

CORIX UTAH CITY HEATING AND COOLING LLC

THIS DISTRICT ENERGY SERVICES AGREEMENT (“Agreement”) dated as of _____ (the **“Effective Date”**), is entered into by and among _____, a _____ (**“Developer”**) and **CORIX UTAH CITY HEATING AND COOLING, LLC**, a Delaware limited liability company (**“Corix”**) (each a **“Party”** or, collectively, the **“Parties”**).

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. Corix is an experienced public utility owner and operator that, pursuant to an Infrastructure Agreement entered into by Corix and Flagborough, L.L.C. (**“Flagborough”**) and dated January 16, 2025 (the **“Infrastructure Agreement”**), has been engaged by Flagborough to develop a heating and cooling utility to provide such Thermal Energy services in connection with Flagborough’s Utah City development project; and to design, construct, own, operate and maintain the related Infrastructure to provide those Thermal Energy services as described in the Infrastructure Agreement; and

C. The Developer wishes to design, build, and operate _____ (the **“Project”**) on land within Corix’s service area as set forth in the Infrastructure Agreement, and will require Thermal Energy services in connection with the Project;

D. The Developer owns the land on which the Project is located;

E. The Developer and Corix intend that Corix will be the exclusive provider to the Project of Thermal Energy Services as described herein.

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.

All capitalized terms not defined herein have the definition ascribed to them in the Infrastructure Agreement. In this Agreement, the following terms have the meanings set out below:

- (a) **“Building”** means a permanent residential or other structure or building on or to be on the land on which the Project is located and which will receive Energy Services.
- (b) **“Building System”** means the complete HVAC system and domestic hot water system and / or storage equipment to be installed and used for distributing and storing Thermal Energy in a Building, connected to but downstream of and excluding the Service Connection and Energy Transfer Station for that Building;
- (c) **“Building System Commissioning”** means , in relation to a Building System, the process by which the Building System is tested by the Developer (including operational and performance testing) to verify and confirm that it performs in accordance with the final Building System specifications agreed and approved pursuant to Section 2.1;

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- (d) “**Developer’s Engineer**” means a professional engineer engaged by the Developer at the Developer’s sole cost and expense, which engineer must be acceptable to Corix, acting reasonably;
- (e) “**Energy Services**” means the provision by Corix of Thermal Energy via the Infrastructure;
- (f) “**Energy Transfer Station**” means the separate heat exchanger(s) for space heating, space cooling, and domestic hot water (excluding domestic hot water storage tanks), energy metering equipment including temperature sensors, flow meters, energy calculators, control panels and all pipes, fittings and other associated equipment that control the transfer, and measure Thermal Energy from the Service Connection to a Building System;
- (g) “**Fees**” means the fees to be charged by Corix and paid by Customers for Energy Services, as approved by the PSC from time to time;
- (h) “**Functional**” means, in relation to a Building System, when that Building System fully complies with Article 2, has satisfied Building System Commissioning and is performing the function for which it was designed;
- (i) “**Infrastructure**” means, collectively, the CEP, Distribution System, Service Connections and Energy Transfer Stations;
- (j) “**Infrastructure Agreement**” has the meaning set forth in Recital D;
- (k) “**Project Infrastructure**” means those portions of the Infrastructure located on the lands owned by the Developer and associated with the Project.
- (l) “**Project Infrastructure Work**” means the design, engineering, installation and verification by Corix of Project Infrastructure on the Developer Lands;
- (m) “**Service Connection**” means the system of water pipes, all ancillaries and all fittings necessary to connect the Energy Transfer Station to the Distribution System;
- (n) “**Statutory Right of Way**” means a statutory right of way agreement, to be executed in a form substantially similar to the Form of Statutory Right of Way attached as Schedule D hereto, the purpose of which is to permit Corix access to Developer Lands for purpose of performing its obligations under this Agreement and any other Agreements with Developer.
- (o) “**Target Date**” has the meaning ascribed to it in Section 2.2;
- (p) “**Thermal Energy**” means the thermal energy for space heating, space cooling, and domestic hot water.

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;

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- (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, becomes, or is found by a court of competent jurisdiction to be 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.

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- 1.7 Schedules. The following are the Schedules to this Agreement:
- | | |
|------------|--|
| Schedule A | Form of Application for Service |
| Schedule B | Form of Final Thermal Energy Delivery Parameters |
| Schedule C | Point of Delivery |
| Schedule D | Form of Statutory Right of Way |
| Schedule E | Performance Measures |

2. DEVELOPMENT OBLIGATIONS OF DEVELOPER BUILDING SYSTEMS

2.1 Review and Approval of Specifications.

To achieve compatibility between each Building System and the Infrastructure and to achieve appropriate energy loads, the Developer shall:

