

Memorandum



Date: February 7, 2006

Agenda Item No. 8(F)(1)(C)

To: Honorable Chairman Joe A. Martinez
And Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Contract for Sale and Purchase of District Cooling Facility, located at 1110 N.E. First Avenue, Miami, from TECO Thermal Systems, Inc.

RECOMMENDATION

It is recommended that the Board approve the attached Contract for Sale and Purchase with TECO Thermal Systems, Inc. (TECO) for the acquisition of TECO's Downtown Miami District Cooling Facility located at 1110 NE First Avenue, together with all existing offsite improvements used to distribute the chilled water to its customers. Once purchased, the plant and distribution system will be expanded and connected to the County's existing downtown chilled water distribution loop for the purpose of providing chilled water for air conditioning to TECO's current clients, to the existing County facilities in the Downtown Government Center, and to future County improvements currently under development, including two large office towers at the Overtown Transit Station, and the future Children's Courthouse. The equipment in the existing County chiller plant will be maintained to provide back-up or emergency service to the County's downtown buildings. The item was prepared by the General Services Administration (GSA).

SELLER: TECO Thermal Systems, Inc.

COMPANY PRINCIPAL: R. Bruce Christmas, President/Director

TAX FOLIO NUMBER: 01-3136-016-0150

LAND SIZE: 45,221 square feet, or 1.04 acres, more or less

LOCATION: 1110 N.E. 1 Avenue

COMMISSION DISTRICT: 3

ZONING: Liberal Commercial

PURCHASE PRICE: \$ 9,025,000.00

APPRAISED VALUES: \$10,260,000.00
\$10,500,000.00

FINANCING SOURCE: Financing to be repaid by revenues generated by plant operations

CLOSING DATE: Not later than February 25, 2006, unless upon mutual agreement

DESCRIPTION OF FACILITIES:

Constructed in 1999 by FPL Energy Services, and purchased by TECO in 2001, the facility contains 28,644 square feet of improvements, specifically designed and constructed to operate as a commercial district chiller plant. The building is divided into a small office and conferencing area, an electronic monitoring and control room, and the plant area itself, which contains high-efficiency equipment for cooling water, and the making and storage of ice. The plant is in excellent condition, and all improvements are fully functional and meet or exceed current industry design and construction standards for this type of facility.

Power is routed to the facility from two separate FPL substations, providing improved reliability of service. The plant's equipment is operated by a state-of-the-art electronic control system with remote monitoring, alarming and diagnostic capability. Purchased assets also include an offsite network of buried 24" main distribution lines constructed of concrete lined steel pipes with external insulation, which connect to the American Airlines Arena (AAA) and the Network Attachment Point of the Americas (The NAP) . In addition to the piping, a 2" conduit of fiber optic cabling runs throughout the network, connecting each chilled water end-user to the plant for "real-time" consumption metering and operations monitoring.

JUSTIFICATION:

At its meeting of July 7, 2005, the Board approved six agenda items authorizing the proposed Overtown Village Development at the Overtown Metrorail Station. In the accompanying report, staff noted that a part of that project would entail "increasing the capacity of the County's chilled water distribution system to immediately accommodate Overtown Towers I and II and eventually service the new Children's Courthouse." The acquisition of the TECO District Cooling Facility, recommended on today's agenda, provides the required capacity in the most timely, cost effective and pragmatic manner possible.

County-owned buildings (and the "Old" Miami Arena") in the Downtown Government Center are currently cooled from chilled water produced at a County-owned and GSA-managed district cooling facility located at 201 NW First Street. Originally constructed in 1984, this facility today utilizes electric chillers to provide chilled water for air conditioning to what has, over the years, grown to ten County-owned buildings totaling 2.5 million square feet, plus the "Old" Miami Arena. The three planned facilities total over 800,000 square feet and present a substantial added demand for air-conditioning, a demand which the County chiller plant, with its existing equipment, does not currently have the capacity to serve.

The initial plan for serving these additional facilities was through the expansion and upgrade of the existing County plant, which is projected to cost just under \$10 million. Following a thorough review by staff and its engineering consultants, this initial strategy was reassessed when the opportunity arose to consider the purchase and expansion of the TECO facility. The negotiated TECO alternative is projected to cost approximately \$19.7 million – \$9.025 million for the purchase, \$9.2 million for the subsequent plant expansion, and \$1.5 million for the interconnection of the TECO and County chilled water loops. In spite of the substantially higher initial capital expense, it is the conclusion of staff that the TECO plant purchase/expansion alternative is the superior approach, for the following reasons:

Lower operating expense. Operating expense for the TECO plant is approximately 25% less than at the County facility, almost entirely due to a lower cost of electricity. The TECO plant uses thermal technology (e.g. melting ice) to cool water, and a "time of use" rate tariff, which charges different rates for on-peak and off-peak periods. During off-peak periods, when electricity costs are much lower (e.g. at night), the TECO plant operates high-efficiency water chillers for real-time cooling while, at the same time, running special glycol chillers to produce ice slurry that is stored in a large tank. During on-peak periods, when electricity costs are high, chiller equipment is shut down and the water is cooled by circulating it through pipes in the

ice tank. This reduces electrical usage during peak hours by as much as 90%. *The existing County plant lacks the space needed for ice storage, and would not benefit from FPL's "time of use" tariff.*

Ease of expansion. The TECO facility was designed in "equipment modules" for easy and cost-effective expansion. Presently built out to 1/3 of its total production capacity, the unimproved area is well-sized to handle the loads required by the County, i.e. all of the buildings currently served by the existing County plant, and the three new buildings scheduled for occupancy during the next few years. *Due to the current design and layout of the County plant, the required expansion for the additional facilities would require more design and planning. It would also require a replacement of much of the plant's present aging equipment.*

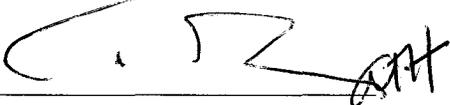
Existing TECO chilled water sales contracts. As a part of this transaction, TECO will be assigning three existing long-term chilled water sales contracts, with: Network Attachment Point of the Americas (NAP), Technology Center of the Americas (TECOTA), and American Airlines Arena (AAA). These contracts, the initial terms of which do not end until 2020 (NAP), 2029 (AAA), and 2031 (TECOTA), provide the County with a long-term stream of net revenue over expense in excess of \$1.2 million per year.

FUNDING/FINANCIAL IMPACT:

Staff from GSA and the Office of Strategic Business Management has conducted a 15-year financial analysis of this transaction. Because the existing chilled water system lacks the capacity to serve future County improvements, either an upgrade to the existing system or purchase of a new facility must be made prior to completion of the new facilities. When compared to an upgrade of the County plant, purchasing the TECO facility presents a savings to the County of approximately \$7.2 million over the 15 years analyzed. Staff plans to finance the \$9.025 million purchase and \$9.2 million of additional build-out over a 15-year timeframe, an agenda item for which will be presented to the Board at a subsequent meeting. Additionally, \$1.5 million previously approved by the Board for the Overtown Development project will be used to interconnect the TECO and County chilled water loops. The savings afforded by more efficient production of chilled water, when added to the revenues from existing contracts for the sale of chilled water to outside entities, provides enough funding for the required debt service payments.

COMMENTS:

- The Contract includes the assignment to the County of various necessary agreements, including District Cooling Service Agreements (with the three customers), an Access and Easement Agreement with TECOTA, and a Service Agreement with BGA, Inc. (for the interim management, maintenance and operation of the plant until the expansion of the plant and interconnection of the distribution loop with the County's existing loop is complete). BGA, Inc., formerly TECO Energy Services, is an independent energy services firm with substantial experience in the design, management and operation of district cooling facilities. BGA has managed the plant for TECO Thermal Systems since the purchase of the plant from FPL in 2001.
- This acquisition will enable staff to avoid upgrading the existing County plant, which will be necessary even without the additional buildings, within a few years. Instead, the existing equipment will be maintained, at modest expense, as a back-up or emergency cooling option for the County buildings, a use more-suited to the age of the equipment.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: February 7, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 8(F)(1)(C)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(C)
02-07-06

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR SALE AND PURCHASE BETWEEN TECO THERMAL SYSTEMS, INC., AS SELLER, AND MIAMI-DADE COUNTY, AS BUYER, OF THE TECO DISTRICT COOLING PLANT LOCATED AT 1110 NE 1ST AVENUE INCLUDING LAND, EQUIPMENT, SYSTEM FACILITIES, BUSINESS FIXTURES AND PERSONAL PROPERTY FOR THE PURPOSE OF PROVIDING CHILLED WATER SERVICE; AUTHORIZING THE COUNTY MANAGER TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY IN SUBSTANTIALLY THE FORM ATTACHED HERETO, AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves a Contract for Sale and Purchase between TECO Thermal Systems, Inc., a Florida for-profit corporation and Miami-Dade County of approximately 45,221 square feet of land and a Chilled Water System Plant located at 1110 NE 1st Avenue for the purpose of providing chilled water service to primarily County-owned facilities; authorizes the County Manager to execute the same for and on behalf of Miami-Dade County; and authorizes the County Manager to exercise any and all other rights conferred therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

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Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro	Jose "Pepe" Diaz
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of February, 2006. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by the County Attorney 
to form and legal sufficiency.

