**

Developer warrants to Corix the following and acknowledges that Corix is relying on such representations and warranties in entering into the transactions contemplated by this Agreement.

- a) Status of Developer. Developer is a Delaware limited liability company, with full power and authority to enter into and perform all of its obligations under the Agreement.
- b) Ownership. Developer is the owner of the Project Lands and has all rights and power to grant Corix the rights to use the Project Lands as described herein.
- c) Litigation. To the best of its knowledge, Developer is not a party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to Developer which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against Developer before or by any Governmental Authority, which could affect Developer's ability to perform its obligations under this Agreement.
- d) No Breach of Agreement. This Agreement and the performance of the obligations of Developer under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to Developer as of the Agreement Date.
- e) No Conflict with Constating Documents. Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of any of the terms or provisions of the constating documents of Developer, and all necessary corporate action on the part of Developer has been taken to authorize and approve the execution and delivery of this Agreement and the performance by Developer of its obligations hereunder.

### **11.2 Representations and Warranties of Corix**

Corix represents and warrants to the Developer the following, each of which is true and correct as of the Effective Date, and acknowledges that the Developer is relying on such representations and warranties in entering into the transactions contemplated by this Agreement.

- a) Status of Corix. Corix is a limited liability company under the laws of Delaware, with full power and authority to enter into and perform all of its obligations under the Agreement.
- b) Litigation. To the best of its knowledge, Corix is not a party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to Corix which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against Corix before or by any Governmental Authority, which could affect Corix's ability to perform its obligations under this Agreement.
- c) No Bankruptcy. Neither Corix nor any of its members have not filed any proceedings under the United States Bankruptcy Code or any other similar federal or state law or statute regarding relief from creditor's claims, and Corix has not received any actual notice of any such proceedings having been instituted or threatened by any party against it.
- d) Capabilities. Corix, together with its Affiliates, has the financial capability to accomplish the requirements under this Agreement, and has the experience and technical know-how to provide the Services contemplated herein and will have such financial capability, experience, and technical know-

how required under any Lease executed pursuant to this Agreement at the time such Lease is executed.

- e) No Breach of Agreement. This Agreement and the performance of the obligations of Corix under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to Corix as of the Agreement Date.
- f) No Conflict with Constating Documents. Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of any of the terms or provisions of the constating documents of Corix, and all necessary corporate action on the part of Corix has been taken to authorize and approve the execution and delivery of this Agreement and the performance by Corix of its obligations hereunder.
- g) No Convictions. Neither Corix nor any of its members, officers or directors has ever been convicted of commission of a felony or is presently the subject of a complaint or indictment charging commission of a felony.

## **12. FURTHER COVENANTS**

### **12.1 Reserved.**

### **12.2 Corix's Covenants**

In addition to the other obligations set out in this Agreement, Corix covenants and agrees with the Developer at all times as follows.

- a) Continued Existence. Corix will comply with all such legal requirements as are necessary to ensure that it remains in existence and in good standing in its jurisdiction of formation at all times while this Agreement is in effect.
- b) Report Third Party Damage. During the Term of this Agreement, Corix will report to the Developer any malicious damage or damage to the Infrastructure of which it becomes aware.
- c) Compliance with Laws. Corix will, at its sole cost and expense, abide by and comply with all applicable Laws (including Environmental Laws) in discharging its obligations hereunder.
- d) No Adverse Effect on Infrastructure. Corix will not take any action or omit to take any action in connection with the Infrastructure, including in connection with Corix's ownership, operation or maintenance of same or in connection with any expansion or upgrade of same, that has, or could reasonably be expected to have, an adverse effect on the Developer, the Infrastructure or the Thermal Energy parameters set out in the Lease. Notwithstanding the foregoing, any action or omission by Corix in fulfilling its obligations pursuant to this Agreement will be deemed not to be a breach of this Section 12.2d) provided such action or omission would, but for this Section 12.2d), otherwise be in compliance with this Agreement.
- e) Project Reporting. Corix will provide periodic (not less than quarterly) reporting on the progress of construction and installation of the Infrastructure.

### **13. INSURANCE AND PARENT GUARANTEES**

#### **13.1 Developer Insurance**

The Developer will obtain and maintain at its own expense throughout the term of this Agreement the following insurance coverage:

- a) Comprehensive General Liability Insurance against claims for personal injury, death or property damage arising out of its operations, in amounts it deems adequate but in any event, not less than \$[REDACTED] per occurrence and in the aggregate;
- b) Property Insurance insuring the property owned by the Developer (including the Infrastructure and the other assets that the Developer owns, operates and maintains in accordance with Section 2) or owned by others but for which the Developer is legally responsible against perils normally included in a standard “all risk” policy;
- c) All Risks Builder’s Risk policy covering assets that the Developer owns, operates and maintains in accordance with Section 2 against fire and other perils from time to time included in such policies affecting similar properties in Utah County, Utah with extended or additional perils supplemental coverage as would be insured against by a prudent owner in an amount not less than 100% of the replacement cost;
- d) if applicable, a standard automobile policy including standard contractual liability endorsement against claims for bodily injury, death, and damage to property, in an amount of not less than \$[REDACTED] per occurrence; and
- e) boiler and machinery insurance, written on a comprehensive form, including repair and replacement coverage, in an amount not less than 100% of the replacement cost.

For greater certainty, the Developer’s obligation to carry any such insurance will end when the Developer ceases to own any part of the Infrastructure Lands.

#### **13.2 Parent Guarantees**

- a) Developer shall deliver fully executed guaranty agreements of even date herewith in the form attached as Exhibit B hereto executed by each of Woodbury Capital VTC Fund, LP and Utah City Holdings LLC (collectively the “**Developer Parent Guarantees**”), each being parent entities of the Developer, in favor of Corix in connection to this Agreement and the Leases.
- b) Corix shall deliver a fully executed guaranty agreement of even date herewith in the form attached at Exhibit B hereto executed by Corix District Energy Holdings LP (the “**Corix Parent Guaranty**”), being a parent entity to Corix, in favor of Developer in connection to this Agreement and the Leases.

#### **13.3 Responsibility**

The Developer will be responsible for the full amount of all premiums and deductibles required under Section 13.1. All policies required must be effective at the Agreement Date and must, to the extent obtainable, provide that the insurance will not be cancelled without the insurer giving at least 30 days’ written notice to Corix. Insurance will be purchased from reputable insurers registered and licensed to underwrite insurance in the State of Utah. Where the Developer fails to comply with requirements of Section 13.1 or this Section 13.2, Corix may take all necessary steps to effect and maintain the required insurance coverage at the Developer’s expense.

#### **13.4 Evidence of Insurance**

The Developer will deliver or cause to be delivered to Corix evidence of all insurance policies required to be obtained and maintained by the Developer under Section 13.1 and any amendments, modifications, or replacements thereof.

#### **13.5 Corix Insurance**

Without restricting the generality of Section 14, or the responsibility of the Developer under the Agreement, insurance coverage will be arranged and paid for as follows:

##### **A. PROJECT-SPECIFIC INSURANCE**

Corix shall purchase and maintain at its own expense, the following types of insurance policies issued by insurance companies licensed to carry on business in the State of Utah:

##### **a) “All Risks” Builders’ Risk and Boiler & Machinery Insurance Coverage**

This policy shall cover all risks of direct physical loss or damage to the Project, including the perils of earthquake and flood, subject to customary exclusions. It shall cover all Infrastructure. It shall not provide coverage for contractors’ equipment other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins, and temporary buildings in connection with the construction operations.

It shall be written in the joint names of Corix, the contractor, subcontractors of all tiers and the advisors engaged on the Project.

It shall provide for a limit of coverage not less than the estimated final completed value of the Project work taking place for the period insured, with a specified sub-limit for property in off-site storage and specified sub-limit for transit risk. It may also contain other sub-limits usual to this type of insurance. It shall contain a waiver of the insurer’s subrogation rights against the Developer and all insureds and their officers, employees, servants, and agents, with the exception of architects, engineers, manufacturers and consultants for their errors or omissions in professional services. Furthermore, it shall provide that, in the event of loss or damage, payment shall be made to Corix and the Developer as their respective interests may appear and as trustees for the benefit of any and all insureds.

This insurance shall be maintained continuously from commencement of the work until the final Service Commencement Date in any given phase, provided that insurance obligations shall continue upon commencement of any subsequent phase of construction conducted hereunder. Terms and conditions are for this anticipated period at project award and any extensions to this period will be subject to change based on market conditions.

##### **b) Wrap-Up Liability Policy**

This policy shall cover the risks of liability for bodily injury, including death and property damage arising from activities at the Project site, subject to customary exclusions. It shall be written in the joint names of Corix, the Developer, the contractor, subcontractors of all tiers and advisors engaged on the Project, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the Project site and who do not perform any installation or construction work at the Project

site. It shall provide for a limit of liability not less than \$ [REDACTED] per occurrence for bodily injury, death, and damage to property including loss of use thereof.