- (a) prior to installation of a Building System, review the Infrastructure Agreement Schedule 2 Base Building Provisions and submit the specifications for each Building System, including all design and engineering components and the Developer's proposed energy loads, temperatures and any connection requirements, for review by Corix. The Developer will allow Corix at least 30 days to discuss and comment on such specifications and where Corix, acting reasonably, determines that any change(s) to any submitted specifications are necessary to achieve compatibility with the Infrastructure, such additions, repairs or alterations will be promptly made by the Developer at its sole expense. The final energy loads (at peak design conditions) and the maximum supply and return temperatures (at such peak design conditions) for the Building System will be mutually agreed between the Developer and Corix and approved by the Developer's Engineer, in each case as evidenced by their respective signature on a completed Final Thermal Energy Delivery Parameters document in the form attached as Schedule B;
- (b) at any time as requested by Corix and from time to time as the Developer determines to be prudent, provide Corix, in a timely manner, with such access to and copies of specifications, drawings and other information as Corix may reasonably require to confirm that the Building Systems conform to the Final Thermal Energy Delivery Parameters as agreed and approved pursuant to subsection (a) above. Where, acting reasonably, Corix determines additions, repairs or alterations to any portion of a Building System are necessary to achieve compatibility with the Infrastructure, such additions, repairs or alterations will be promptly made by the Developer at its sole expense; and
- (c) except pursuant to subsection (b) above in relation to additions, repairs or alterations identified by Corix, not amend the Final Thermal Energy Delivery Parameters agreed to and approved pursuant to subsection (a) above in any manner that does or may affect Corix under this Agreement without the prior written consent of Corix, not to be unreasonably withheld. In all cases, the Developer will provide to Corix written notice of any proposed or contemplated amendment to such agreed and approved Final Thermal Energy Delivery Parameters. In connection with any proposed or contemplated amendment to such agreed and approved Final Thermal Energy Delivery Parameters that Corix determines will or may affect its rights hereunder, the Parties will review and agree on any amendments to the Final Thermal Energy Delivery Parameters and this Agreement that may be necessary to:
 - i. reflect necessary or desired consequential alterations to any part of the Building System or the Project Infrastructure and the manner in which such alterations are executed;

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- ii. adjust the timing of any of the Project Infrastructure Work; and/or
- iii. address compensation owing to Corix for any costs incurred or to be incurred by it in connection with such amendments. The Developer acknowledges and agrees that it will be responsible to pay or reimburse (as applicable) Corix for any additional costs reasonably incurred by Corix in connection with, or as a consequence of, such amendments.

2.2 Construction and Installation.

The Developer will construct and install each Building System in accordance with the Final Thermal Energy Delivery Parameters agreed and approved pursuant to Section 2.1. The Developer will keep Corix reasonably informed regarding the progress of construction and installation of each Building System. Without limiting the generality of the foregoing, the Developer will provide at least one year's written notice to Corix of the Developer's anticipated date, as provided for in the Final Thermal Energy Delivery Parameters agreed to by the Parties, by which date: (a) the Developer will have completed the construction and installation of each Building System in accordance with this Section 2; (b) the Developer will have each Building System ready for connection to the Energy Transfer Station in accordance with Section 2.3; and (c) each Building will be ready to receive Energy Services from Corix (the "**Target Date**").

2.3 Connection to Energy Transfer Station.

Upon completion of construction and installation of each Building System, the Developer will provide to Corix documentation from the Developer's Engineer (in a form that is satisfactory to Corix, acting reasonably) verifying that the Building System has been designed, constructed and installed in full compliance with the final Thermal Energy delivery parameters agreed and approved pursuant to Section 2.1, has been flushed and cleaned, and is capable of performing the function for which it was designed. Each Building System will be connected to the Energy Transfer Station by the Developer, in the presence of a Corix representative, as and when such full compliance of such Building System has been so verified by the Developer's Engineer. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that a Building System will not be connected to the Infrastructure prior to the Target Date, unless the Parties mutually agree otherwise in writing.

2.4 Building System Commissioning.

Upon connection of each Building System to the Energy Transfer Station pursuant to Section 2.3, the Developer will perform Building System Commissioning. During Building System Commissioning, the Developer will take all required steps to remedy any defects in the design, engineering, construction or installation of the Building System identified by the Developer's Engineer within such period of time as may be reasonably required to remedy such defects and will thereafter promptly provide to Corix documentation from the Developer's Engineer (in a form that is satisfactory to Corix, acting reasonably) verifying that the Building System is Functional.

2.5 The Developer's Responsibility.

Notwithstanding anything to the contrary in this Article 2, the Developer acknowledges and agrees that Corix will not in any way be responsible for any aspect of the design, engineering, permitting, construction or installation of any Building System; each Building System has or will be engineered, designed, constructed and installed by the Developer solely at its own expense and in a good and workmanlike manner

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consistent with industry standards and in compliance with all applicable Laws and this Agreement. The Developer will ensure that each Building includes a Building System that complies with this Article 2.

2.6 Delays.

The Developer agrees that if Energy Services Commencement has not occurred within 90 days from the Target Date or such other date that is mutually agreed by the Parties in writing (the “**Deadline**”) such that a Building has not commenced receiving Energy Services in accordance with Section 3.1 by the Deadline, and that if such delay in Energy Services Commencement is the result of the acts or omissions of the Developer, the Developer will commence paying Corix the Capacity Charge as specified in the tariff approved by the PSC with effect as of the Deadline as if Corix had commenced providing Energy Services to the Building as of the Deadline. The Developer acknowledges and agrees that its obligation to pay such Capacity Charge as aforesaid shall apply whether or not it has signed an Application for Service by the Target Date or the Deadline. Notwithstanding the foregoing, the Developer shall not be required to pay such Capacity Charge as aforesaid if Corix is the direct cause of the delay (in which case Corix will use commercially reasonable efforts to commence providing Energy Services as soon as possible, and in any event no later than 30 days from the Deadline).

2.7 Corix Obligations.

Notwithstanding any other language contained in this Agreement, Corix shall (i) install all Corix-owned Infrastructure necessitated by this Agreement in a good and workmanlike manner, consistent with industry standards and in compliance with all applicable laws; (ii) use all reasonable efforts to conduct all necessary work in a timely manner compatible with Developer’s construction and installation schedule; (iii) use all reasonable efforts to regularly inform the Developer regarding progress; and (iv) install all Corix-owned Infrastructure in designated rights of way, assuming that access to such is provided by Developer.

Corix shall additionally maintain in effect all the licenses, permissions, authorizations, consents, and permits necessary to carry out its obligations under this Agreement. Where needed and/or upon Corix’s request, Developer shall use commercially reasonable efforts to assist Corix in obtaining any such permits.