Thomas Goldstein

By: _____
Deputy Clerk

CONTRACT FOR SALE AND PURCHASE

This CONTRACT FOR SALE AND PURCHASE (the "Contract") is entered into as of the 7 day of December 2005, by and between **TECO Thermal Systems, Inc.**, a Florida corporation ("Seller"), and **Miami-Dade County**, a political subdivision of the State of Florida ("Buyer"). For the purposes of this Contract, Seller and Buyer are sometimes collectively referred to herein as the "Parties" and individually as a "Party".

WITNESSETH, Seller is the owner of a district cooling facility located in Miami, Florida that provides chilled water for air conditioning to certain commercial customers (the "Chiller Plant");

WITNESSETH, Buyer and its professional advisors have inspected and evaluated the assets and real property of Seller more particularly described below including, but not limited to, the Chiller Plant; and

WITNESSETH, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, such assets **ON AN AS IS WHERE IS WITH ALL FAULTS BASIS**, free of all liabilities and encumbrances except those set out herein, subject to the terms and conditions described in this Contract.

NOW, THEREFORE, in consideration for the mutual promises and conditions contained herein, and such other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. SALE OF PROPERTY AND ASSUMPTION OF CONTRACTS. Subject to the terms of this Contract, at the Closing (as defined in Section 4), Seller will sell, convey, assign, transfer and deliver to Buyer, and Buyer will purchase, acquire, accept and assume from Seller, all right, title and interest of Seller in and to all assets, properties, rights and claims of Seller as listed herein (except as otherwise expressly set forth in Section 1(d)):

a. the real property (the "Real Property") upon which the Chiller Plant is sited, as set forth in the Legal Description set forth in Schedule 1(a) attached hereto, subject to Permitted Exceptions (as defined in Section 5);

b. the physical assets, buildings and fixtures, personal property and intangible property located on the Real Property or owned by Seller and comprising Seller's chilled water distribution system as described in Schedule 1(b) attached hereto ("Personal Property");

c. subject to receipt of requisite consents, if any, the rights and interests of Seller in the contracts and agreements listed in Schedule 1(c) attached hereto (the "Assigned and Assumed Contracts", together with Real Property and Personal Property shall sometimes be referred to herein, collectively as the "Property"); and

d. all of the assets and interests of Seller described in Schedule 1(d) attached hereto shall be excluded from the Property and, as such, shall remain with Seller and not be subject to this Contract ("Excluded Assets").

e. Seller has provided to Buyer a revenue stream for its existing operation based on District Cooling Service Agreements referenced in Schedule 1(c)A. Buyer has relied upon such declaration of revenue stream in agreeing to enter into this purchase of the property as a going concern. Buyer's purchase of the property is, therefore, contingent upon Buyer's written confirmation by December 20, 2005 of the validity of such declaration of revenue stream after review of all financial books and records of the Seller's operation of the Chiller Plant.

2. PURCHASE PRICE: Subject to the terms of this Contract, Buyer agrees to pay to Seller a purchase price in the amount of Nine Million Twenty-Five Thousand and 00/100 Dollars (\$9,025,000.00) (the "Purchase Price") for the Property.

a. PAYMENT OF PURCHASE PRICE. On the Closing Date (as hereinafter defined), Buyer shall pay to Seller the Purchase Price, subject to the other adjustments and prorations provided for herein, by means of a wire transfer of immediately available U.S. funds to the account designated by Seller in Schedule 2(a) attached hereto or such other account as Seller shall advise Buyer in writing, or if Buyer is unable to effect a wire transfer, then by County check for the Property referenced above.

b. ALLOCATION OF PURCHASE PRICE. The Parties acknowledge that the Buyer is not required to file income tax returns with the Internal Revenue Service. Therefore only the Seller shall file or cause to be filed IRS Form 8594 (Asset Acquisition Statement) for its taxable year that includes the Closing Date and Buyer is not obligated to agree to any allocation of the Purchase Price.

3. EFFECTIVENESS: The effectiveness of this Contract is contingent upon approval by the Miami-Dade County Board of County Commissioners ("Board"), as well as public hearing approval pursuant to Section 33-303 of the Code of Miami-Dade County, if applicable, and provided no motion to reconsider such approval is made at the next regularly scheduled meeting of said Board. If a motion to reconsider approval hereof is made within such time, then the Effective Date hereof shall be the date of the next regularly scheduled meeting of the Board, at which next regularly scheduled meeting, provided a motion to reconsider has been filed, the Board shall reconsider its prior approval hereof; provided further, however, that such initial Board approval or subsequent reconsideration and approval ratification shall not be effective until the earlier of; a) the date the Mayor of Miami-Dade County indicates approval of such Commission action; b) the lapse of ten (10) days without the Mayor's veto; or c) January 31, 2006 (the "Effective Date"). In the event that the Mayor vetoes the Board approval, the Board approval shall not be effective in the absence of an override of the Mayor's veto that shall be at the next regularly scheduled meeting of the Board after the veto occurs, in which case such override date shall be the Effective Date. The actions of the Commission and the Mayor in connection with the award or rejection of any contract rests within their sole discretion. If not vetoed, the contract shall become effective in accordance with Resolution No. R-377-04. The

date of such approval of the Contract by Buyer, as set forth above is the Effective Date of this Contract.

4. CLOSING; CLOSING DATE: The closing of this transaction shall be completed within sixty (60) days of the Effective Date of this Contract unless otherwise extended, as mutually agreed upon by both Buyer and Seller or as otherwise provided herein. The precise date, time and place of closing shall be mutually set by Buyer and Seller (the "Closing Date") and notwithstanding the foregoing, shall be no later than February 25, 2006.

5. RESTRICTIONS, EASEMENTS, LIMITATIONS: The Buyer shall take title to the Property subject to the following permitted exceptions (the "Permitted Exceptions"): zoning, restrictions, prohibitions and other requirements imposed by a governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; easements, restrictions and other matters of record; matters of survey, taxes after the date of closing and subsequent years, and the additional matters set forth on Schedule 5 attached to this Contract.

6. EVIDENCE OF TITLE: Within 15 days after the Effective Date, Buyer shall, at Buyer's expense, obtain a title insurance commitment issued by a Florida licensed title insurer ("Title Company") agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, insuring Buyer's title to the Real Property, subject only to the Permitted Exceptions and such other exceptions or qualifications, if any, set forth in this Contract and those which shall be discharged by Seller at or before the Closing. In addition, the policy shall insure title to the Real Property for the period between Closing and recording of the warranty deed. In connection herewith, Seller agrees to provide and pay the cost of recording of all affidavits and other documents as reasonably required by the title insurer. Buyer shall have 10 days from the date of receiving evidence of title (which in no event shall be later than 25 days after the Effective Date) to examine same and to notify Seller in writing specifying defect(s), if any ("Title Defect Notice"). If the defects render title unmarketable, Seller shall have 120 days from receipt of such Title Defect Notice within which to remove said defect(s), and if Seller is unsuccessful in removing them within said time, Buyer shall have the option of either accepting the title as it then is and proceed with Closing the transaction, or notifying Seller that it is not waiving the defects to title in which case this Contract shall be rendered null and void and Buyer and Seller shall be released, as to one another, of all further obligations under the Contract. If Buyer does not provide Seller with written notice of title defects, if any, on or before the 25th day after the Effective Date, Buyer's right to cancel this Contract due to title defects under this Section shall lapse.

7. BUYER'S PHYSICAL AND ENVIRONMENTAL INSPECTION AND CANCELLATION OPPORTUNITY:

a. For a period of 15 days following the Effective Date (the "Inspection Period"), Buyer will be given reasonable access during normal business hours and upon prior notice to Seller to, at its cost and risk, survey the Property, inspect all improvements, fixtures, equipment and systems, and to conduct such soil tests, test borings, environmental audits, engineering

studies and other studies or tests that Buyer believes desirable or convenient, with the right to enter upon the Property at all reasonable times and in an ordinary and reasonable manner for such purposes. Buyer shall indemnify and hold harmless Seller from and against any claim, loss, damage, costs and attorney's fees that result from the conducting of such inspections, tests and audits by Buyer on or about the Property including any testing or activity undertaken un paragraph (b) below, pursuant to the terms of this paragraph. The indemnification obligations contained in this Section 7(a) shall survive Closing or termination of this Contract.

b. Buyer may, at its own cost and expense, obtain a Letter of Current Enforcement Status of the Property by the Dade County Department of Environmental Resources Management ("DERM Letter") and conduct any tests required or recommended by DERM to determine the existence and extent, if any, of Hazardous Materials as defined below) on the Property in violation of any laws, ordinances, rules or restrictions of any governmental authority having jurisdiction thereover. If the DERM Letter or subsequent testing confirms the presence of Hazardous Materials on the Property, Buyer may elect to terminate this Contract by delivering to Seller, prior to the end of the Inspection Period, a written notice of its election to terminate ("Termination Notice") together with complete copies of all materials and documents relating to Buyer's inspections, tests and audits. If Buyer does not provide Seller with such Termination Notice and documents within the time specified, Buyer's right to cancel this Contract pursuant to this Section shall lapse, the DERM Letter and the physical and environmental condition of the Property shall be deemed accepted by Buyer and this Contract shall remain in full force and effect. For purposes of this Contract, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste; it shall also include solid waste or debris of any kind.