This policy shall include the following coverage features:

- a. Premises and Operations Liability;
- b. Products and Completed Operations Liability (Aggregate Limit);
- c. Blanket Contractual Liability;
- d. Cross Liability and Severability of Interests Clause;
- e. Contingent Employer's Liability;
- f. Personal Injury Liability;
- g. "Occurrence" basis coverage for Bodily Injury and Property Damage;
- h. "Broad Form" Property Damage coverage, including "Broad Form" Completed Operations coverage;
- i. "Broad Form" Loss of Use of Property coverage;
- j. Coverage for shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work, grading, tunnelling, and all work below ground surface;

This insurance shall be maintained continuously from commencement of Corix's work until the Service Commencement Date in any given phase, provided that it shall continue upon commencement of any subsequent phase of construction conducted hereunder. The Products-Completed Operations Hazard coverage shall be for not less than 24 months after the Service Commencement Date. Terms and conditions are for this anticipated period at project award and any extensions to this period will be subject to change based on market conditions.

**c) Project Specific Contractors Pollution Liability ("CPL")**

This policy shall cover claims for bodily injury, property damage, clean-up costs and related legal defence expenses for pollution conditions that result from, or are disrupted by, the services rendered in performance at the Project site by or on behalf of Corix. This policy shall have limits of not less than \$ [REDACTED] per occurrence and in the aggregate. Coverage shall include extensions for transported cargo and off-site disposal.

This insurance shall be maintained continuously from commencement of Corix's work until the Service Commencement Date. The Completed Operations Hazard coverage shall be for not less than 24 months after the Service Commencement Date in any given phase, provided that it shall continue upon commencement of any subsequent phase of construction conducted hereunder. Terms and conditions are for this anticipated period at project award and any extensions to this period will be subject to change based on market conditions.

**d) Project-Specific Professional Liability**

This policy shall cover the risks of errors, omissions, or negligent acts in the performance of professional services for the Project.

It shall include as named insureds consultants of all tiers providing professional services on the Project. The named insureds are to be approved and accepted for coverage by the insurer. Corix will be listed as an indemnified party under the policy.

This policy shall provide for a limit of liability not less than \$ [REDACTED] each claim and in the aggregate (inclusive of defence costs and expenses) and it shall cover only this Project. It shall be written on a "Claims-Made" form and shall be maintained from beginning of Corix's work until 24 months after the

Service Commencement Date. Terms and conditions are for this anticipated period at project award and any extensions to this period will be subject to change based on market conditions.

#### **B. OPERATIONAL INSURANCE (following the Service Commencement Date)**

Corix shall purchase and maintain at its own expense, the following types of insurance policies issued by insurance companies licensed to carry on business in the State of Utah:

##### **a) “All Risks” Property and Boiler & Machinery Insurance Coverage**

This policy shall cover all risks of direct physical loss or damage to the Infrastructure, against perils normally included in a standard “all risk” policy, including the perils of earthquake and flood, subject to customary exclusions.

It shall be written in the name of the owner of the Infrastructure, Corix or applicable owner should transfer of ownership occur at time of completion. In the event of loss or damage, payment shall be made to the named insured (owner and loss payee).

It shall provide for a limit of coverage not less than the current replacement cost value of the Infrastructure, and adjusted at least annually to reflect changes in replacement cost value due to inflation and other factors, with sub-limits appropriate to the operational exposure.

Terms and conditions are for this future period at the Service Commencement Date and may be subject to reasonable change based on market conditions.

##### **b) General Liability Coverage**

Comprehensive General Liability Insurance against claims for bodily injury or property damage, including personal injury and death, covering its operations, including premises/operations liability and products/completed operations liability, subject to customary exclusions, in an amount not less than \$ [REDACTED] per occurrence and in the aggregate. This limit may be provided by a single policy or a combination of Primary and Umbrella / Excess Liability policies.

##### **c) Automobile Liability Coverage**

Standard automobile policy including standard contractual liability endorsement against claims for bodily injury, death, and damage to property, in an amount of not less than \$ [REDACTED] per occurrence and in the aggregate. This limit of liability may be provided by a single policy or in combination with an Umbrella / Excess Liability policy.

#### **13.6 Responsibility**

Corix will be responsible for the full amount of all premiums and deductibles required under Section 13.5. Except as otherwise expressly provided herein, all policies required must be effective at the Agreement Date and must, to the extent obtainable, provide that the insurance will not be cancelled without the insurer giving a least 30 days’ written notice to the Developer by Corix. Insurance will be purchased from reputable insurers registered and licensed to underwrite insurance in the state of Utah. Where Corix fails to comply with the requirements of Section 13.5 or this Section 13.6, the Developer may take all necessary steps to effect and maintain the required insurance coverage at Corix’s expense.

### **13.7 Evidence of Insurance**

Corix will deliver or cause to be delivered to the Developer evidence of all insurance policies required to be obtained and maintained by Corix under Section 13.5 and any amendments, modifications or replacements thereof, all in a form satisfactory to the Developer.

### **13.8 Additional Insured**

Each Party will ensure that the other Party is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1a) (under both the “Project-Specific Insurance” heading and the “Operational Insurance” heading), in the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **14. INDEMNITY AND LIABILITY**

### **14.1 Corix Indemnity**

Without limiting any other obligation of Corix provided herein, except with respect to Developer’s gross negligence or willful misconduct, to the fullest extent permitted by law, Corix will indemnify, defend, and save harmless the Developer and its Affiliates and its and their respective officers, employees, agents and contractors (collectively, the “**Developer Indemnitees**”) from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses (including the full amount of all legal fees and expenses on a solicitor and own-client basis) which may be paid by, incurred by, or asserted against the Developer Indemnitees or any one or more of them, arising from or in connection with (i) any gross negligence or wilful misconduct perpetrated by Corix or any Person for whom it is in law responsible; (ii) any breach or non-performance by Corix of any of its obligations under this Agreement; or (c) any service of process or notice of (or similar document relating to) any action, omission, violation or circumstance caused by Corix regarding the Infrastructure and such action, omission, violation or circumstance could have a material effect on the Project.

### **14.2 Developer Indemnity**

Without limiting any other obligation of the Developer provided herein, except with respect to Corix’s gross negligence or willful misconduct, to the fullest extent permitted by law, the Developer will indemnify, defend, and save harmless Corix and any Affiliates from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses (including the full amount of all legal fees and expenses on a solicitor and own-client basis) which may be paid or incurred by, or asserted against Corix and any Affiliates or any one or more of them, arising from or in connection with (i) any gross negligence or wilful misconduct perpetrated by the Developer or any Person for whom it is in law responsible; (ii) any breach or non-performance by the Developer of any of its obligations under this Agreement; or (iii) any service of process or notice of (or similar document relating to) any action, omission, violation or circumstance regarding the Project and such action, omission, violation or circumstance could have a material effect on Corix’s construction, operation, or maintenance of the Infrastructure.

### **14.3 Liability**

- a) Notwithstanding anything to the contrary in this Agreement, neither Corix nor any Affiliate will be responsible or liable for any loss, injury (including death), damage or expense incurred by the Developer or any other Person caused by or resulting from, directly or indirectly, any failure or defect in the Infrastructure, unless the loss, injury (including death), damage or expense is attributable to the gross negligence or wilful misconduct of Corix or any Affiliate.

b) For greater certainty, the Developer is solely responsible for all expense, risk, and liability with respect to:

- (i) the Building System and all other equipment, other than the Infrastructure; and
- (ii) the use by the Developer of the Thermal Energy supplied by Corix and the use of Thermal Energy services provided by Corix.

#### **14.4 Consequential Loss**

Notwithstanding anything to the contrary in this Agreement, in no event will either Party be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its Affiliates or their respective officers, directors, shareholders, employees, contractors, agents, successors or permitted assigns.

#### **14.5 Survival**

Notwithstanding anything to the contrary in this Agreement, the indemnities set out in this Article 14 will survive the expiry or termination of this Agreement.

### **15. FORCE MAJEURE**

#### **15.1 Suspension**

Subject to the other provisions of this Article 15, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any of its obligations or covenants set out in this Agreement (except an obligation or covenant to pay), such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### **15.2 Definition of Force Majeure**

For purposes of this Agreement, “**Force Majeure**” means any event or occurrence not within the reasonable control of the Party claiming Force Majeure, and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of nature such as lightning, earthquakes, storms, washouts, landslides, avalanches, floods and other extreme weather conditions; epidemics; pandemics (including COVID-19); strikes, lockouts or other industrial disturbances; acts of the Queen’s or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe not preventable by maintenance properly carried out in the ordinary course; any delay by or actions of Governmental Authorities; and Changes of Law. For the purposes of this Article 15, a Party is deemed to have control over the actions or omissions of those Persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities.