2.8 Liens.

Corix shall not permit any liens arising out of Corix’s use of the Project Site to be filed against the Project Site; provided however, if a lien is filed against the Project Site by a party claiming through Corix and Corix wishes to contest such lien, Corix shall, within twenty (20) days after receiving notice of a lien, provide Developer a bond or other security as may be reasonably requested, or promptly cause such liens to be removed from the Project Site in the manner provided by applicable law.

2.9 Return of Equipment.

At the expiration of the applicable term of this Agreement (or sooner pursuant to a valid termination event), Corix shall, at its discretion, promptly remove from the Developer’s property any Infrastructure and/or related equipment installed in relation to this Agreement, with the cost of disassembly, loading, transport of all such Infrastructure and/or equipment, and general site cleanup from the removal of such Infrastructure and/or equipment, to be paid by the Developer.

2.10 Access to Developer Lands.

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In addition to all additional obligations of Developer pursuant to this Agreement, Developer hereby agrees that it shall use all reasonable efforts to secure for Corix and its subcontractors, agents, employees and representatives, for nominal consideration, Statutory Rights of Way, easements, leases, or other agreements providing non-exclusive access to, on, over, and under the Developer Lands as may be or become necessary to achieve the goals of this Agreement or any other agreements between the Parties. Without limiting the scope of the foregoing, the Developer shall, upon Corix's request, grant or cause to be granted to Corix and duly register with the relevant County Recorder's Office a Statutory Right of Way with respect to each lot comprising a part of the Developer property touching or concerning this Agreement and any other Statutory Rights of Way as required to allow Corix to perform its obligations under this Agreement and any other agreements between the Parties. Each Statutory Right of Way granted pursuant to this Section 2.10 shall have priority over any other encumbrance of the subject property. For greater certainty, any access granted to Corix pursuant to this Section 2.10 shall be adequate, in the sole discretion and determination of Corix, to allow Corix to efficiently and effectively carry out its obligations hereunder and pursuant to any additional agreements between the Parties without undue disturbance or interference from the Developer or any of its contractors, agents, employees, or representatives.

Developer further acknowledges and agrees that each Statutory Right of Way, lease, or other registrable interest granted pursuant to this Section 2.10 may be registered by Corix (at Corix's sole cost) in the relevant County Recorder's Office, together with any priority arrangements as Corix may deem necessary or advisable.

3. PROVISION OF ENERGY SERVICES BY CORIX

3.1 Provision of Energy Services.

Corix will provide Energy Services to a Building, subject to and provided that the following conditions have been satisfied:

- (a) that the Building System for such Building has been connected to the Infrastructure in accordance with Article 2; and
- (b) that the relevant Application for Service has been completed, executed and delivered in accordance with Section 3.2.

Such conditions are for the sole benefit of Corix and may be waived only by Corix. The date and time when heat is first transferred between the Infrastructure and the Building System shall be deemed the "**Energy Services Commencement**".

3.2 Customer Agreements.

The Developer will:

- (a) prior to Building System Commissioning in accordance with Section 2.4:
 - (i) complete, execute and deliver to Corix an Application for Service covering such Building; and
 - (ii) cause any homeowner's association, condominium corporation, or other divided ownership arrangement by agreement between the owners then existing or subsequently created in respect of the applicable Building to complete, execute and deliver to Corix an Application for Service covering such Building; provided,

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however, that there shall be only one Energy Transfer Station per Building, and therefore to the extent that there are multiple owners within a Building, the Developer will cause the homeowner's association, or similar organization whose premises include the space occupied by the Energy Transfer Station to complete, execute and deliver to Corix an Application for Service in respect of such Building;

- (b) Upon Corix's request, cause any Person to whom the Developer transfers or otherwise disposes, whether directly or indirectly, all or any portion of its interest in the Project to complete, execute and deliver to Corix an Application for Service covering such Building; and
- (b) if any such homeowner's association or similar organization or Person referred to in subsections (a)(ii) or (b) above refuses to execute an Application for Service in respect of a Building as required by this Section 3.2, pay to Corix the sum equal to the full cost (including without limitation, the capital investment) of all Infrastructure associated with the provision of Energy Services to such Building (including the applicable Energy Transfer Station and Service Connection) in order to ensure other existing and potential Customers of Corix are not adversely impacted.

4. ENERGY CHARGES

4.1 Energy Charges.

Corix will charge each Customer the applicable Fees, commencing on Energy Services Commencement, subject to any implications arising from delays pursuant to Section 2.6.

4.2 Adjustment to Fees.

The Developer acknowledges and agrees that, subject in each instance to approval by the PSC, Corix may adjust the Fees at any time and from time to time to ensure that it earns a fair market return on its provision of Energy Services to Developer.

4.3 Recovery of Costs and Expenses through Fees.

The Developer acknowledges and agrees that Corix will, to the extent possible, recover all costs and expenses incurred by it in connection with the Infrastructure or Energy Services, including without limitation design, inspection, construction and operation costs, permit fees, and all federal, state, regional and municipal taxes (including property taxes), levies and fees, through Fees.

4.4 Rate of Return.

The Developer further acknowledges and agrees that Corix will, through its applications to PSC, be seeking an appropriate rate of return for its provision of the Energy Services, as determined in light of risks assumed by Corix, number of Customers and other relevant factors, which rate of return may, depending on the circumstances, exceed the standard rate of return allowed by the PSC.

5. TERM AND TERMINATION

5.1 Term.

The term of this Agreement, if not sooner terminated pursuant to the provisions hereof, shall

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commence on the Effective Date and end on the date that is twenty-five (25) years from the Effective Date. The Agreement may be renewed or extended by mutual written agreement of the Parties.