8. SURVEY: During the Inspection Period, Buyer may obtain, at Buyer's option and expense, a survey of the Property by a certified, registered Florida surveyor. Buyer shall have 5 days from the date of receiving the survey (provided it is not more than 5 days after the conclusion of the Inspection Period) to examine the survey and to notify Seller in writing ("Survey Defect Notice") specifying any material encroachments on the Property or if improvements located on the Property materially encroach on setback lines, easements, lands of others, or violate any restrictions of record, covenants contained herein or applicable governmental regulations, which shall be treated as a title defect. If Buyer does not provide Seller with written notice of defects identified by the survey within the time specified in this Section 8, Buyer's right to cancel this Contract due to defects in title shall lapse.

9. FRANCHISE AGREEMENT: Seller and Buyer acknowledge that there exists that certain Franchise Agreement authorized by City of Miami Ordinance 11662 (May 26, 1998) (the "Franchise Agreement"). Within five (5) business days of the Board of County Commissioner's approval of this Contract at its meeting on December 20, 2005, Seller shall provide the notice to the City Clerk for the City of Miami required under paragraph 5 of the Franchise Agreement. Notwithstanding the provisions of Section 12 below, a Closing under this Contract is conditioned upon approval by the City of Miami of the transfer of the System Facilities (as defined in the Franchise Agreement) from Seller to Buyer, which will operate the System Facilities pursuant to its Home Rule powers, thereby resulting in termination of the Franchise Agreement. No Closing shall occur until this approval is obtained and, if no such approval is obtained by February 27,

2006, or if the Board of County Commissioners does not approve this Contract at its meeting on December 20, 2005, and unless both Seller and Buyer agree to extend such deadline, either Seller or Buyer may terminate this Contract.

10. REPRESENTATIONS AND WARRANTIES OF THE PARTIES:

a. **REPRESENTATIONS AND WARRANTIES OF SELLER:** Seller represents and warrants to Buyer (which representations and warranties shall be true as of the date of this Contract and, unless specifically applicable only to an earlier time or period, as of the Closing Date) that:

i. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida with full power, right and authority to own and lease the properties and assets it currently owns and leases and to carry on its business as such business is currently being conducted.

ii. Seller has the power and authority to execute and deliver this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Contract and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Seller. Each of the agreements attached as an exhibit hereto (collectively the "Ancillary Agreements") will be duly executed and delivered by Seller at the Closing.

iii. To Seller's Knowledge, Seller's current operation and use of the Property does not violate any zoning, subdivision, building or similar law, ordinance, order, or regulation or any certificate of occupancy to which the Property is subject. "Seller's Knowledge" shall mean the actual knowledge, after reasonable inquiry, of those individuals identified on Schedule 10(a)(iii) attached hereto.

iv. To Seller's Knowledge, no claim, demand, filing, hearing, notice of violation, proceeding, notice or demand letter, administrative proceeding, civil, criminal or other action, suit or other legal proceeding ("Claim") is pending or threatened against Seller relating to or resulting from or affecting the ownership or operation of the Property or that would reasonably be expected to result in (i) a material diminution in the Seller's ability to perform its obligations and consummate the transactions contemplated hereby, or (ii) a material claim against Buyer for damages as a result of Seller entering into this Contract or any of the Conveyance Documents (as defined in Section 13(a)(ii)) or consummation of the transactions contemplated hereby and thereby. Except as disclosed on Schedule 10(a)(iv) attached hereto, to Seller's knowledge no notice from any Governmental Entity or any other person has been received by the Seller as to any Claim against the Seller claiming any violation of any Law or claiming against the Seller any breach of any contract or agreement with any third party that would reasonably be expected to result in a material diminution in the Seller's ability to perform its obligations and consummate the transactions contemplated hereby.

v. There are no pending or, to Seller's Knowledge, threatened condemnation or eminent domain proceedings, which affect or would affect the Property or any part thereof.

vi. Seller has received no notice of any assessment for public improvements, other than as may be a matter of public record.

vii. There are no leases affecting the Property.

viii. Seller is not a "foreign person" within the meaning of Section 1445 of the United States Internal Revenue Code, as amended, or its regulations.

ix. **EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 10(a), NEITHER SELLER NOR ANY OF ITS AGENTS, ATTORNEYS OR AFFILIATES, MAKES ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER WITH REGARD TO THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER UNDERSTANDS AND AGREES THAT SELLER EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES WITH REGARD TO LIABILITIES, OPERATION OF THE PROPERTY (INCLUDING THE CONDITION, VALUE, QUALITY AND PROSPECTS OF THE PROPERTY, CONDITION [FINANCIAL OR OTHERWISE] OF THE PROPERTY, OR PROSPECTS OF SELLER AND ITS AFFILIATES), RISKS ASSOCIATED WITH THE OWNERSHIP AND OPERATION OF THE PROPERTY AND ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY OR ANY PART THEREOF.**

x. Except as set forth on Schedule 10(a)(ix) attached hereto for which Seller is solely responsible for payment, Seller is not represented in this transaction by a licensed real estate broker and no commissions are payable to anyone relating to this transaction.

b. **REPRESENTATIONS AND WARRANTIES OF BUYER:** Buyer represents and warrants to Seller as of the date hereof and as of the Closing Date, as follows:

i. Buyer is a political subdivision of the State of Florida with full power, right and authority to own and lease the properties and assets it currently owns and leases and to carry on its business as such business is currently being conducted and to purchase the Properties and otherwise consummate the transactions contemplated by this Contract and the Ancillary Agreements.

ii. Buyer has the power and authority to execute and deliver this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Contract and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer. Each of the Ancillary Agreements will be duly executed and delivered by Buyer at the Closing.

iii. Having reviewed the representations and warranties of Seller set forth in this Contract, Buyer is not aware of any facts or conditions which contradict the representations and warranties of Seller set forth herein.

iv. Buyer is not now a party to any litigation, or subject to any agreements which would affect Buyer's right or ability to purchase the Property.

v. Buyer is aware of no agreements, conditions, or circumstances which would prevent Buyer from accepting the assignment from Seller and performing the Assignment and Assumption Contracts.

vi Except as set forth on Schedule 10(b)(vii) attached hereto, Buyer is not represented in this transaction by a licensed real estate broker and no commissions are payable by Buyer to anyone.

11. COVENANTS:

a. **BUYER AND SELLER AGREE THAT THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS", "WHERE IS," AND "WITH ALL FAULTS" BASIS, AND, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10(a) ABOVE WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY REPRESENTATION OR WARRANTY CONCERNING THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING THE CONDITION OF THE SOIL), THE ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON OR AFFECTING THE PROPERTY), THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAWS AND REGULATIONS (INCLUDING ZONING AND BUILDING CODES OR THE STATUS OF DEVELOPMENT OR USE RIGHTS RESPECTING ANY OF THE PROPERTY) OR ANY OTHER REPRESENTATION OR WARRANTY RESPECTING ANY INCOME, EXPENSES, CHARGES, LIENS OR ENCUMBRANCES, RIGHTS OR CLAIMS ON, AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF. BUYER AGREES THAT IT IS ACQUIRING THE PROPERTY SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY ANY TITLE INSURANCE THAT BUYER MAY PURCHASE.**

b. Seller shall use commercially reasonable efforts to obtain, in a timely manner, the consents and approvals as set forth in Schedule 11(b) attached hereto. Seller shall promptly notify Buyer in the event that Seller is unable to obtain any such required consents or approvals.

12. CONDITIONS TO CLOSING; CLOSING PROCEDURES:

(a) **CONDITONS TO BUYER'S OBLIGATIONS TO CLOSE:** The obligations of Buyer to be performed at Closing are subject to the fulfillment, before or at Closing, of each of the following conditions, each of which may be waived by Buyer in its sole discretion, but only in writing:

Execution Document

(i) Seller shall have executed and delivered to Buyer a Special Warranty Deed substantially in the form of Exhibit "A" attached hereto and an affidavit to the title insurer for removal of the Possessions and Mechanics Liens 'Standard Exceptions';

(ii) Seller shall have executed and delivered to Buyer the Bill of Sale and an Assignment and Assumption Agreement for each of the Assigned and Assumed Contracts each in substantially the form of Exhibits "B" and "C" attached hereto executed by an officer of Seller and, where appropriate, a third party consenting to the Assignment and Assumption Agreement;

(iii) Seller shall have vacated the Real Property and relinquished physical possession of the Personal Property;

(iv) Seller shall have delivered to Buyer a closing certificate substantially in the form mutually agreed upon by Seller and Buyer and executed by a duly authorized officer of Seller, certifying as to the matters set forth therein; and

(v) Seller shall have delivered to Buyer any other agreements, documents, certificates or other instruments in a form reasonably satisfactory to Seller which are reasonably necessary to consummate the transactions contemplated by this Contract and reasonably requested by Buyer.