#### **15.3 Exceptions**

Neither Party will be entitled to the benefit of Section 15.1 under any of the following circumstances:

- a) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;



- b) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition or to resume the performance of such covenants and obligations with reasonable dispatch; or
- c) if the inability or failure was caused by lack of funds by the Party claiming Force Majeure or is in respect of any amount due by the Party claiming Force Majeure hereunder.

The Party claiming Force Majeure, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, will give the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### **15.4 Resumption of Obligations**

As soon as possible after the Force Majeure event or occurrence is remedied or discontinued, the Party claiming Force Majeure will give notice to the other Party of such remedy, and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### **15.5 Settlement of Labor Disputes**

Notwithstanding anything to the contrary in this Article 15, but subject to Section 15.3, the settlement of labor disputes or industrial disturbances in which a Party is involved is entirely within the discretion of that Party, which Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 15.1.

### **16. DISPUTE RESOLUTION**

#### **16.1 Informal Dispute Resolution**

In the event of any dispute that may arise under, out of, in connection with or in relation to this Agreement, the Parties will make commercially reasonable efforts, in good faith, to settle such dispute by amicable negotiations through the Operations Committee to reach a fair and equitable solution satisfactory to the Parties.

#### **16.2 Utah PSC Resolution**

If a dispute within the jurisdiction of the Utah PSC remains unresolved within 15 Business Days of either Party requesting that the other Party engage in negotiations to resolve the dispute in accordance with Section 16.1, the dispute may be referred by either Party to the Utah PSC for resolution through its administrative dispute resolution process described under Utah Admin. Code § 746-345-6.

#### **16.3 RESERVED**

#### **16.4 Arbitration**

- a) If a dispute subject to Section 16.3 cannot be settled within 30 days, or such other period agreed to in writing by the Parties, the dispute may be referred to and resolved by arbitration before a single arbitrator.

- b) In the event the Parties cannot agree on the appointment of an arbitrator within five Business Days, either Party may refer the matter to the American Arbitration Association, or such mediation or arbitration center as may be mutually agreed upon. The arbitration will:
  - (i) to the extent possible, and with the necessary modifications as determined by the arbitrator, be administered in accordance with the Utah Uniform Arbitration Act, 78B U.C.A. Chapter 11.
  - (ii) be conducted in the state of Utah.
- c) Notwithstanding the above, no one will be nominated to act as an arbitrator who is in any way financially interested in the business affairs of, or is not independent from, the Developer or Corix.
- d) The arbitrator will issue a written award that sets forth the essential findings and conclusions on which the award is based.
- e) If the arbitrator fails to render a decision within 30 days following the final hearing of the arbitration, either Party may terminate the arbitration and a new arbitrator will be appointed in accordance with these provisions. If the Parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then any Party to this Agreement will be entitled to apply to a court of competent jurisdiction for judicial relief in accordance with the provisions of this Article 16 and 78B U.C.A. Chapter 11.

#### **16.5 Arbitrator's Authority**

- a) The arbitrator will have the authority to award:
  - (i) monetary damages;
  - (ii) interest on unpaid amounts from the date due;
  - (iii) specific performance; and
  - (iv) permanent relief.
- b) The costs and expenses of the arbitration, but not those incurred by the Parties, will be shared equally, unless the arbitrator determines that a specific Party prevailed. In such a case, the non-prevailing Party will pay all costs and expenses of the arbitration, but not those of the prevailing Party.

#### **16.6 Continuation of Services**

Except as otherwise expressly provided herein, each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 16 except where to do so would threaten public health and safety or the environment.

#### **16.7 Injunctive Relief**

Nothing in this Article 16 will preclude either Party from applying to a court of competent jurisdiction for interlocutory or interim relief.

17. **LEASE AGREEMENT**

- a) At a reasonable time after commencement of any portion of the Infrastructure being constructed for a specific building, Corix and Developer or its Affiliate shall execute the equipment lease agreement in substantially the same form as attached hereto as Exhibit A (the “**Lease**”).
- b) The Lease shall:
  - (i) Have an initial term of 25 years;
  - (ii) Contain terms allowing for operations and maintenance obligations of Corix; and
  - (iii) Grant Corix the option, in Corix’s sole discretion to terminate the lease upon approval of the CPCN by the Utah PSC which allows inclusion of the CEP subject to the Lease to be included in Corix’s rate base.
  - (iv) Identify the Service commencement Date (the “**Target Date**”), which shall be the date upon which the Infrastructure shall be available to provide Services to any Buildings under the Lease, and upon which certain base charges shall be payable to Corix in accordance with terms of the Lease and any exhibits thereto.

18. **JOINT VENTURE**

Within sixty (60) days of the Agreement Date, Corix Utah City DE Systems, LLC (“**Corix DESCO**”) and Developer shall cooperate in good faith and use commercially reasonable efforts to negotiate, finalize and enter into (i) a membership interest subscription agreement pursuant to which Developer (or its wholly-owned subsidiary) will acquire an ownership interest in Corix DESCO, and (ii) an amended and restated operating agreement of Corix DESCO to reflect Developer (or its wholly-owned subsidiary) as a member of Corix DESCO following the completion of such acquisition, with such agreements being substantially in accordance with the summary of terms set forth in Exhibit D and in form and substance mutually acceptable to the Parties.

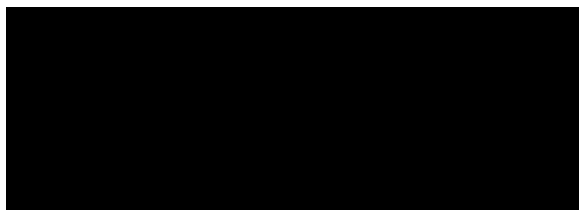
19. **GENERAL**

19.1 **Notices**

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by same-day courier or by electronic means) to the Party for whom it is intended at the following address or such other address in the state of Utah as such Party may designate to the other Party by notice to the attention of the following persons or the successors in title or function of such person from time to time in writing delivered in accordance with this Section 19:

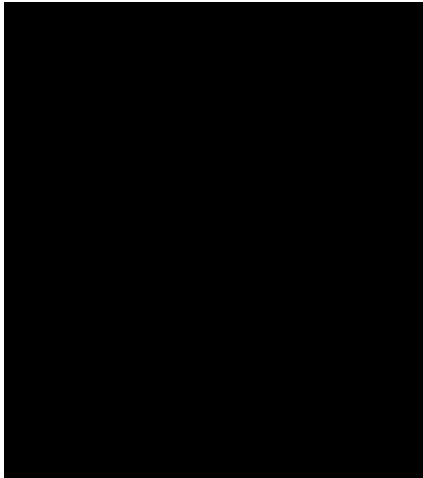
- a) if to Corix:

**CORIX UTAH CITY HEATING AND COOLING, LLC**



b) if to the Developer:

**FLAGBOROUGH L.L.C.**



Notwithstanding the foregoing, notices with respect to Force Majeure events will be given in writing by same-day courier or by email, or orally in person, to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## **19.2 Confidentiality**

- a) Each Party (the “**Receiving Party**”) will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) of the other Party (the “**Disclosing Party**”) and will at all times during the term of this Agreement and for a period of two years thereafter hold the same in confidence and will not, without the prior written consent of the Disclosing Party, disclose or divulge to any Person the terms of this Agreement or any Confidential Information of the Disclosing Party, provided that nothing in this Section 19.2 will restrict or prevent any Party from making any disclosure of such terms or any Confidential Information:
- (i) that is reasonably necessary or desirable for the Receiving Party to carry out and give full effect to the terms, conditions and intent of this Agreement, including providing any information required to be disclosed by the Utah PSC in connection with any application, hearing, or other action;
  - (ii) that is required by any Law or Governmental Authority;
  - (iii) to an Affiliate of the Receiving Party or to the directors, officers or employees of such Party or its Affiliates;
  - (iv) to the professional advisors of the Receiving Party;
  - (v) that the Receiving Party, in its sole discretion determines is required, prudent or necessary to be disclosed by that Party in connection with any prospectus filing, public securities offering or other applicable securities matters or laws; or
  - (vi) that is already in the public domain, that was in the possession of the Receiving Party prior to its receipt of the information from the Disclosing Party or that was disclosed to the Receiving Party by a third party free of any obligation of confidentiality.

- b) For the purposes of this Section 19.2, “**Confidential Information**” means proprietary information of the Disclosing Party such as data, plans, drawings, manuals, or specifications which have been provided by the Disclosing Party or its employees, contractors, agents, subcontractors or Affiliates to the Receiving Party pursuant to this Agreement, or proprietary information conceived or developed by or for the Disclosing Party concerning construction practices, operation and maintenance practices, agreements, business plans and strategies, marketing plans and strategies, profits, costs, pricing and pricing structures, pro forma statements and systems of procedure, but excluding information developed or conceived by the Receiving Party without using the Confidential Information of the Disclosing Party.

### **19.3 Changes in Law**

The terms and conditions of this Agreement shall be subject to any and all changes in applicable laws, including but not limited to changes to rules and regulations that subsequently may be prescribed by any federal, state or local governmental authority having competent jurisdiction.