5.2 Termination.

- (a) By the Developer. The Developer may terminate its right to receive Energy Services from Corix prior to expiration of the term of this Agreement by providing prior written request to Corix at least one (1) year prior to the requested termination of Energy Services. This Agreement shall not be terminated until Corix provides written consent in response to such request, which shall not be unreasonably withheld. Upon the termination date agreed upon by the Parties, Corix shall have no further obligation to provide or deliver Energy Services to the Developer.
- (b) By Corix. In the sole event that Corix, for any reason, permanently ceases to provide Energy Services in the Project area, Corix may terminate this Agreement upon provision of ninety (90) days' written notice to the Developer; provided, however, that the foregoing right of termination by Corix shall not apply where Corix's obligations are assumed by a successor in interest.
- (c) Obligations Prior to Termination. All obligations of the Parties, including Corix's obligation to provide Energy Services and the Developer's obligation to pay for Energy Services received, shall continue until the date of termination.

6. FORCE MAJEURE

6.1 Force Majeure.

No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such Party's (the "**Impacted Party**") failure or delay is caused by fire, flood, earthquake or other natural disaster, pandemic, epidemic, war, embargo, riot, the intervention of any government authority, acts of government, or changes in laws and governmental policies ("**Force Majeure Event(s)**"). The Impacted Party's right to claim a Force Majeure Event is conditioned upon the Impacted Party (i) giving prompt notice (but not less than three (3) business days after the occurrence of the Force Majeure Event) of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue; (ii) using diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized; and (iii) resuming the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Impacted Party's failure or delay remains uncured for a period of fourteen (14) days following written notice given by it under this Article, the Other Party may thereafter terminate this Agreement upon ten (10) days' written notice.

7. WARRANTIES

7.1 Developer Warranties.

- (a) Developer warrants and represents to Corix that (i) any equipment and/or materials incorporated in the Building System shall be new and in good operating condition; (ii) such equipment and/or materials will meet all specifications for its intended use and will otherwise conform to the requirements of this Agreement; (iii) such equipment is and will be free from liens, security interests, encumbrances (except for liens for current taxes not yet due and payable), and any other defects in title, other than financing statements that may be in the favor of and filed by Developer or its lenders;

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and (iv) such equipment (and the use thereof) and any associated services related to its construction and/or installation do not and will not infringe, misappropriate or violate the trademarks, service marks, copyrights, patents, patent rights, trade secrets and other intellectual property rights of any third party.

- (b) Any and all construction, installation, operation, and/or maintenance of the Building System shall (i) be performed in accordance with good, safe and workmanlike practices and generally accepted standards of professional care, skill, diligence and competence normally provided by a professional in the performance of work similar to the Services, and (ii) conform in all respects to Article 2 of this Agreement.
- (c) Developer is a limited liability company, duly formed, created, existing, and in good standing under and by virtue of the laws of [Delaware] and is authorized to do business in the State of Utah;
- (d) Developer possesses all requisite legal power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein;
- (e) Developer's execution, delivery, and performance of this Agreement have been duly authorized and are within the scope of its organizational documents; the person(s) executing this Agreement were duly authorized, by Developer, to execute this Agreement and to bind the Developer; and this Agreement constitutes Developer's legal, valid, and binding obligation;
- (f) Developer has obtained all licenses, authorizations consents and approvals required by any governmental authority or other third party and necessary for Developer to own its assets, carry on its business, and to execute and deliver requirements under this Agreement, including construction of the Building System; and Developer is in compliance with all laws that relate to this Agreement in all material respects.

7.2 Corix Warranties.

- (a) Corix warrants and represents to Developoer that (i) any equipment and/or materials installed by Corix shall be new and in good operating condition; (ii) such equipment and/or materials will meet all specifications for its intended use and will otherwise conform to the requirements of this Agreement; (iii) such equipment is and will be free from liens, security interests, encumbrances (except for liens for current taxes not yet due and payable), and any other defects in title, other than financing statements that may be in the favor of and filed by Corix or its lenders; and (iv) such equipment (and the use thereof) and any associated services related to its construction and/or installation do not and will not infringe, misappropriate or violate the trademarks, service marks, copyrights, patents, patent rights, trade secrets and other intellectual property rights of any third party.
- (b) Provision of the Energy Services shall (i) be performed in accordance with good, safe and workmanlike practices and generally accepted standards of professional care, skill, diligence and competence normally provided by a professional in the performance of work similar to the Services, and (ii) conform in all respects to Article 3 of this Agreement.
- (c) Corix is a limited liability company, duly formed, created, existing, and in good standing under and by virtue of the laws of Delaware and is authorized to do business in the State

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of Utah;

- (d) Corix possesses all requisite legal power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein;
- (e) Corix's execution, delivery, and performance of this Agreement have been duly authorized and are within the scope of its organizational documents; the person(s) executing this Agreement were duly authorized, by Corix, to execute this Agreement and to bind Corix; and this Agreement constitutes Corix's legal, valid, and binding obligation;
- (f) Corix has obtained all licenses, authorizations consents and approvals required by any governmental authority or other third party and necessary for Corix to own its assets, carry on its business, and to execute and deliver requirements under this Agreement; and Corix is in compliance with all laws that relate to this Agreement in all material respects.

8. FURTHER COVENANTS

8.1 Developer Covenants.

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

- (a) Continued Existence. Developer 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, Developer will report to Corix any malicious damage or damage to the Infrastructure of which it becomes aware.
- (c) Compliance with Laws. Developer 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. Developer will not take any action or omit to take any action in connection with the Infrastructure, including in connection with Developer's ownership, operation or maintenance of same, in connection with any expansion or upgrade of same, or in connection with the Building System that has, or could reasonably be expected to have, an adverse effect on Corix, the Infrastructure or the Thermal Energy parameters set out in this Agreement. Notwithstanding the foregoing, any action or omission by Developer in fulfilling its obligations pursuant to this Agreement will be deemed not to be a breach of this Section 1.7(d) provided such action or omission would, but for this Section 1.7(d), otherwise be in compliance with this Agreement.
- (e) Project Reporting. Developer will provide periodic (not less than quarterly) reporting on the progress of construction and installation of the Building System.
- (f) Disclosures. In the event that Developer enters into a transaction involving the sale of any portion of the Project Site or related assets, Developer will provide to any purchasers (i) a disclosure statement providing information regarding the Utah City

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District Energy Utility, and (ii) all appropriate agreements existing between Developer and Corix.