(vi) Fulfillment of the condition set forth in Section 9 of this Contract.

(b) **CONDITIONS TO SELLER'S OBLIGATIONS TO CLOSE:** The obligations of Seller to be performed at Closing are subject to the fulfillment, before or at Closing, of each of the following conditions, each of which may be waived by Seller in its sole discretion, but only in writing:

(i) payment of the Purchase Price by Buyer and receipt of the same by Seller;

(ii) Seller shall have received all third party consents necessary to the Assignment and Assumption Agreements and Buyer shall have executed and delivered to Seller all Ancillary Agreements to which it is a party;

(iii) Buyer shall have delivered to Seller a closing certificate substantially in the form mutually agreed upon by Seller and Buyer executed by a duly authorized officer of Buyer, certifying as to the matters set forth therein;

(iv) Buyer shall have delivered to Seller any other agreements, documents, certificates or other instruments in a form reasonably satisfactory to Seller which are reasonably necessary to consummate the transactions contemplated by this Contract and reasonably requested by Seller.

- (v) Fulfillment of the conditions set forth in Section 9 of this Contract.

13. TERMINATION; EFFECT OF TERMINATION:

(a) **TERMINATION:** Subject to the provisions of this Section 13, this Contract may, by the giving of written notice at or prior to the Closing by the Party having the right to give such notice, be terminated and abandoned:

(i) By mutual written consent of the Parties;

(ii) By either Seller or Buyer if a material default or breach shall be made by the other with respect to the due and timely performance of any of its representations, warranties, covenants and agreements contained herein, and such default is not promptly cured and has not been waived;

(iii) By Buyer if (x) a timely Title Defect Notice or a Survey Defect Notice was provided to Seller in accordance with the provisions of Section 6 or Section 8, as applicable, and Seller failed to remove the defects set forth in such notice within the time provisions set forth in Section 6, (y) a Termination Notice was delivered to Seller by Buyer prior to the expiration of the Inspection Period in accordance with Section 7, or (z) all of the conditions set forth in Section 12(a) shall not have been satisfied on or before February 25, 2006, other than through failure of Buyer to comply with its obligations hereunder, or shall not have been waived by it on or before such date; or

(iv) By Seller if (y) Seller is unable to obtain all of the consents and approvals listed on Schedule 11(b) on or before February 25, 2006, or (z) all of the conditions set forth in Section 12(b) shall not have been satisfied on or before February 25, 2006, other than through failure of Seller to comply with its obligations hereunder, or shall not have been waived by it on or before such dates;

(b) **EFFECT OF TERMINATION:** In the event that the Closing does not occur as a result of either Party exercising its right to terminate pursuant to Section 13, then neither Party shall have any further rights or obligations under this Contract, except that (i) nothing herein shall relieve either Party from any liability for any willful breach hereof and (ii) any indemnification obligations shall survive any such termination of the Contract.

14. EXPENSES: Seller shall be responsible for the payment of Florida Documentary Stamp Taxes and Miami-Dade County Surtax, if any, which are required to be affixed to the Special Warranty Deed. Buyer shall be responsible for recording fees on the deed and for payment of survey costs and fee owner's title policy premium.

15. PRORATIONS; CREDITS: Taxes, assessments and other expenses and revenue of the Property shall be prorated through the day prior to Closing. Cash at Closing shall be increased or decreased as may be required by said prorations. All prorations will be made through the day prior to occupancy if occupancy occurs before Closing. Taxes shall be prorated based on the

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current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date which the current year's millage is not fixed, and the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax; provided, however, if there are completed improvements on the Property by January 1st of the year of Closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which a request will be made to the County Property Appraiser for an informal assessment taking into consideration exemptions, if any. Any tax proration based on an estimate may at the request of either Buyer or Seller be subsequently readjusted upon receipt of the tax bill. At Closing, Buyer and Seller will execute a tax pro-ration agreement in accordance with this paragraph.

16. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens as of the Closing Date (and not as of the Effective Date) are to be paid by Seller.

17. BULK TRANSFER LAWS: Buyer acknowledges that Seller will not comply with the provisions of any bulk transfer laws of any jurisdiction in connection with the transactions contemplated by this Contract.

18. ASSIGNABILITY: Neither this Contract nor any interest therein shall be assigned by Buyer or Seller without the express written consent of the other.

19. ATTORNEY FEES; COSTS: In any litigation arising out of the Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

20. FAILURE OF PERFORMANCE: If either Party fails to perform its obligations under this Contract within the time specified, the other Party may seek specific performance without thereby waiving any action for damages resulting from the breaching Party's breach. In no event shall either Party be entitled to recover from the other Party any special, consequential, punitive, or business damages of any type. Exclusive jurisdiction for any breach shall be in the Circuit Court of Miami-Dade County.

21. PERSONS BOUND; NOTICE: This Contract shall bind and inure to the benefit of the Parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice given by or to the attorney for any Party shall be as effective as if given by or to said party.

22. OTHER AGREEMENT: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the Party or Parties to be bound thereby.

23. NOTICES: All notices required or permitted under this Contract shall be in writing and, (a) if by air courier, shall be deemed to have been given one (1) Business Day after the date

Execution Document

deposited with a recognized carrier of overnight mail, with all freight or other' charges prepaid, (b) if by telecopy, shall be deemed to have been given when actually received, and (c) if mailed, shall be deemed to have been given seven (7) days after the date when sent by registered or certified mail, postage prepaid, addressed as follows, unless another address is designated by a Party hereto by written notice to the other Party:

As to Seller: TECO Thermal Systems, Inc.
702 N. Franklin Street
Tampa, Florida 33602
Attn: Mr. Bruce Narzissenfeld
Fax: 813-228-4643

- with a copy to -

TECO Energy, Inc.
702 N. Franklin Street
Tampa, Florida 33062
Attn: Ellen W. Anderton, Esq.
Fax: 813-228-1328

As to Buyer: Laureen Varga
Chief Real Estate Officer
Miami-Dade County
General Services Administration
111 N.W. 1st Street, 24th Floor
Miami, Florida 33128
Fax:

*

*

*

continued on next page

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Execution Document

BUYER:

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida

ATTEST:

By: _____
Name:
Its:

By: _____
Name:
Its:

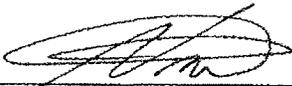
Date: _____

Tax ID No. _____

SELLER:

TECO THERMAL SYSTEMS, INC., a
Florida corporation

WITNESSES:



Noriel Castro



Ellen Ankersten

By: 

Name: R. BRUCE CHRISTMAS
Its: PRESIDENT

Date: 12/7/05

Tax ID No. 65-0858520

This instrument prepared by

Stuart H. Altman Esq.
Fowler White Burnett P.A.
1395 Brickell Avenue, 14th Floor
Miami, FL 33131

Property Appraisers Folio No:

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is executed the _____ day of _____, 20____, by TECO THERMAL SYSTEMS, INC., a Florida corporation, whose mailing address is 702 N. Franklin Street, Tampa, Florida 33602, first party, to MIAMI-DADE COUNTY, a political subdivision of the State of Florida, whose mailing address is _____, second party:

[Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.]

WITNESSETH: that the said first party, for and in consideration of the sum of \$10.00 in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby grant, bargain and sell unto the second party, its successors and assigns forever, the following described parcel of land in the County of Miami-Dade, State of Florida, to wit:

Lots 1 through 10, Block "C", J.A. DANN SUBDIVISION, according to the Plat thereof recorded in Plat Book 1, at Page 36, of the Public Records of Miami-Dade County, Florida.

Subject to conditions, limitations, easements and restrictions of record, and real property taxes for 2006 and subsequently.

TO HAVE AND TO HOLD in fee simple forever.

AND the first party does hereby warrant the title to said land against the claims of all persons claiming by, through or under the first party, but no others.

IN WITNESS WHEREOF, the said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
in our presence:

TECO THERMAL SYSTEMS, INC.

Print Name:

By: _____

Its: _____

Print Name:

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

The foregoing instrument was subscribed before me this ____ day of _____, 20____, by _____, as _____ of TECO THERMAL SYSTEMS, INC., a Florida corporation, who is personally known to me.

Notary Public

Name: _____

My commission expires:

Exhibit A

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That TECO THERMAL SYSTEMS, INC., a Florida corporation, the party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States, paid by MIAMI -DADE COUNTY, a political subdivision of the State of Florida, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the said party of the second part, its successors and assigns, all of the personal property located at 1110 N.E. 1st Avenue, Miami, Florida, as more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

AND it does, for itself and its successors and assigns, covenant to and with the said party of the second part, its successors and assigns, that it is the lawful owner of the said goods and chattels; that they are free from all encumbrances; that it has good right to sell the same aforesaid and that it will warrant and defend the sale of the said property, goods and chattels hereby made, unto the said party of the second part, its successor and assigns, against the lawful claims and demands of all persons claiming by, through or under the first party, but no others.