### **19.4 No Waiver**

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or different character.

### **19.5 Inurement**

This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

### **19.6 Entire Agreement**

The Project Documents contain the entire agreement between the Parties in respect of the subject matter thereof and cancel and supersede any prior written or oral agreements or understandings, express or implied, between the Parties.

### **19.7 Further Assurances**

Each Party will execute and deliver all such further documents and do all such further things as may be reasonably requested by the other Party to give full effect to the intent and meaning of this Agreement.

### **19.8 Assignment and Subcontracting**

- a) Neither Party will be permitted to assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; provided, however, that subject to the approval of the Utah PSC, if required:
- (i) Corix will be permitted to assign this Agreement or any of its rights or obligations hereunder to, or sell the majority of its shares or business or its material assets to, or amalgamate with, any of its Affiliates without the consent of the Developer, provided such Affiliate is duly qualified to observe and perform Corix’s covenants and obligations under this Agreement and agrees directly with the Developer to be bound by the terms and conditions of this Agreement; and
  - (ii) the Developer (or either Person comprising the Developer) will be permitted to assign

this Agreement or any of its rights or obligations hereunder to (1) any subsequent owner of the Project or any interest therein; (2) an Affiliate; or (3) a construction lender, provided (in the case of (1) or (2) only) that such owner or Affiliate:

- A. agrees directly with Corix to be bound by the terms and conditions of this Agreement; and
- B. has also been or is concurrently being assigned all or part of the Developer's rights, title, and interest to the Project;

whereupon the Developer (or the applicable Person comprising the Developer) will be released from all its covenants and obligations under this Agreement (to the extent assumed by such owner or Affiliate).

### **19.9 Relationship**

Nothing in this Agreement will create a partnership or joint venture between the Developer and Corix.

### **19.10 Joint and Several**

If Corix is comprised of more than one Person, then all the covenants, agreements, representations, and warranties of Corix in this Agreement will be deemed to be joint and several covenants, agreements, representations, and warranties of each of such Persons. If the Developer is comprised of more than one Person, then all the covenants, agreements, representations and warranties of the Developer will be deemed to be several (and not joint and several) covenants, agreements, representations and warranties of each of such Persons and Corix acknowledges that the maximum percentage liability of each Person comprising the Developer in respect of a particular matter arising in connection with this Agreement will be equal to its percentage ownership interest in the Project Lands.

### **19.11 Counterparts**

This Agreement may be executed in counterparts and transmitted by electronic means with the same effect as if the Parties had signed the same original document. All counterparts will be construed together and will constitute one and the same agreement and, if transmitted by electronic means, each Party will promptly dispatch an original to the other Party.

### **19.12 Terms Not Defined Herein**

Unless otherwise expressly indicated, capitalized terms not otherwise defined in this Agreement shall have the respective meanings provided for in the Project Documents.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first above written.

**FLAGBOROUGH L.L.C.,**  
**a Delaware limited liability company**

By: WOODBURY CORPORATION,  
a Utah corporation, Manager

By:

By:

By:

**CORIX UTAH CITY HEATING AND COOLING,**  
**LLC**

By:

# SCHEDULE 1

## Project Map



\*The boundary of the Project Map above is subject to periodic adjustment to account for additional buildings that may be serviced by the Utah City district energy system (eg. Huntsman Cancer Institute).