8.2 Corix Covenants.

In addition to the other obligations set forth in this Agreement, Corix covenants and agrees with 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 Corix any malicious damage or damage to the Infrastructure or Building System 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 Developer's ownership, operation or maintenance of same, in connection with any expansion or upgrade of same, or in connection with the Building System 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 this Agreement. 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 1.7(d) provided such action or omission would, but for this Section 1.7(d), 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.

9. INSURANCE

9.1 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 \$5 million per occurrence, with coverage to include contractual liability, tortious liability, and completed operations liability;
- (b) Property Insurance insuring the property of the Developer and property owned by others but for which the Developer is legally responsible, against perils normally included in a standard "all risk" policy, in an amount equal to 100% of the current replacement cost thereof, and adjusted at least annually to reflect changes in replacement value due to inflation or other factors;

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- (c) All Risks Builder's Risk policy covering the Project against fire and other perils from time to time included in such policies affecting similar properties in 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) Boiler and machinery insurance, covering [more specific description of equipment to be covered], written on a comprehensive form, including repair and replacement coverage, in an amount not less than \$5 million per occurrence;
- (e) 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 \$2 million per occurrence; and
- (f) Errors and omissions liability insurance for a value of not less than \$2 million in the aggregate, to be provided by the Developer and/or the Developer's Engineer.

9.2 Responsibility.

The Developer will be responsible for the full amount of all insurance premiums and deductibles required under Section 9.1. All policies required must be effective as at the date the Developer commences any construction and/or installation activities on the Developer Lands 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 British Columbia. Where the Developer fails to comply with requirements of this Article 5, Corix may take all necessary steps to effect and maintain the required insurance coverage at the Developer's expense.

9.3 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 this Article 5 and any amendments, modifications or replacements thereof.

9.4 Corix Insurance.

Corix 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, covering its operations, in an amount not less than \$5 million per occurrence, with coverage to include contractual liability, tortious liability, and completed operations liability;
- (b) Property Insurance insuring the Project Infrastructure against perils normally included in a standard "all risk" policy, in an amount equal to 100% of the current replacement cost of the Project Infrastructure, and adjusted at least annually to reflect changes in replacement value due to inflation or other factors;
- (c) All Risks Builder's Risk policy covering the Project Infrastructure against fire and other perils from time to time included in such policies affecting similar properties in Utah with

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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) Boiler and machinery insurance covering relevant equipment owned by Corix from time to time, written on a comprehensive form, including repair and replacement coverage, in an amount not less than \$5 million per occurrence;
- (e) 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 \$2 million per occurrence; and
- (f) Errors and omissions liability insurance for a value of not less than \$2 million in the aggregate, to be provided by Corix and/or its prime engineering consultant.

9.5 Responsibility.

Corix will be responsible for the full amount of all insurance premiums and deductibles required under Section 9.4. All policies required must be effective as at the date that Corix commences the Project Infrastructure Work 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. Insurance will be purchased from reputable insurers registered and licensed to underwrite insurance in British Columbia. Where Corix fails to comply with requirements of this Section 9.5, the Developer may take all necessary steps to effect and maintain the required insurance coverage at Corix's expense.

9.6 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 this Article 5 and any amendments, modifications or replacements thereof.

9.7 Additional Insured.

Where applicable, each Party will ensure that the other Party is an additional insured under the insurance to be obtained and maintained pursuant to Section 9.1 and Section 9.4 and 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.

10. DISPUTE RESOLUTION

10.1 Informal Dispute Resolution. The Parties will make a *bona fide* attempt to settle all disputes that may arise under, out of, in connection with or in relation to this Agreement by amicable negotiations and will provide frank and timely disclosure to one another of all relevant facts and information to facilitate such negotiations.

10.2 Utah PSC Resolution. If a dispute within the jurisdiction of the Utah PSC remains unresolved within thirty (30) Business Days of either Party requesting that the other Party engage in negotiations to resolve the dispute in accordance with Section **Error! Reference source not found.**, the dispute may be referred by either Party to the Utah PSC for resolution.

10.3 Arbitration.

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- (g) If a dispute not within the jurisdiction of the Utah PSC cannot be settled within thirty (30) Business Days after one Party has notified the other Party of a dispute arising under Section **Error! Reference source not found.** of this Agreement, 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.
- (h) In the event the Parties cannot agree on the appointment of an arbitrator within five (5) 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 Commercial Arbitration Rules or similar rules;
 - (ii) and be conducted in Salt Lake City, Utah.
- (i) 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 any of the Developer or Corix.
- (j) The arbitrator will issue a written award that sets forth the essential findings and conclusions on which the award is based.
- (k) The award in any arbitration proceeding may be enforced in any court that has jurisdiction over the Parties.

10.4 Arbitrator's Authority.

- (a) The arbitrator will have the authority to award:
 - (i) Monetary damages;
 - (ii) Interest on unpaid amounts from the due date;
 - (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.

10.5 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 8 except where to do so would threaten public health and safety or the environment.

10.6 Injunctive Relief.

Nothing in this Article **Error! Reference source not found.** will preclude either Party from applying to a court of competent jurisdiction for interlocutory or interim relief.