IN WITNESS WHEREOF, the party of the first part has executed this Bill of Sale as of the _____ day of _____, 20__.

Signed, sealed and delivered
in presence of us:

TECO THERMAL SUSTEMS, INC.

Print Name:

By: _____

Its: _____

Print Name:

STATE OF FLORIDA)
)ss:
COUNTY OF HILLSBOROUGH)

The foregoing instrument was subscribed before me this _____ day of _____, 20, by _____, as _____ of TECO THERMAL SYSTEMS, INC., a Florida corporation, who is personally known to me.

Notary Public

Name: _____

My commission expires:

Exhibit B

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ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), effective as of _____, 20____, is entered into between **TECO THERMAL SYSTEMS, INC.**, a Florida corporation ("TTS"), and MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("MDC"). Capitalized terms used but not defined herein shall have the meanings specified in the Assigned Agreement (as defined below). TTS and MDC are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, [insert counterparty name], a [State of Origin/Form of Business Entity], and TTS are parties to that certain [Name of Assigned Contract], dated as of [Date] (the "Assigned Agreement"); and

WHEREAS, TTS desires to assign to MDC all of TTS's rights and obligations under the Assigned Agreement provided that MDC agrees to assume and discharge all of TTS's liabilities, obligations and contractual commitments under the Assigned Agreement; and

WHEREAS, MDC desires to accept the assignment and to assume and discharge all of the liabilities, obligations and contractual commitments of TTS under the Assigned Agreement in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the recitals and the mutual promises, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment. Pursuant to [Section Reference] of the Assigned Agreement and subject to the terms and conditions set forth herein, TTS hereby sells, transfers and assigns to MDC TTS's right, title, and interest in, to and under the Assigned Agreement.

2. Assumption. MDC expressly accepts the assignment set forth above and hereby assumes, all of the liabilities, obligations and contractual commitments of TTS under the Assigned Agreement as provided herein. MDC acknowledges and agrees that, upon the effectiveness of this Agreement (the "Effective Date"), (i) TTS is relieved from all liability arising under the Assigned Agreement after the Effective Date, and (ii) MDC agrees to indemnify and hold harmless TTS from and against any loss, damage, cost or expense arising under or with respect to the Assigned Agreement after the Effective Date.

3. Release. Upon the effectiveness of this Agreement, and subject to the condition that all payment obligations of TTS under the Assigned Agreement that are due as of the Closing Date shall have been performed or paid in full, TTS shall be released from any and all of its obligations under the Assigned Agreement, and [insert counterparty name] shall look only to MDC for the performance of the obligations under the Assigned Agreement arising on or after the Effective Date which release shall be a condition precedent to the assignment in accordance with Section 1 hereof.

4. Representations and Warranties. TTS hereby represents and warrants to MDC that (a) the Assigned Agreement is in full force and effect and neither TTS nor, to the knowledge of TTS,

[insert counterparty name] is in default thereunder; and (b) the execution, delivery and performance of this Agreement, the Assigned Agreement and each other agreement, instrument and document executed and delivered by it in connection with or as contemplated by this Agreement to which it is or will be a party (i) are within TTS's power, and (ii) have been duly authorized by all necessary action on its part.

5. Indemnification. MDC indemnifies and holds harmless TTS from any disputes, claims, and liabilities that may arise in connection with the Assigned Agreement after the date hereof.

6. Binding Effect; Purposes. This Agreement shall inure to the benefit of and shall be binding upon TTS, MDC and their respective successors and assigns as permitted under the Assigned Agreement.

7. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

8. Governing Law. This Agreement shall be interpreted and construed under the laws of the State of Florida, excluding any conflict-of-law or choice-of-law rules which might lead to the application of the internal laws of another jurisdiction.

[Remainder of page intentionally left blank]

DISTRICT COOLING SERVICE AGREEMENT

This Agreement is dated and effective as of April 15, 1998 ("Effective Date"), by and between FPL Energy Services, Inc., a Florida corporation ("Company") and Basketball Properties, Ltd., a Florida limited partnership ("Customer").

W I T N E S S E T H:

Whereas, the Company is a district cooling company engaged in the business of producing and delivering district cooling service,

Whereas, Miami-Dade County, Florida (the "County") owns a certain parcel of property described on Exhibit "1" attached hereto (the "Property"); and

Whereas, pursuant to that certain Management Agreement dated as of April 29, 1997 by and between the County and the Customer (the "Management Agreement"), the Customer will manage and oversee the operation of a multi-purpose sports and entertainment facility (the "Arena") to be located on the Property and owned by the County; and

Whereas, the Customer has agreed to enter into a long-term contract with Company to provide district cooling service to the Arena, subject to the Company's obtaining the required permits and approvals as hereinafter provided; and

Whereas, subject to the terms of this Agreement, the Customer has agreed to purchase district cooling service from the Company; and

Whereas, the Company shall have the right to sell district cooling to other customers without the consent of Customer, subject to Company providing the level of district cooling service set forth in this Agreement.

NOW, THEREFORE, the Company and the Customer hereby agree as follows:

1. **Purchase and Sale of District Cooling Service.** This Agreement is dated and effective as of the Effective Date. Commencing upon the Service Commencement Date (as hereinafter defined), Company shall deliver and sell and Customer shall accept and purchase district cooling service for use within the Property for the Term of this Agreement. Customer shall take all required action, not otherwise the obligation of Company hereunder, to enable it to purchase district cooling service commencing on the Service Commencement Date in accordance with this Agreement. Company shall take all required action, not otherwise the obligation of Customer hereunder, to enable it to sell district cooling service commencing on the Service Commencement Date in accordance with this Agreement. The chilled water delivered under

this Agreement shall be for cooling and refrigeration purposes only.

2. Chilled Water Facility; Reliability.

(a) Company agrees to construct a chilled water service facility and to connect the Company's service to Customer's equipment as further discussed in Section 9 hereof. The pipes and equipment to be installed by the Company up to the interconnection point to carry the chilled water to and from the Arena shall be sufficiently sized to accommodate up to 4,375 tons of chilled water at a flow rate of 6,176 gallons per minute at a temperature difference delta of 17 degrees F. and supply temperature not to exceed 35 degrees F., which is equal to one hundred twenty five percent (125%) of the maximum required Contract Demand, based upon the service standards set forth in Section 10.

(b) Company agrees to utilize its best efforts to deliver the Contract Demand to the Customer as required by this Agreement, and at all times to operate and maintain the chilled water facility and distribution system in accordance with prudent industry standards and in accordance with all applicable manufacturer operation and maintenance requirements.

(c) If, after the Service Commencement Date, (1) the Company is prevented or delayed in the performance of any of its obligations to deliver chilled water under this Agreement as a result of any reason, including, without limitation, any Force Majeure Event (as described below), the Company shall immediately provide notice to the Customer of the circumstances preventing or delaying performance and the expected duration thereof, or (2) the Customer is for any reason not receiving chilled water delivery from the Company and the Customer is fully capable of receiving chilled water from the Company, the Customer shall immediately provide notice to the Company of its non-receipt of the chilled water and any knowledge that it may have regarding the circumstances thereof. "Force Majeure Event" means any Acts of God or of a public enemy, war, insurrection, civil disturbances, terrorism, sabotage, blockades, riots, embargoes, fires, floods, epidemics, avalanches, volcanic eruptions, earthquakes, cyclones, floods, explosions, lightning, hurricanes, governmental restrictions or governmental actions which prevent the Company from providing the chilled water services to the Customer required by this Agreement. In the event the Company is unable to provide the Contract Demand to the Customer as a result of any reason, including, without limitation, any Force Majeure Event, the Company shall, if the Customer is capable of receiving and utilizing chilled water, nevertheless remain obligated to:

(i) a. arrange for, at the Customer's cost, as further described in subparagraph (d) below (unless the inability to provide the Contract Demand to the Customer is the result of the

negligence or intentional misconduct of the Company or its employees, contractors or agents, in which event the Company shall pay the costs as described in subparagraph (d) below), 450 tons of chilled water per hour at a flow rate of 635 gallons per minute, at a temperature difference delta of 17 degrees F., and a supply temperature not to exceed 45 degrees F. within 6 hours (including a Force Majeure Event) from the occurrence of such event; and

b. arrange for, at Customer's cost, as further described in subparagraph (d) below (unless the inability to provide the Contract Demand to the Customer is the result of the negligence or intentional misconduct of the Company or its employees, contractors or agents, in which event the Company shall pay the costs as described in subparagraph (d) below), additional chilled water above the 450 tons described in subparagraph a. above, up to the Contract Demand in effect immediately prior to such event (or such lesser demand as directed by the Customer), at a delivery temperature not to exceed 45 degrees F., within 24 hours from the occurrence of such event (except in a Force Majeure Event, in which case such delivery shall be within 48 hours) and be maintained at the Contract Demand in effect immediately prior to such event, thereafter (or such lesser demand as directed by the Customer), at a delivery temperature not to exceed 45 degrees F., until the Company is able to restore normal district cooling service; and

(ii) make available its recirculation water loop, if operable, for purposes of removing heat from Customer's cooling system; and

(iii) utilize its best efforts to restore Company's district cooling facility to normal operation at a target delivery temperature described in Section 10, and deliver the applicable Contract Demand, as promptly as possible.