**SCHEDULE 2**  
**BASE BUILDING PROVISIONS**

















































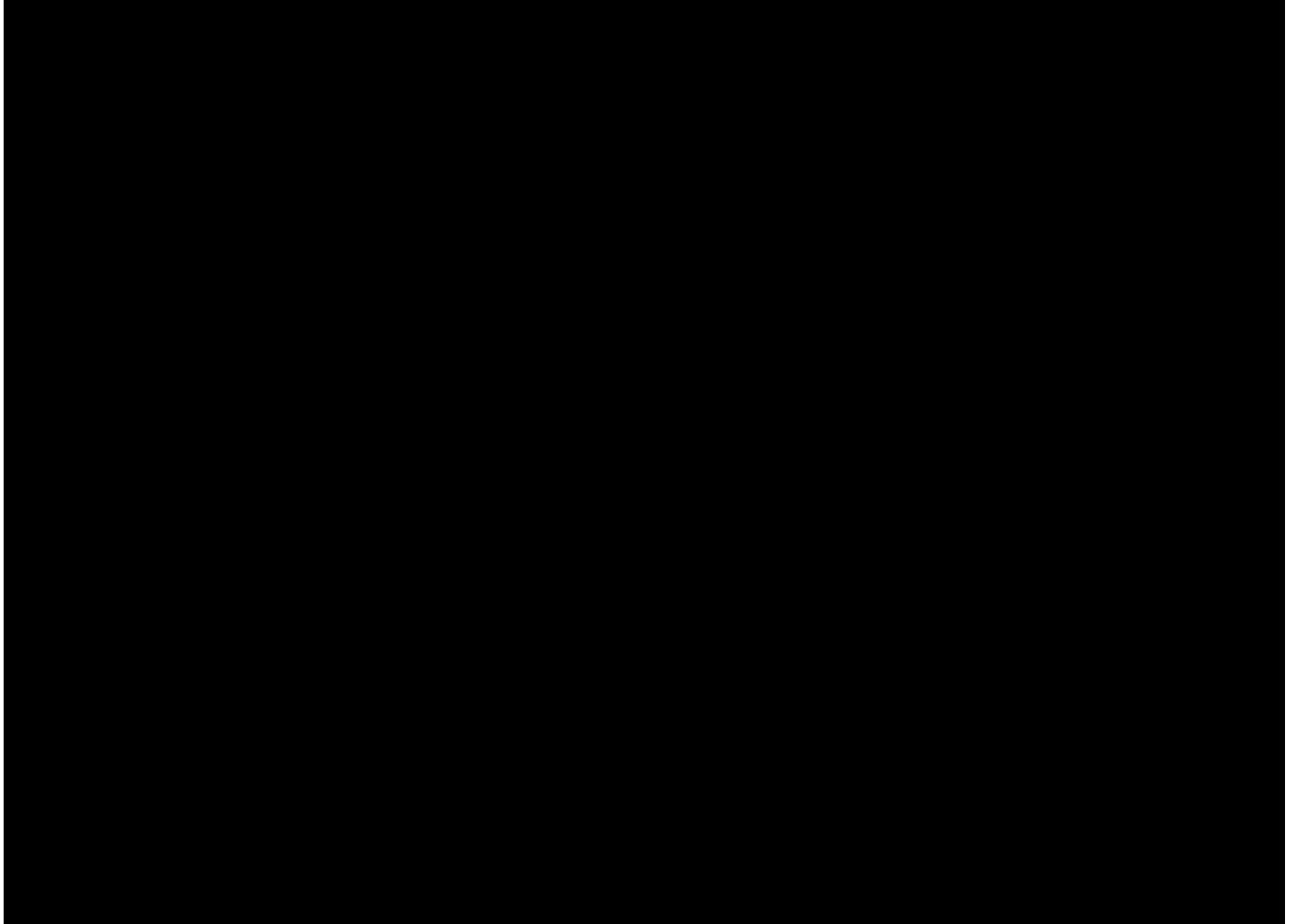




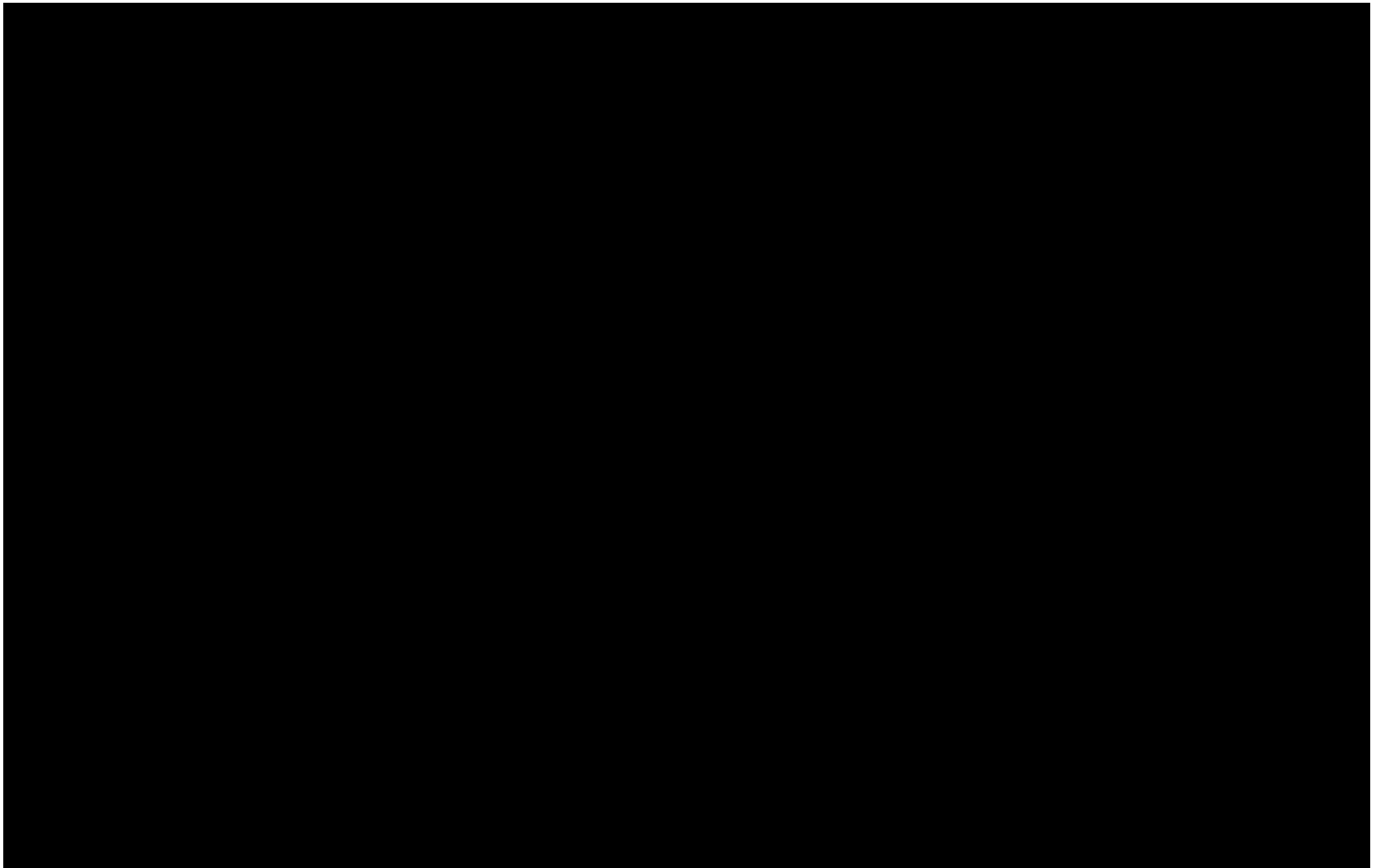


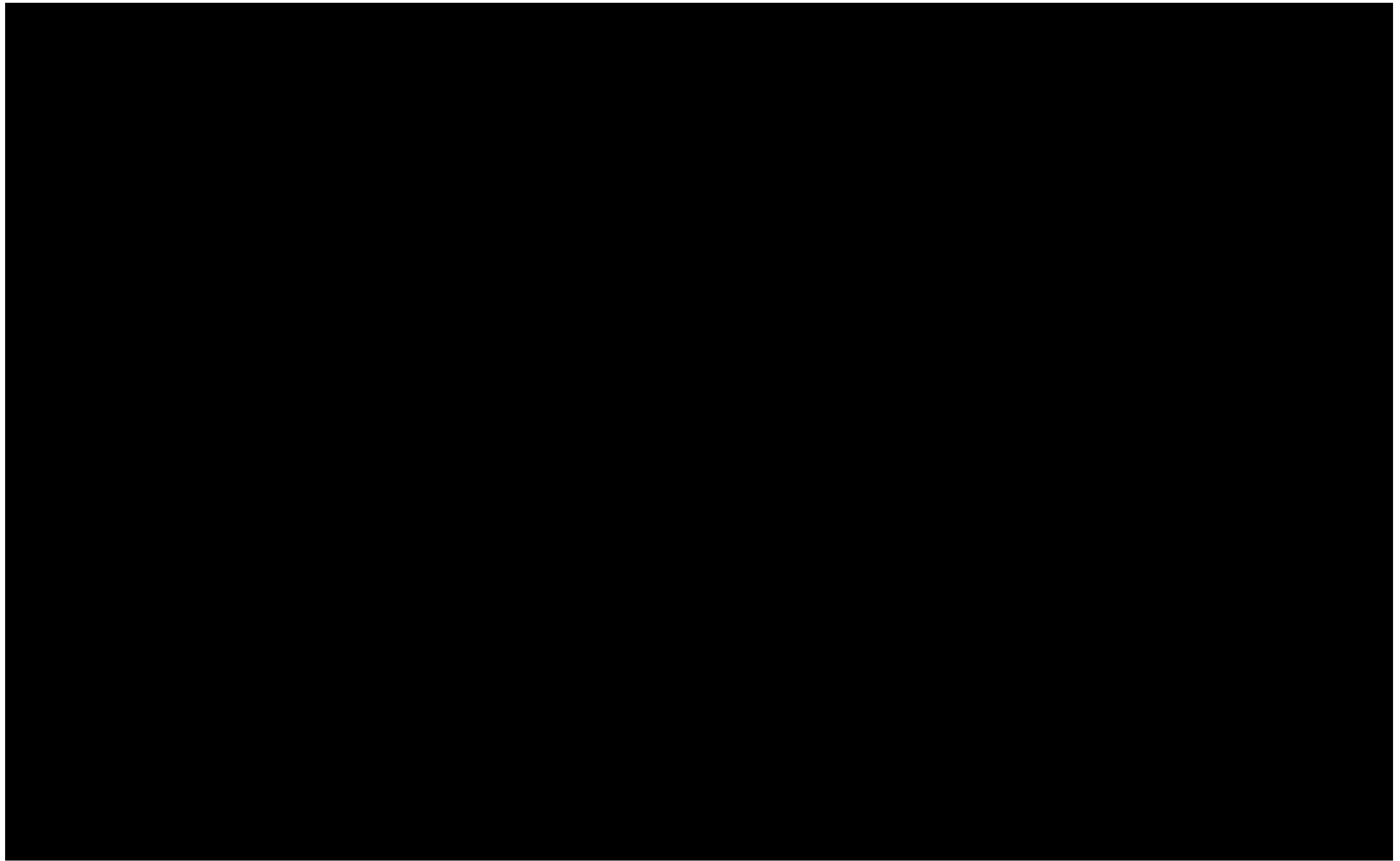
**SCHEDULE 2.3(d)**

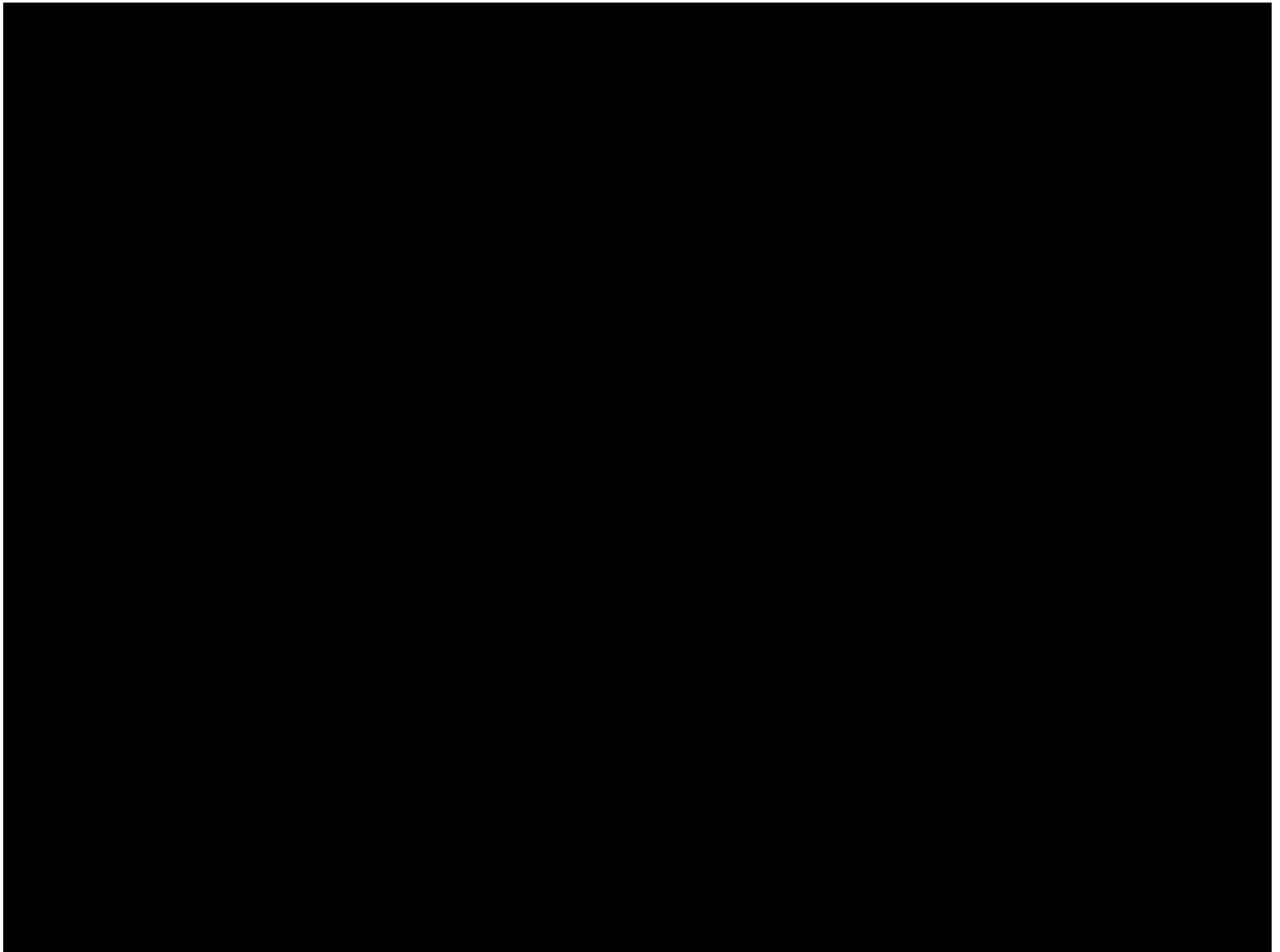
**Fees for Removal of a Building or  
Termination of all Remaining Buildings upon Termination of Agreement**