11. GENERAL

11.1 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 telecopy or other telecommunications device) to the party for whom it is intended at the following address or such other address as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 11.1:

if to Corix:

Attention:
Facsimile:

if to the Developer:

Attention: [insert]
Facsimile: [insert]

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by facsimile, or orally in person or by telephone (to be confirmed by facsimile), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

11.2 Confidentiality.

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 11.2 will restrict or prevent any Party from making any disclosure of such terms or any Confidential Information:

- (a) 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;
- (b) that is required by any Law or Governmental Authority;
- (c) to an Affiliate of the Receiving Party or to the directors, officers or employees of such Party or its Affiliates;
- (d) to the professional advisors of the Receiving Party;
- (e) 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; and

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(f) 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.

For the purposes of this Section 11.2, “**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, marketing plans and strategies, profits, costs, pricing and systems of procedure, but excluding information developed or conceived by the Receiving Party without using the Confidential Information of the Disclosing Party.

11.3 No Solicitation.

Unless Corix expressly agrees otherwise in writing, during the term of this Agreement and for a period of one (1) year following the expiration or termination of this Agreement on any grounds, the Developer shall not (a) directly or indirectly hire, solicit, or encourage to leave Corix’s employment, any employee, consultant, or contractor of Corix or hire any such employee, consultant, or contractor who has left Corix’s employment or contractual engagement during the six (6) months immediately preceding; or (b) induce any customer of Corix to reduce or refrain from doing business with Corix, or interfere with or damage (or attempt to interfere with or damage) any relationship between Corix and its customers.

11.4 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.

11.5 Enurement.

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

11.6 Entire Agreement.

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and supersedes any pre-existing written or oral agreement or understanding, express or implied, between the Parties. In the event that the Parties have previously entered into a Lease Agreement regarding the same or collocated building(s) and/or Infrastructure as referenced herein, this Agreement shall supersede and replace such Lease Agreement in its entirety except to the extent that any obligations or terms set forth in this Agreement and related to construction of any Building System have become irrelevant or inapplicable due to the completion of such construction prior to execution of this Agreement. Where such construction has been completed prior to execution of this Agreement, the relevant terms of the previously existing Lease Agreement shall apply to the same and related obligations or terms in this Agreement shall be disregarded.

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11.7 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.

11.8 Counterparts and Facsimile.

This Agreement may be executed in counterparts and by facsimile 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 signed by facsimile, each Party will promptly dispatch an original to the other Party.

11.9 Assignment.

The Developer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Corix, such consent not to be unreasonably withheld. Corix may assign this Agreement or any of its rights or obligations hereunder (including, without limitation, by way of the sale of the majority of its shares or business or its material assets or by way of an amalgamation, merger or other corporate reorganization) to any of its Affiliates or to any other Person without the consent of the Developer, provided such Affiliate or Person is duly qualified to carry out this Agreement and agrees to be bound by the terms and conditions of this Agreement. Forthwith upon such assignment, Corix shall be released from its obligations and responsibilities hereunder.

11.10 Relationship.

Nothing in this Agreement will create a partnership or joint venture, or a relationship of landlord and tenant between the Developer and Corix.

12. PERFORMANCE AND DEFAULT

12.1 Performance and Default.

Corix shall be obligated to perform according to the terms of Schedule E, attached hereto, and Developer may be entitled to any Deductions according to the terms of Schedule E. The Parties shall address any issues covered by Schedule E prior to any such action or inaction of Corix becoming the basis for an Event of Default.

12.2 Event of Default.

At the option of a Party, each of the following events shall constitute an event of default (“**Event of Default**”) hereunder, if: (i) the other Party fails to pay any amount when due under the terms of this Agreement; (ii) the other Party has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part, and such failure continues for thirty (30) days after the other Party’s receipt of notice of nonperformance; provided, however, that if the nature of the Party’s obligation is such that more than thirty (30) days are required for performance, then the nonperforming Party shall not be in default if the nonperforming Party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion; or (iii) the other Party becomes insolvent; is generally unable to pay, or fails to pay, its debts as they become due; files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law; makes or seeks to make

Corix Exhibit 8.1

a general assignment for the benefit of its creditors; or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property or business; or (iv) if any representation or warranty of a Party proves before or during performance to have been materially incorrect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the non-defaulting Party demanding such cure.

12.3 Entitlement to Equitable Relief.

Each Party hereto acknowledges that a breach or threatened breach by such Party of any of their obligations under this Agreement would give rise to irreparable harm to the other Party hereto for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such Party of any such obligations, the other Party hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

Corix Exhibit 8.1

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

[DEVELOPER NAME]

By:

By: _____

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

By: _____

SCHEDULE A
APPLICATION FOR SERVICE FORM

Building Name:		
Service Location Address:		
Customer Information		
Applicant Name:		
c/o:		
Mailing Address:		City:
State:	Zip Code:	Email:
Business Phone:	Cell Phone:	
Target Date:		
Serviceable Total Floor Area (ft ²):	Building Design Capacity (kW):	
Heating:	Heating: DHW:	
Cooling:	Space Heating:	
Total:	Cooling:	
	Total:	
Thermal Energy Service Information (Office Use Only)		
Heating Connection Date:	Cooling Connection Date:	
Heating Energy Services Commencement Date:	Cooling Energy Services Commencement Date:	
Meter 1 S/N & Start Reading:	Meter 2 S/N & Start Reading:	
Meter 3 S/N & Start Reading:	Meter 4 S/N & Start Reading:	
Meter 5 S/N & Start Reading:	Meter 6 S/N & Start Reading:	
Termination (Office Use Only)		
Reason for termination:	Date to Terminate On:	
Terms and Conditions		

- a) I affirm that the information contained in this application is correct and I understand that the terms of service.
- b) I consent to Corix (1) using the applicant’s personal information (including financially related information) when it is necessary in order to serve the applicant as a Customer, to meet legal and regulatory requirements, and for internal audit, statistical and record-keeping purposes; and (2) obtaining any reports, including any credit, background and other personal information about applicant that Corix deems necessary from any third parties including credit bureaus and reporting agencies or other credit grantors, and consents to the disclosure and exchange of such information by and among Corix and such third parties (including credit agencies and bureaus and other credit grantors) for the purposes of evaluating the applicant’s eligibility for services that are requested by applicant.
- c) The undersigned, by applying for service and signing this application, acknowledges an obligation to pay for services provided by Corix in accordance with this application and all applicable terms and conditions and rates and charges and to be bound by and comply with all applicable terms and conditions and rates and charges as approved, amended, or repealed, from time to time by the PSC and available for inspection at Corix’s office in Lehi, Utah.