During and throughout all of such time period of any non-delivery of chilled water by the Company as described in this Section 2(c), Customer shall be entitled to an abatement of the Contract Demand Charge for the time period and duration of non-delivery from the Company chilled water facility as follows:

(1) In the event that the reason the Company is unable to deliver the chilled water from the Company's chilled water facility to the Customer is not the result of the negligence or intentional misconduct of the Company, its employees, contractors and agents, (and further provided that Customer is not in default in making payments of all Other Costs including, but not limited to those amounts associated with any temporary or mobile chiller(s) and generators as described in Section 2(d) beyond the applicable grace period), Customer shall be entitled to a full abatement of the Contract Demand Charge for the time period and duration with respect to the portion of the Contract Demand which is not being

delivered to the Customer by the Company from the Company's chilled water facility. It is further, provided, however, that if at any time covered by an abatement right of the Customer hereunder, the Company delivers a portion of the Contract Demand from the Company's chilled water facility and not from the temporary chillers described in Section 2(d), (the "Abatement Period Partial Contract Demand Delivery"), the abatement by the Customer permitted hereunder shall only be for the undelivered portion of the Contract Demand, and payment shall be made by the Customer for the applicable Monthly Billing Charge based upon the Abatement Period Partial Contract Demand Delivery, and further provided that any such abatement by the Customer shall cease (and full payment shall re-commence) at the time that the entire Contract Demand is restored; or

(2) In the event that the reason the Company is unable to deliver the chilled water from the Company's chilled water facility to the Customer is the result of the negligence or intentional misconduct of the Company, its employees, contractors and agents and the Company is delivering all or a portion of the Contract Demand from the temporary chillers paid for by the Company described in Section 2(d) Customer shall be entitled to an abatement of the Contract Demand Charge and, in lieu of the Contract Demand Charge, the Customer shall only be required to pay (i) ninety percent (90%) of the Contract Demand Charge (Contract Demand Charge x 90%) with respect to that portion of the Contract Demand being delivered from the temporary chillers described in Section 2(d) for the time period and duration that any portion of the Contract Demand is being delivered to the Customer by the Company from the temporary chillers paid for by the Company as described in Section 2(d); and (ii) one hundred percent (100%) of the Contract Demand Charge for that portion of the Contract Demand being delivered to the Customer by the Company from the Company's chilled water facility until such time that the Company is able to deliver the Contract Demand from its chilled water facility. All other amounts shall be due and payable during any abatement period.

(d) To satisfy Company's obligation in Section 2(c)(i), the Company shall be responsible to arrange for a temporary source of district cooling service such as mobile chillers. The Company shall provide, at the Customer's sole cost and expense, mobile chiller(s) capable of producing 450 tons of chilled water per hour at a flow rate of 635 gallons per minute at a temperature difference delta of 17 degrees F. and a supply temperature not to exceed 45 degrees F. within 6 hours, including a Force Majeure Event. The Company shall provide, at Customer's cost and expense (as provided below), additional temporary chiller(s) for producing more than the aforementioned 450 tons of chilled water up to the then Contract Demand, or so much thereof as directed by the Customer. The Company shall consult with the Customer with respect to the applicable rental charges and transportation costs for

providing the temporary chillers. Any cost incurred by Company in connection with renting the temporary chillers and generators, including, but not limited to, transporting such to the Property, and in fueling the chillers and generators, shall be the responsibility of the Customer which shall be added as Other Costs to the Monthly Billing Charge, unless the reason the Company is unable to deliver the chilled water from the Company's chilled water facility to the Customer is the result of the negligence or intentional misconduct of the Company, its employees, contractors or agents, in which case Company shall pay all cost associated with providing and operating the temporary chillers and generators. The Company shall pay all other costs and expenses associated with arranging for the temporary chillers and required generators and all costs associated with connecting the temporary chillers and generators to the Property and maintaining the temporary chillers and generators.

(e) Provided that the Company is exercising its best efforts to obtain and operate such temporary source of district cooling service (even if not available within the stated time periods herein), and to restore Company's district cooling facility to normal operation, such situation shall not be deemed a default or breach of the Company's obligations under this Agreement, except as otherwise expressly hereinafter provided.

(f) In the event that the Company fails to provide for a temporary source of chilled water as required by this Section 2, Customer may undertake reasonable self help measures to obtain temporary chilled water supply as required by this Section 2, provided, however, that prior to undertaking such self help measures, the Customer shall notify the Company of its intent to undertake such self help measures and to ascertain whether the Company is already undertaking its best efforts to obtain the temporary chilled water supply as required by this Section 2. Any self-help measures taken by Customer, as required by this Section 2(f) shall not relieve Company of its obligations as provided in this Section 2.

(g) For purposes of delivery of any temporary source of chilled water as required by this Section 2 or elsewhere in this Agreement, the Company agrees that it shall be responsible for providing a sufficient quantity and type of taps into the Company's side of the chilled water delivery interconnection to provide for temporary chilled water delivery. For purposes of delivery of any temporary source of chilled water as required by this Section 2 or elsewhere in this Agreement, the Customer agrees that it shall be responsible for providing sufficient space (if required by Company) to locate temporary chiller and chiller electric generator units, as well as interconnections into the Customer's electric panel for purposes of powering at least 450 tons of temporary chiller capacity either one (1) 1,000-amp panel or two (2) 500-amp panels, or such other power configuration as may be agreed to by the

parties. In the event of Company's use of Customer's electric panel for powering temporary chiller units, Company shall arrange for monitoring of such electric usage and reimbursement to Customer for actual utility electrical charges associated therewith.

3. Term; Extensions.

(a) On or before May 15, 1998, Customer shall deliver to the Company a notice indicating the specific date for the anticipated substantial completion of the Arena (the "Anticipated Completion Date"). Such Anticipated Completion Date shall not be earlier than October 15, 1999 or later than September 1, 2000. On or before December 31, 1998 the Customer shall provide notice to the Company indicating the scheduled completion date for the Arena (the "Completion Date") which date shall be a specific date no earlier than the Anticipated Completion Date and no later than four (4) months after the Anticipated Completion Date. Company shall furnish and Customer shall purchase, district cooling service in accordance with the terms of this Agreement commencing on the date that is eight (8) months prior to the Completion Date, but which commencement date for district cooling service shall in no event be earlier than May 1, 1999 and in no event later than May 1, 2000 (the "Service Commencement Date"), and which shall continue uninterrupted subject to the terms of this Agreement up to and including the later of (the "Term"): (1) the date which is thirty (30) years after the Service Commencement Date, or (2) the Expiration Date (as defined in the Management Agreement) of the initial term of Management Agreement as described in Section 2.1 thereof (excluding any extensions or options to extend the Management Agreement term as described therein) but including any time period of suspension or tolling of the Management Agreement as set forth therein, including, but not limited to, any Abatement Period under the Management Agreement. The Term of this Agreement shall be subject to any Term extension described in Section 3(d) or 3(e) of this Agreement. Upon the Service Commencement Date and during and throughout the Term hereof, except as provided in Section 2(c), the Customer shall be obligated to pay the Monthly Billing Charge and purchase district cooling service at the Contract Demand as provided in this Agreement. All of the payment and performance obligations of the Customer under this Agreement (during the Term and during any extension pursuant to Sections 3(d) and (e)), including, but not limited to, the obligation to make payment for the Contract Demand (notwithstanding the Customer's non-use or inability to use such Contract Demand) shall continue in full force and effect notwithstanding any suspension or tolling of the Management Agreement, including, but not limited to, any Abatement Period under the Management Agreement. A copy of the Management Agreement, as referred to in this Agreement, is attached hereto as Exhibit "2".

(b) If the Customer desires to establish a ramp up period for a ramp up of delivery of the Contract Demand for a time

period of no longer than four (4) months from the Service Commencement Date (the "Ramp Up Period"), Customer shall notify Company on or before November 1, 1998 of such request. Any ramp up schedule and the ton hours to be delivered under any ramp up schedule shall be subject to the mutual written consent of the parties, which consent shall not be unreasonably withheld or delayed, and the parties shall attempt to negotiate a mutually agreeable ramp up for delivery of chilled water as provided herein, which shall result in the delivery of the full Contract Demand no later than four (4) months after the Service Commencement Date, provided, however, that the minimum amount of chilled water to be delivered during any Ramp Up Period shall be at least 1400 tons, and all chilled water delivered during the Ramp Up Period shall be paid by Customer at the Monthly Billing Charge, but the Contract Demand for the Contract Demand Charge during the Ramp Up Period shall be only for the Ramp Up Period tons delivered. If the parties have not agreed to a ramp up as described in this provision by December 31, 1998 (or such other date as mutually agreed to by the parties), no ramp up shall apply and the Contract Demand shall be delivered on the Service Commencement Date.