**SCHEDULE 3**  
**PROJECT TIMELINE**







## **SCHEDULE 4**

### **MATERIAL PERMITS**

<b>Material Permit</b>	<b>Responsible Party</b>
Preliminary Plan Approval (PPA) City of Vineyard/the State of Utah	Developer
Development Permit(s)	Developer
Occupancy Permit(s) for CEP area	Developer
Building Permit(s) and all sub permits from the City of Vineyard	Developer
CPCN from the Utah PSC (if and when applied for)	Corix
All necessary building and construction permits to install the District Energy system under the auspices of Tennant Improvement Permit	Corix
Air Quality Permits	Corix
All necessary operating permits	Corix

## **SCHEDULE 4**

### **MATERIAL PERMITS**

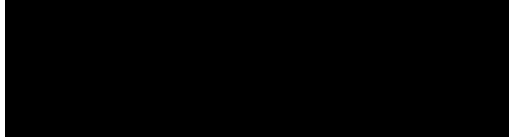
<b>Material Permit</b>	<b>Responsible Party</b>	<b>Likely Timeframe</b>
Development Permit(s)	Developer	3-6 months
Building permit(s) and all sub permits for the CEP area(s) from the City of Vineyard	Corix	3-6 months
CPCN from the Utah PSC	Corix	6-9 months
All necessary building and construction permits to install the Energy Transfer Stations under the auspices of Tennant Improvement Permit	Developer	1-3 months
Minor Source Air Permit from the Utah Department of Environmental Quality	Corix	6 months
Wastewater discharge permit from the Utah Department of Environmental Quality	Corix	6 months
Stormwater discharge permit from the Utah Department of Environmental Quality	Corix	6 months
Fugitive Dust Control Plan	Corix	< 1 month
All necessary operating permits approved by the Utah Department of Environmental Quality	Corix	3-6 months
Architectural Committee Approval from the City of Vineyard	Developer	3-6 months



## **SCHEDULE 5**

When Recorded Mail to:

**CORIX UTAH CITY HEATING AND COOLING, LLC**



*Space above for County Recorder's use*  
Parcel Id. No. \_\_\_\_\_

**RIGHT-OF-WAY AND EASEMENT GRANT**

\_\_\_\_\_, a \_\_\_\_\_ with an address of \_\_\_\_\_ (“Grantor”), does hereby convey to CORIX UTAH CITY HEATING AND COOLING, LLC, a Delaware limited liability company with an address of \_\_\_\_\_ (“Grantee”), its successors and assigns, for the sum of \_\_\_\_\_ in hand paid and other good and valuable consideration, receipt of which is hereby acknowledged, a right-of-way and non-exclusive easement to construct, lay, maintain, operate, repair, alter, inspect, protect, make connections to, remove and replace a system of water pipes, fittings, and ancillary components and equipment connecting Grantee’s physical central thermal energy plant to buildings in and around Grantor’s property (hereinafter collectively called “Facilities”), through and across the following described land and premises situated in the County of Utah, State of Utah, and more particularly described in Exhibit A attached hereto and incorporated by this reference (the “Easement”).

TO HAVE AND TO HOLD the same unto said Grantee, its successors and assigns, so long as the Facilities within the Easement shall be used by Grantee for service to any customer, with the right of ingress and egress to and from the Easement to construct, lay, maintain, operate, repair, alter, inspect, protect, make connections to, remove and replace the Facilities. The rights granted within the Easement shall include the right to use any available access road(s) for the purpose of conducting activities permitted hereunder. During temporary periods, Grantee may use such portion of the property along and adjacent to the Easement as may be reasonably necessary in connection with construction, maintenance, repair, removal or replacement of the Facilities. Grantor shall have the right to use the Easement area so long as such use does not unreasonably interfere with the Facilities or any other rights granted to Grantee hereunder. Notwithstanding the foregoing, Grantor shall in no way be limited from providing non-exclusive easements in the Easement area to other utility providers, provided such other utility providers do not unreasonably interfere with Grantee’s use of the Easement. Grantor reserves the right to relocate the Easement

area, at Grantor's sole cost, including the cost of granting a new easement, relocating the Facilities, and any attendant costs, provided such new easement provides the equivalent rights to Grantee and does not impair Grantee's use or operation of the Facilities.

Without limiting the generality of the foregoing, Grantor and Grantee do hereby covenant, warrant and agree as follows:

1. Grantee shall be required to present any construction plans for the Facilities to Grantor in advance of commencement of construction for Grantor's review and written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, and shall be required to hold a preconstruction meeting with Grantor before engaging in any construction on the Easement area. Within sixty (60) days of the completion of Grantee's initial construction, as well as within sixty(60) days of the completion of any subsequent construction, Grantee shall provide Grantor with an as-built description of the Facilities.

2. Grantor shall not build or construct, nor permit to be built or constructed, over or across the Easement, any building, retaining walls, rock walls, or footings which impairs the maintenance or operation of the Facilities.

3. Grantor shall not change, and shall not permit others to change, the contour within the Easement without prior written consent of Grantee, which consent shall not be unreasonably withheld or delayed.

4. Grantor shall not plant, or permit to be planted, any deep-rooted trees, or any vegetation with roots that may damage the Facilities, within the Easement, without prior written consent of Grantee.

5. Grantor shall not place, and shall not allow others to place, personal property within the Easement that impairs the maintenance or operation of the Facilities.

6. Grantee shall have the right to cut and remove timber, trees, brush, overhanging branches, landscaping and improvements or other obstructions of any kind and nature which may injure or unreasonably interfere with Grantee's use, occupation or enjoyment of this Easement, without liability to Grantor, and without any obligation to restore or compensate Grantor for any removed material.

7. Grantor will indemnify, defend, and hold Grantee, along with its contractors, agents, employees, directors, officers, and affiliates ("Indemnified Parties") harmless from and against any and all claims, mechanics liens, demands, damages, actions, costs and charges for personal injury and property damage, including without limitation any claims, liabilities, fees, or penalties (the "Claims") arising out of or resulting from the presence of any Contaminants (as defined below) on or near the Easement, except to the extent such Contaminants are released or deposited by Grantee's use of the Easement, and any other liabilities (the "Liabilities"), including attorney's fees, arising out of or relating to Grantor's use of the Easement or any activities conducted thereon by Grantor(s), its agents, employees, or contractors. For purposes of this indemnity "Contaminants" shall mean any radioactive materials, asbestos materials, urea

formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, hazardous waste, waste, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or release into the environment of which is now or hereafter prohibited, controlled, or regulated under any applicable federal, state, or local law. Notwithstanding the foregoing, Grantor's obligation to indemnify the Indemnified Parties shall not apply to the extent any Claims and/or Liabilities arise from or relate to the negligence or willful misconduct of any of the Indemnified Parties. Moreover, Grantor's obligation to indemnify the Indemnified Parties shall not apply to the extent any Claims and/or Liabilities relating to the Contaminants were exacerbated by the negligence or willful misconduct of any of the Indemnified Parties.

8. Grantee shall indemnify, defend and hold harmless Grantor against all Claims and Liabilities arising out of or resulting from the presence of any Contaminants on or near the Easement that are released or deposited by Grantee's use of the Easement, or any injury or death of persons or damage to property resulting from the negligence or willful misconduct of Grantee or its respective employees, contractors, or agents exercising the rights herein granted, except to the extent that such Claims or Liabilities are caused by the negligence or willful misconduct of Grantor or Grantor's employees, contractors, or agents.

9. Grantee shall maintain and repair the Facilities in accordance with industry standards and applicable laws, rules and regulations for Facilities of the type installed by Grantee. In the event of any leak, spill or release of substances caused by or arising from Grantee's operation of the Facilities, Grantee shall take immediate action to stop any such leak, spill or release and to clean up and remediate any affected soil, groundwater or other areas in accordance with applicable laws, rules and regulations.