Date:

Name:

Signature:

SCHEDULE B

FORM OF FINAL THERMAL ENERGY DELIVERY PARAMETERS

The design, construction and operation parameters for the Building System will be as provided in the table below;

Building Name:			
Design Parameters Customer Side of Energy Transfer Station	Space Heating	Space Cooling	Domestic Hot Water
Serviceable Floor Area (sq. ft)			
Building Design Capacity (kW) (at peak design conditions)			
Building System Peak Design Supply Water Temperatures (Building System side of the heat exchanger)			
Building System Peak Design Return Water Temperatures (Building System side of the heat exchanger)			
Building System Space Heating & Cooling Temperature Reset Schedule at Outdoor Air Temperatures (OAT)	°F at °F OAT °F at °F OAT °F at °F OAT	°F at °F OAT °F at °F OAT °F at °F OAT	Not Applicable
Peak Design Conditions Flow Rate (GPM)			
Maximum Pressure Drop (PSIG)			
Assumed Domestic Cold Water Temp			
Building System Pumping Capacity (GPM)			

SCHEDULE C

Point of Delivery

The location of the Energy Transfer Station in the Building and the location of the Corix-owned Service Connection routing on the Developer Lands will each be shown on the attached drawing(s) **[INSERT DRAWING REFERENCE]**

SCHEDULE D

Form of Statutory Right of Way

SCHEDULE E

Performance Measures and Deductions

Pursuant to the terms of this Schedule, Developer will be entitled to certain credits according to the terms and conditions contained below.

1. DEFINITIONS

The following definitions apply to this Appendix.

- (a) **“Building”** means any multi-family residential, commercial, institutional or industrial building, and if a building or structure constructed upon a parcel of real property is subdivided by an airspace plan, “building” means any such subdivided air space parcel or remainder parcel notwithstanding that the buildings constructed within such parcels may be physically connected;
- (b) **“Deductions”** means deductions from the Price (as defined in the Lease) for amounts calculated in accordance with this Appendix.
- (c) **“Demand Requisition”** means any request for O&M Services, report of an Event or any other report or inquiry made to Corix in connection with the provision of the O&M Services, including reports generated electronically or inquires or requests made by Developer.
- (d) **“Emergency”** means any other matter threatening to life or limb or which may cause material health and safety risks.
- (e) **“Equipment”** means the Central Energy Plant and related Infrastructure.
- (f) **“Event”** means an unplanned incident or state of affairs affecting the Equipment or requiring O&M Services to be performed or both.
- (g) **“Monthly Deduction Cap”** has the meaning set out in Section 2.1 of this Schedule.
- (h) **“Outage”** means an event or circumstance where: the Equipment ceases entirely to provide flow of Thermal Energy to a Building’s mechanical system; when a Building is calling for heating or cooling and the temperature measured on the Developer’s side of the Point of Delivery is 20°F below, for heating, or 10°F above, for cooling, where applicable, the Thermal Energy Setpoints for a period exceeding two hours, respectively; or in the case of domestic hot water heating, provided there is flow on Developer’s side of the Point of Delivery, the temperature measured on the Developer’s side of the Point of Delivery is 20°F below the Thermal Energy Setpoint for a period exceeding two hours.
- (i) **“O&M Services”** means the operations and maintenance and other services to be provided by Corix to Developer, pursuant to the District Energy Services Agreement.
- (j) **“Planned Outage”** means an Outage (a) scheduled in advance by Corix, (b) for which notice is provided to Developer, (c) is for maintenance or similar purposes, and (d) is not an Emergency or an Event.

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- (k) **“Point of Delivery”** means the point where Corix’s ownership of energy delivery facilities ends and Developer’s begins as identified in Schedule C of the District Energy Services Agreement.
- (l) **“Prudent Utility Practice”** means, with respect to the planning, engineering, design, construction, installation, operation, maintenance and repair of the Equipment and the provision of the O&M Services: any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts known, or facts which should reasonably have ought to be known, at the time the decision was made, including, but not limited to, the practices, methods and acts engaged in or approved by responsible and reputable owners and operators of district energy systems, having regard to size, age, location and intended use prior thereto, reasonably would have been expected to accomplish the desired result at a reasonable cost consistent with reliability, safety, good business practice and expediency; and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced district energy utility operator engaged in a similar type of undertaking under similar circumstances, and includes due regard for manufacturers’ warranties, environmental considerations, and the requirements of governmental authorities that have jurisdiction.
- (m) **“Rectification”** means, following the occurrence of an Event, making good the Event so that the subject matter of the Event complies with the levels of performance required pursuant to this Agreement, including restoring all functional capability; “Rectify” and “Rectified” will be construed accordingly.
- (n) **“Respond”** and **“Response”** means the appropriate personnel attending the location of the Event and making the location and all affected locations safe, all in accordance with Prudent Utility Practice.
- (o) **“Thermal Energy Setpoint”** has the meaning set out in Section 2.4(a)(i) of this Appendix.
- (p) **“Thermal Service Degradation Event”** has the meaning set out in Section 2.4(a)(ii) of this Appendix.