(c) If Customer elects to abandon the construction of the Arena and terminate the Management Agreement at any time after May 15, 1998, but prior to the Service Commencement Date, the Customer shall be permitted to terminate this Agreement by written notice to be received by the Company at any time prior to the Service Commencement Date. In such event, Customer shall be obligated to pay to the Company (subject to an aggregate maximum cap of three million six hundred thousand dollars (\$3,600,000)), the amount required to make the Company completely whole for any and all costs, fees, and damages incurred by Company, directly or indirectly, related to such termination. Such calculation of damages hereunder shall include, but not be limited to, the total of all internal and external costs, fees, and expenses, for any and all sums incurred, directly or indirectly, by Company allocable or otherwise attributable to the design, engineering, construction, installation, and procurement of equipment and labor for the district cooling facility, any reliance damages incurred by Company (including, but not limited to, reliance damages associated with Company entering into additional chilled water contracts with other customers based upon the Company's reliance upon, and expectation of, Customer purchasing chilled water as described in this Agreement notwithstanding the termination right herein), termination or cancellation fees or decommissioning or recommissioning fees, overhead, costs of acquiring real or personal property, interest, and finance costs (including, but not limited to, finance termination costs). In such event, Company shall be required to provide to the Customer reasonable evidence substantiating all such costs, and damages incurred by Company up to the time of the termination notice. The Customer shall be required to pay the amount due (subject to the \$3,600,000 cap) within ten (10) business days of its receipt of the documentation

described above from the Company. Except for any indemnity obligation of either party pursuant to Section 17 which has already accrued: (a) upon Customer's notification to Company of the exercising of Customer's termination rights hereunder, Company shall be deemed immediately released from all obligations under this Agreement, and (b) upon Customer's payment to Company of the termination amount required hereunder, Customer shall be deemed immediately released from all obligations under this Agreement. No termination fee shall be due if the Customer terminates this Agreement on or before May 15, 1998.

(d) The Company grants to the Customer two consecutive options to extend the Term of this Agreement, subject to the terms below. Each option shall be for an additional ten (10) year term commencing at the end of the then-existing term and subject to the same terms and conditions of this Agreement, except for the Contract Demand Rate, as hereinafter defined. Notice of Customer's intention to exercise each option must be in writing and delivered no later than two (2) years before the expiration of the Term or the end of the first extension period, as applicable. Upon delivery of notice by the Customer of its election to extend the Term, the parties shall negotiate in good faith in an attempt to establish a mutually acceptable new Contract Demand Rate, as hereinafter defined, which shall be applicable during such respective extension period. Within six months of the Company's receipt of notice of the Customer's intention to extend the term of this Agreement, the Company and the Customer shall negotiate, in good faith, to agree upon the applicable Contract Demand Rate. If the Customer and the Company agree on the applicable Contract Demand Rate, the Customer and the Company shall execute an amendment to this Agreement extending the Term of this Agreement and establishing the applicable Contract Demand Rate. If the Customer and the Company are unable to agree on the applicable Contract Demand Rate within six (6) months after the Customer has delivered written notice to the Company of the Customer's intention to extend the term, neither party shall be obligated to any extension of the Term of this Agreement for the applicable ten (10) year extension as provided herein, and this Agreement shall conclude at the end of the then existing Term. Notwithstanding the foregoing, the parties may, by mutual consent, elect to extend such negotiations beyond the six (6) month negotiation period described above. In the event that the Customer shall not notify the Company of its intent to exercise the option to extend the term of the Agreement no later than two (2) years before the expiration of the Term or the end of the first extension period, as applicable, then the option(s) herein provided shall terminate and be null and void. The Company agrees to make the district cooling service contemplated by this Agreement available to Customer during the option periods provided that the Company and Customer agree on terms for providing such service and both execute an amendment to this Agreement as described above. In the event that the Manager does not extend the term of the Management Agreement, the County

shall have the right to require the Manager to assign this Agreement to the County effective on the expiration of the term of the Management Agreement. In such event, the Company acknowledges that the County shall be entitled to execute an amendment to this Agreement to exercise the remaining option(s) set forth in this Section 3(d) subject to all terms and conditions of such extension option herein, subject to all terms and conditions of this Agreement, and subject to the County assuming all of the Customer's obligations under this Agreement from and after the termination of the Management Agreement with the County substituted as the Customer.

(e) If the parties have agreed to extend this Agreement for the two additional ten (10) year extension terms described in Section 3(d), then the Company grants to the Customer one additional option to extend the Term of this Agreement for an additional ten (10) year period subject to the terms below. Notice of Customer's intention to exercise this option must be in writing and received by Company no later than two (2) years before the expiration of the second extension period described in Section 3(d). Upon receipt by Company of Customer's notice of its election to exercise the option herein, the parties shall negotiate in good faith in an attempt to establish mutually acceptable terms and conditions including, but not limited to, a mutually acceptable new Monthly Billing Charge for such extension period hereunder. If the Customer and the Company agree on all of such terms, the Customer and the Company shall execute an amendment to this Agreement. If the Customer and the Company are unable to agree on such extension within six (6) months after the Customer has delivered written notice of the Customer's intention to extend the term pursuant to this option, neither party shall be obligated to any extension of the Term of this Agreement hereunder, and this Agreement shall conclude at the end of the then existing Term. Notwithstanding the foregoing, the parties may, by mutual consent, elect to extend such negotiations beyond the six (6) month negotiation period described above. In the event that the Company does not receive Customer's notification of its intent to exercise the option herein by two (2) years before the expiration of the second extension of the Term described in Section 3(d), then the option herein provided shall terminate and be null and void. The Company acknowledges that the County shall have the right to exercise the option if the term of this Agreement, as extended, will extend beyond the then term of the Management Agreement and the Customer has assigned its rights under this Agreement to the County effective as of the termination of the Management Agreement. Any such assignment hereunder and exercise by the County of the option herein shall be subject to all terms and conditions of such extension option herein, subject to all terms and conditions of this Agreement, and subject to the County assuming all of the Customer's obligations under this Agreement from and after the termination of the Management Agreement with the County substituted as the Customer.

4. Contract Demand.

(a) Except for the Ramp Up Period, the tons of cooling service to be delivered by Company to Customer in any one hour period as provided pursuant to the terms of this Agreement shall be the Contract Demand. Customer and Company agree that, except as otherwise provided in this Agreement, the Contract Demand shall be set at 2,800 tons at the flow rate and temperature described in Section 10, during the time period from the Service Commencement Date through a period of thirty six (36) consecutive months thereafter ("Initial Period") of this Agreement. A ton shall be defined as 12,000 British Thermal Units.

(b) The actual demand, at the flow rate and temperature described in Section 10 as calculated by Section 11 ("Actual Demand") shall be defined as the Customer's maximum demand in tons for cooling service delivered by Company during any one-hour period during the Term of this Agreement.

(c) (i) During the Initial Period, if the Customer's Actual Demand for district cooling service exceeds the then applicable Contract Demand, the Contract Demand shall be automatically increased to, and established to be, an amount equal to the Actual Demand, but the Company's consent shall be required before the Company shall be obligated to deliver in excess of 3,500 tons. In the event that the Customer desires in excess of 3,500 tons, the Company shall not unreasonably withhold consent if Company has such excess amount readily available for delivery to Customer and it is not otherwise reserved. The Customer shall have the right to obtain only the excess portion from another source if the Company does not consent to delivery hereunder. During the Initial Period, the Contract Demand shall be established monthly, based on the highest Actual Demand during that month, and such measurement shall be reset to 2,800 tons on the first hour of the first day of each following month. During the Initial Period, except during the Ramp Up Period, the Contract Demand shall never be less than 2,800 tons (regardless of actual use by Customer), and shall not be more than 3,500 tons without the Company's consent as provided herein. Special Events within the scope of Section 4(f) shall not serve to establish the Contract Demand hereunder.

(ii) If Actual Demand exceeds 3,500 tons in the Initial Period, Company shall not be obligated to deliver such amount in excess of 3,500 tons, except as set forth in subsection 4(c)(i).

(d) (i) The time from the conclusion of the Initial Period through the conclusion of the Term of this Agreement (including, but not limited to, any extension of the Term as provided in this Agreement) shall be referred to as the "Remaining Period."

(ii) At least ninety (90) days prior to the conclusion of the Initial Period, Customer shall establish by written notice to the Company, the Contract Demand for the Remaining Period based on the actual usage during the Initial Period. Company will provide Customer with historical usage data to aid in determining the Contract Demand. The Contract Demand for the Remaining Period shall be no less than 2,800 tons. The Contract Demand for the Remaining Period, and the Company's delivery obligation, shall be no greater than 3,500 tons, and the Company's consent shall be required for any delivery in excess of 3,500 tons.

(iii) During the Remaining Period, in the event that the Customer desires in excess of 3,500 tons, the Company shall not unreasonably withhold consent if Company has such excess amount readily available for delivery to Customer and it is not otherwise reserved. The Customer shall have the right to obtain only the excess portion from another source if the Company does not consent to delivery hereunder.