10. The rights granted herein to Grantee may not be assigned by Grantee without the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed; provided, however, Grantee may assign, in whole or in part, the rights granted herein without the consent of Grantor if the assignment is (a) to a parent, subsidiary, affiliate or related company of Grantee, (b) to an entity regulated by the Utah Public Service Commission as a Utility who will utilize this Easement to provide public utility services, or (c) for any mortgage, pledge, or other type of encumbrance of the Facilities or Easement.

This Easement shall run with the land, shall be binding upon and inure to the benefit of the successors and assigns of Grantor and the successors and assigns of Grantee, and may be assigned in whole or in part by Grantee to a future owner or operator of the Facilities.

*[Signature and Acknowledgement on Following Page]*

WITNESS the execution hereof this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ personally appeared before me  
\_\_\_\_\_ who, being duly sworn, did say  
that he/she is a Manager of \_\_\_\_\_, and that the foregoing instrument  
was signed on behalf of said company by authority of its Articles of Organization or its Operating  
Agreement.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ personally appeared before me  
\_\_\_\_\_ who, being duly sworn, did say  
that he/she is a Manager of \_\_\_\_\_, and that the foregoing instrument  
was signed on behalf of said company by authority of its Articles of Organization or its Operating  
Agreement.

\_\_\_\_\_  
Notary Public

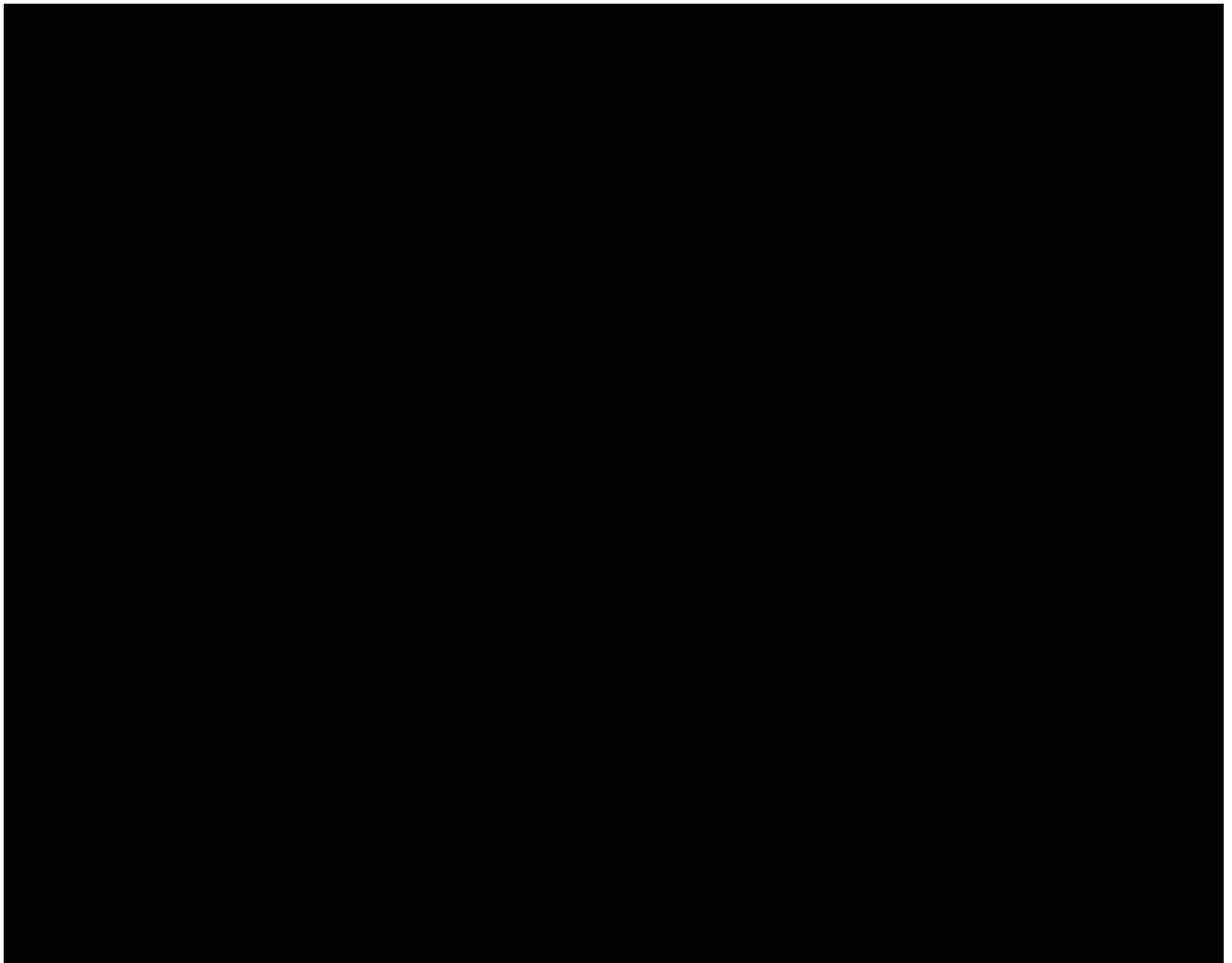
**EXHIBIT A**  
(Easement Legal Description)

## **SCHEDULE 8**

### **DEVELOPER'S CONSTRUCTION SCHEDULE**

1. *Journal of the American Medical Association*, 1997; 277: 1039-1043.





## **SCHEDULE 9**

### **RESPONSIBILITY MATRIX**

The following table is the responsibility matrix for the infrastructure:

**SCHEDULE 9****RESPONSIBILITY MATRIX**

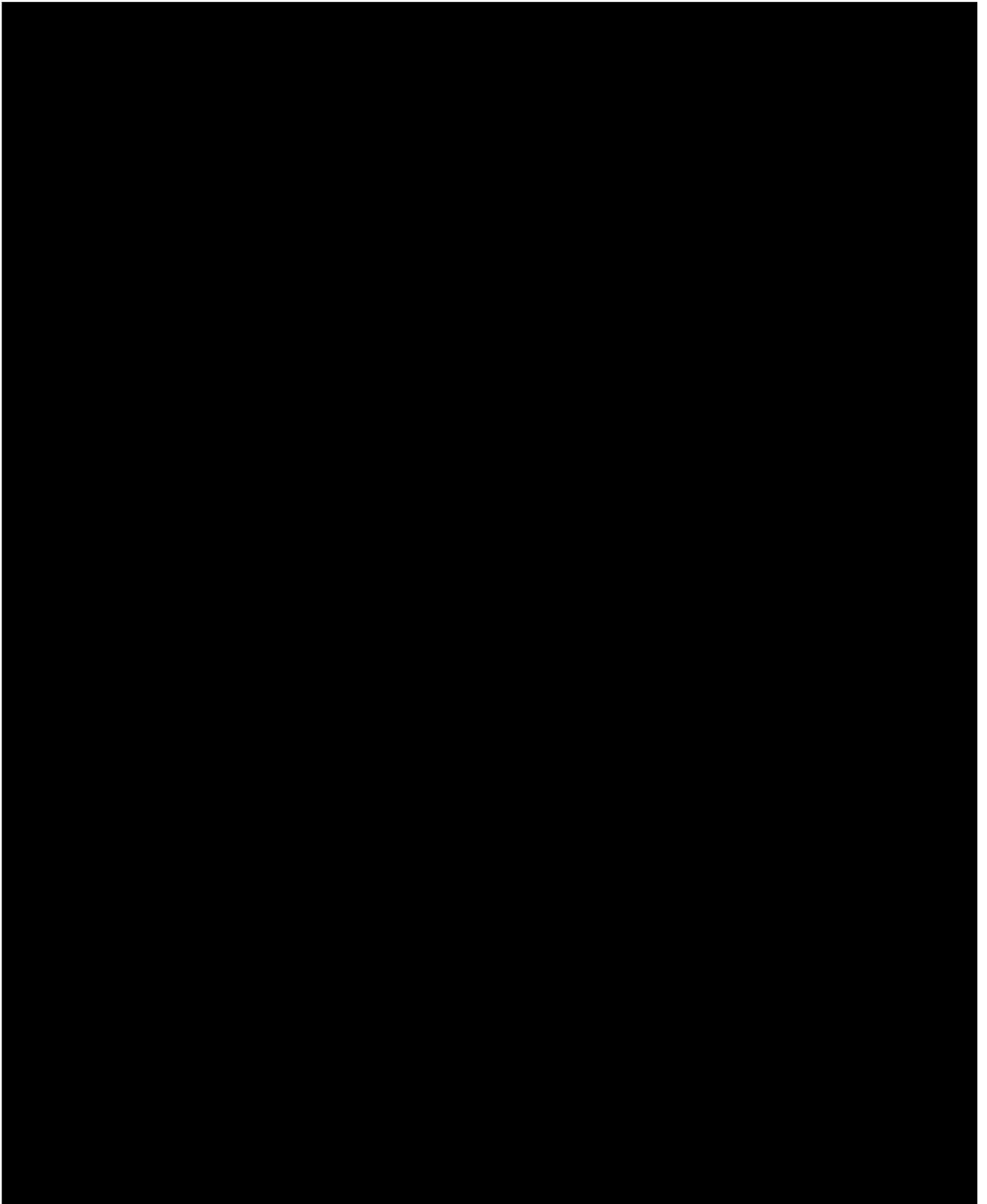
<b>Item</b>	<b>Preparation of Specifications</b>	<b>Installation and Ownership</b>	<b>Operations and Maintenance</b>
<b>Central Energy Plant(s)</b>	Corix	Corix	Corix
<b>Natural Gas Service to CEP(s)</b>	Developer	Developer	Developer
<b>Electricity to CEP(s)</b>	Developer	Developer	Developer
<b>Energy Transfer Stations</b>	Corix	Corix	Corix
<b>Hot Water Distribution Network</b>	Corix	Corix	Corix
<b>Chilled Water Distribution Network</b>	Corix	Corix	Corix
<b>Building HW Piping/Risers</b>	Developer	Developer	Developer
<b>Building HW Distribution Pumps</b>	Developer	Developer	Developer
<b>Fire Protection</b>	Developer	Developer	Developer
<b>ETS Drains</b>	Developer	Developer	Developer
<b>Architectural Screening at CEP(s)</b>	Developer	Developer	Developer