2. PERFORMANCE MEASURES AND DEDUCTIONS

2.1 General.

Any Deductions provided for herein shall not exceed an amount equal to 25% of the ROE Amount attributable to the building(s) to which this Appendix applies in the month in which the Deduction was incurred (the “Monthly Deduction Cap”).

2.2 Reserved.

2.3 Reserved.

2.4 Service Quality and Outages.

a. Thermal Service Degradation.

- i. Corix will meet setpoints (each, a “Thermal Energy Setpoint”) measured on the Developer’s side of the Point of Delivery, provided there is flow on Developer’s side of the Point of Delivery. The applicable Thermal Energy Setpoint will be determined and set out in Schedule B of the District Energy Services Agreement.
- ii. Except in the event of a Planned Outage and subject to Section 2.4(b)(i) of this Appendix, Corix will be subject to a Deduction of \$25/hour , for every hour or part thereof when the Building is calling for heating, domestic hot water or cooling and the temperature on the Developer’s side of the Point of Delivery is 10°F below, for heating or domestic hot water, or 5°F above, for cooling, where applicable, the Thermal Energy Setpoint in Schedule B of the District Energy Services Agreement for heating, cooling, or domestic hot water respectively, for a period exceeding four hours (each, a “Thermal Service Degradation Event”). Corix shall promptly notify Developer in writing of a Thermal Service Degradation Event that has continued for twenty-four (24) continuous hours, and shall deliver status updates to Developer with respect to such Thermal Service Degradation Event (including Corix’s corrective actions with respect thereto) every forty-eight (48) hours thereafter until such time as such Thermal Service Degradation Event no longer exists.
- iii. In the event a Thermal Service Degradation Event continues for fifteen (15) continuous days, such Thermal Service Degradation Event shall be deemed an Outage governed by Section 2.4(b) below.

b. Outages.

- i. Except in the event of a Planned Outage or Emergency, Corix will be subject to a Deduction of \$50/hour for each hour or part thereof that Developer experiences an Outage.
- ii. If and to the extent Corix incurs Deductions pursuant to Section 2.4(b)(i) of this Appendix, Corix will not be subject to any concurrent Deductions incurred for Thermal Service Degradation Event pursuant to Section 2.4(a)(ii) of this Appendix.

2.5 Events and Response Times.

a. Demand Requisitions from Developer.

Corix will Respond to Demand Requisitions from Developer pertaining to Emergencies or Events relating to the Equipment or the O&M Services within 90 minutes.

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b. Emergencies or Outages.

Upon Corix's identification of an Emergency or Outage or upon receipt of a Demand Requisition in respect of an Emergency or Outage:

- i. Corix will notify Developer about the occurrence of the Emergency or Outage by phone or email within 30 minutes;
- ii. Corix will Respond to the Emergency or Outage and provide an initial plan for Rectification within 90 minutes of the earlier of receipt of the Demand Requisition or Corix's identification of the Emergency or the Outage, acting reasonably, and identify whether such Event:
 - A. does not constitute an Emergency or Outage, in which case such Event will thereafter be addressed by Corix in accordance with Section 2.5(c) of this Appendix;
 - B. is caused by a building-side issue that is unrelated to, and will not adversely effect, the Equipment, in which case Corix will notify Developer and the person making the initial Demand Requisition and thereafter Corix will have no further responsibility to Respond to such Event but will provide support to the Customer to aid resolution of the building-side issue as requested; or
 - C. does constitute an Emergency or Outage, in which case Corix, acting reasonably, will establish the applicable time required for Corix to Rectify such Event in accordance with Section 2.5(b)(ii) of this Appendix.
- iii. Corix will notify Developer, Respond to, and provide a Rectification plan for the Emergency or Outage within the times established in accordance with Section 2.5(b)(ii) of this Appendix, including notifying Developer of its plan for Rectifying the Emergency together with any estimated resulting Outage time and any estimated other impacts on availability. Corix's obligation to notify Developer, Respond, and provide Rectification plans within such time will constitute a Performance Measure, and Corix will be subject to a Deduction equal to \$25/hour for every hour or part thereof for which Corix fails to meet such Performance Measure. Rectification Plans shall promote and prioritize the health and safety of the occupants of any building suffering the Emergency, Thermal Service Degradation Event, or Outage and where required to protect the health and safety of such occupants shall include provision of supplemental heating sources and other extraordinary measures.
- iv. Corix will Rectify the Emergency in accordance with the plan established by Corix pursuant to Section 2.5(b)(ii) of this Appendix.

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- v. If a Developer Outage is expected to last longer than two hours, Corix will inform Developer of the anticipated length of the outage within 60 minutes of Corix's determination of the Outage length in accordance with Section 2.5(b)(ii) of this Appendix, and will thereafter inform Developer in the event that the anticipated length of the Outage increases following Corix's previous determination.
 - vi. Developer may refer any assessment or determination made by Corix for resolution pursuant to Section 19 – Dispute Resolution in the Lease, if Developer disagrees with any assessment or determination made by Corix in accordance with this Section 2.5(b), provided that Developer's referral of any Dispute to the Dispute Resolution Procedure will not affect Corix's compliance with any timeline set out in this Section 2.5(b) in connection with the making of such assessment or determination.
 - vii. Corix will submit to Developer a written report within ten Business Days of the completion of the Rectification of an Emergency or Outage outlining:
 - A. the root cause of the Emergency or Outage;
 - B. the actions Corix took to Rectify the Emergency or Outage; and
 - C. if applicable, Corix's steps taken or planned to be taken to prevent such an Emergency or Outage from reoccurring.
- c. Non-Emergency Events.
For Events which are not Emergencies, Corix will notify Developer, Respond and take steps to Rectify the Event in a timely manner while minimizing associated costs.