**SCHEDULE 10**  
**INFRASTRUCTURE COSTS**

## INFRASTRUCTURE COSTS

**SCHEDULE 11**  
**MASTER PLAN**

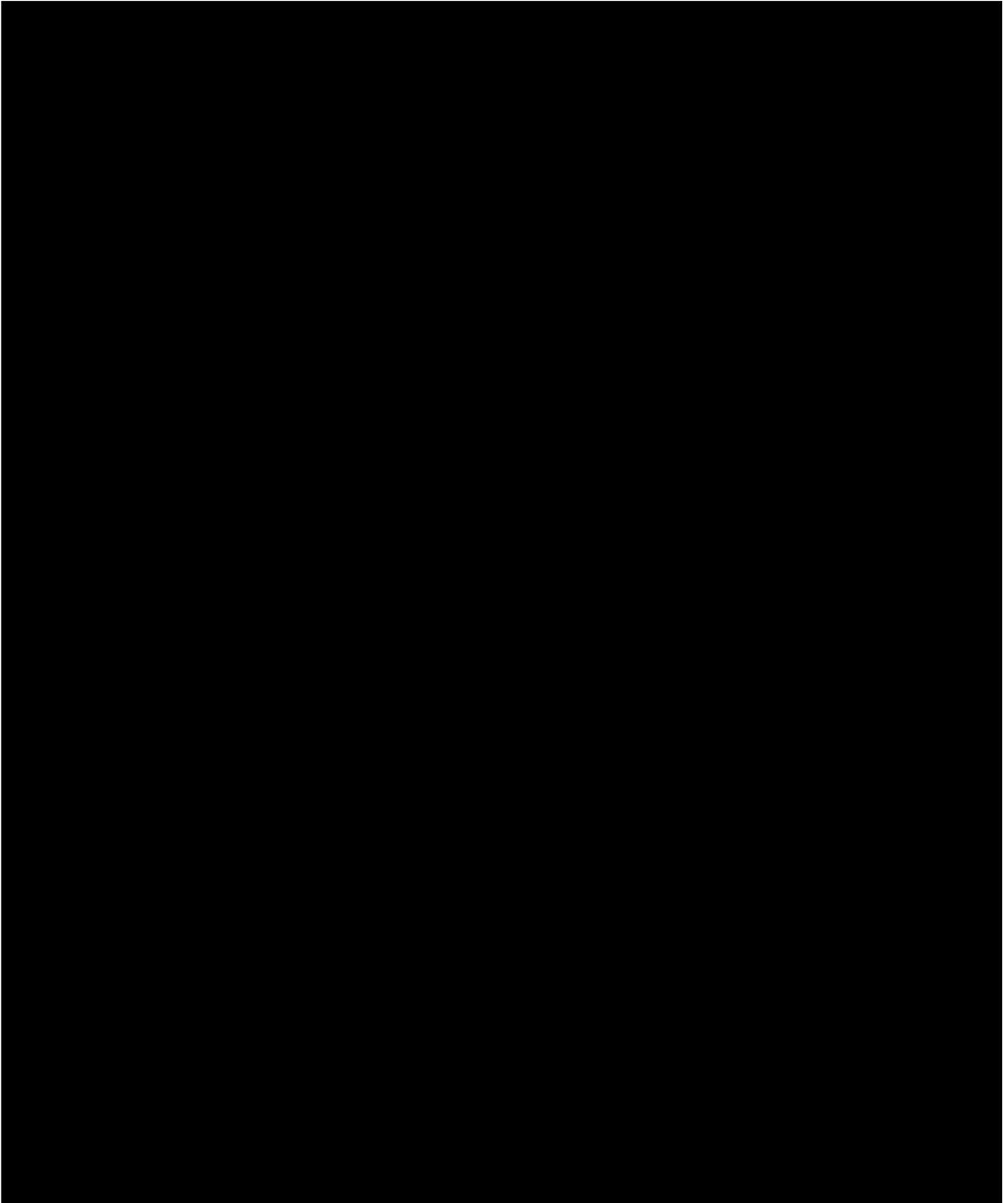
## SCHEDULE 11

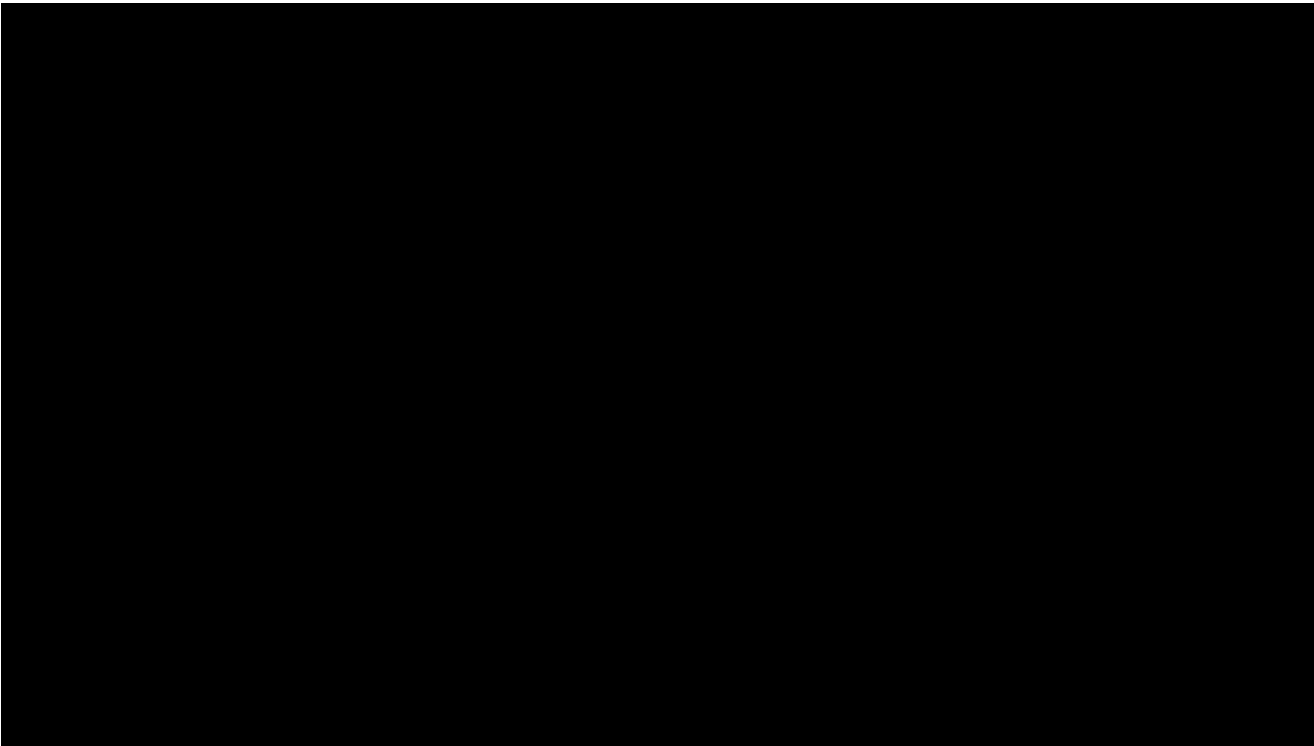


**SCHEDULE 12**  
**DEFINITION OF PHASE 1**



## SCHEDULE 12





## **SCHEDULE 13**

### **DESIGN SPECIFICATION, LAYOUT AND COMPONENTS OF INFRASTRUCTURE**

























































































**EXHIBIT A**  
**LEASE AGREEMENT**



































































































**EXHIBIT B**  
**GUARANTY**







































































## EXHIBIT C