(iv) During the Remaining Period, if at any time during any one calendar month the Customer's Actual Demand for district cooling service during any one hour period exceeds the Contract Demand, such difference between the Actual Demand and the Contract Demand is defined as the incremental demand ("Incremental Demand"). The highest Incremental Demand occurring during any calendar month shall be in effect for the entirety of any calendar month in which any Incremental Demand occurs. The Incremental Demand shall be reset to zero on the first second of the first hour of the first day of each following month. Special Events within the scope of Section 4(f) shall not serve to establish the Incremental Demand hereunder.

(v) During the Remaining Period, if the Customer at any time desires to add additional cooling to address new cooling load at the Arena, resulting from any material new construction or material modification of the physical facility at the Arena, including, without limitation the addition of up to 70,000 rentable square feet of retail space on the property described on Exhibit "3" ("Permanent Increase In Load Demand"), the Customer may notify the Company, at least twelve (12) months prior to the date of adding such additional cooling load, of the Customer's desire to add such additional cooling load under the terms and conditions of this Agreement at the Permanent Increase In Load Demand Charge, as hereinafter defined. Such notice shall contain a designation of the exact number of additional tons which the Customer desires for such Permanent Increase In Load Demand. Within sixty (60) days of the Company's receipt of such notice from the Customer, the Company shall inform the Customer of whether or not the Company shall provide all or any portion of such Permanent Increase In Load Demand. The Company shall provide such Permanent Increase In Load Demand (or a portion thereof) if Company has such excess amount

readily available for delivery to Customer and it is not otherwise reserved. The Customer shall have the right to obtain only the excess portion from another source if the Company does not consent to delivery hereunder. If the Company is to provide all or any portion of such Permanent Increase In Load Demand, the parties shall execute an amendment to this Agreement indicating the agreed upon Permanent Increase In Load Demand no later than thirty (30) days after Company's response to Customer as described herein. Any Permanent Increase In Load Demand (or portion thereof) provided by Company shall be at the prices, and on the terms, set forth in this Agreement.

(e) If the Customer's maximum Actual Demand is less than the Contract Demand by more than 10% for any twelve (12) consecutive month period, the Customer may provide written notice of same to the Company. The Customer, at the Customer's option and by such written notice to the Company, may notify the Company of the Customer's election to decrease the Contract Demand, including a reduction below 2,800 tons, to reflect Actual Demand, provided that: (1) in all such instances, the Company is able to sell such reduced amount, at a price and on such terms and for such duration at least as favorable to the Company as those contained in this Agreement, and (2) in all such instances, the Customer shall pay to Company, as incurred by Company, all direct costs of the Company related to the sale, including, but not limited to, all internal and external marketing, sales and other costs in identifying prospective customers and selling to such substitute customer(s), and (3) in all such instances, the substitute customer(s) must be of acceptable business standing and credit-worthiness as solely determined, in good faith, by Company and its financing parties. Unless and until the Contract Demand is reduced as provided herein, the Contract Demand shall remain in effect. The Contract Demand shall be reduced in stages as the Company actually sells such excess demand until the Contract Demand is reduced to the greater of (A) the then existing Actual Demand or (B) the demand requested by the Customer. In the event that the Customer delivers notice to the Company pursuant to this subsection (e) and subject to the terms hereof, the Company shall use its good faith efforts to promptly enter into agreement(s) with such substitute customer(s) as described in this provision. Upon such reduction as permitted pursuant to this provision, the Customer shall be deemed to have waived its rights to claim or demand all or any portion of the reduced amount, provided, however, that in the event that the Customer desires to acquire all or any portion of Contract Demand which has already been reduced hereunder, the Customer shall provide notice to the Company of its desire to obtain such tons (designating the specific amount desired). The Company shall provide Customer with such tons at the Permanent Increase In Load Demand Charge if Company has such excess amount readily available for delivery to Customer and it is not otherwise reserved. The Customer shall have the right to obtain such desired tons from another source if the Company does not agree to provide same. Each

and every reduction by Customer pursuant to this provision shall be subject to a minimum of 300 tons, and each and every substitute customer purchasing any demand pursuant to this provision shall be subject to a minimum purchase (per substitute customer) of at least 300 tons during and throughout the term of such contract, and the Company shall not be obligated to any reduction hereunder, or to enter into any contract with any substitute customer, for any level below such amount. If Customer exercises its rights hereunder, and (i) the Company cannot identify a substitute customer(s), or (ii) only can identify prospective substitute customer(s) who is (are) not willing to pay a price for district cooling service at least equal to the price set forth in this Agreement for a committed term at least equal to the remaining Term in this Agreement and on such other terms which are at least as favorable to Company as those set forth in this Agreement, the Company shall notify the Customer of such circumstances and the Company and Customer may mutually agree for the Customer pay for such desired reduction in the Contract Demand or any difference in pricing on an ongoing or lump-sum basis to make the Company entirely whole for the entire Term, or, in the event that the parties cannot reach such mutual agreement, the Customer shall continue to purchase the obligated Contract Demand.

(f) Subject to the following terms, if Customer foresees a special event or special circumstance in which Customer may require additional demand ("Special Event"), the Customer must submit a written request stating the amount in excess of Contract Demand required and the duration at least seven (7) days prior to the occurrence thereof. The Company's consent shall be required for any delivery in excess of 3,500 tons for any Special Event, and in the event that the Customer desires in excess of 3,500 tons, the Company shall not unreasonably withhold consent if Company has such excess amount readily available for delivery to Customer and it is not otherwise reserved. For any Special Events hereunder, the Company shall bill the Customer at the Contract Demand Rate for any excess Actual Demand over the Contract Demand and not exceeding fifteen percent (15%) of the Contract Demand ("Threshold Amount"). If Customer designates such additional demand in excess of the Threshold Amount, the Company shall provide the Customer with notice regarding the amount of such excess which Company is willing to provide to Customer, which may or may not equal the excess requested by Customer. Upon such acknowledgment by Company of the excess that it is willing to provide, Company shall provide such excess to the Customer for the designated time period, and shall bill the Customer for all applicable amounts associated with the Actual Demand up to the Threshold Amount, plus the Contract Demand Rate multiplied by 1.5 for such excess over the Threshold Amount, plus the associated Monthly Operating Costs. Once the Customer designates any Threshold Amount or excess and the time period thereof, such designation cannot be cancelled or modified by Customer on less than four (4) days' advance written notice prior to the requested commencement of delivery of chilled water for such Special Event, and in the event that Customer fails to cancel or

modify within such time period, Customer shall pay for such pre-designated Threshold Amount and excess regardless of Customer's actual use thereof. The Threshold Amount and any excess provided by Company under this subsection shall not be used to determine Actual Demand. The maximum number of designated days upon which Special Events may occur under this provision shall not exceed an aggregate of fifteen (15) calendar days per calendar year, and each and every calendar day involving such consumption as designated and described herein shall be deemed a Special Event, and each Special Event shall be separately billed as set forth herein. The parties may agree to additional days subject to mutual consent, in each party's respective sole discretion. The Customer shall have the right to obtain the excess over the Threshold Amount from another source only if the Company does not consent to delivery of such excess of the Threshold Amount hereunder. Special Event billing shall be in addition to, and not in lieu of, any other amounts payable under this Agreement for the applicable time period, and the Customer shall pay all applicable Monthly Billing Charges during any period in which a Special Event occurs.

5. Rates and Charges

5.1 Monthly Billing Charge

(a) Beginning on the first day of the month following the month in which the Service Commencement Date falls, Customer shall pay a Monthly Billing Charge for district cooling services in arrears and for the availability of the Contract Demand under this Agreement for each monthly billing period. The Monthly Billing Charge shall be determined as follows:

$$\text{Monthly Billing Charge} = \text{Contract Demand Charge} + \text{Monthly Operating Costs} + \text{Other Costs}$$

(b) The contract demand charge ("Contract Demand Charge") is determined as follows:

(i) The Contract Demand Rate is \$21.25 per ton, fixed at this price for the Ramp Up Period, Initial Period, and that portion of the Remaining Period covered by the initial Term as provided in Section 3(a) (but expressly excluding any renewal options of the Term described in Section 3(d) and 3(e)). The Monthly Operating Costs and Other Costs are set forth in Sections 5.2 and 5.3. The Monthly Contract Demand Charge shall be calculated as follows:

$$\text{Contract Demand Charge} = \text{Contract Demand (tons)} \times \text{Contract Demand Rate } (\$21.25/\text{ton})$$

(ii) Subject to any Ramp Up Period set forth in Section 3(b), if the Customer is unable to receive district cooling

service at the time of the Service Commencement Date, Customer shall be subject to the monthly Contract Demand Charge.

Contract Demand Charge during the extension periods shall be mutually agreed upon pursuant to Section 3(d) of this Agreement.

5.2 Monthly Operating Costs

(a) The Operating Costs for the one hundred twenty month period following the Service Commencement shall be the billed monthly ton-hours multiplied by the operating rate ("Variable Rate"). The Variable Rate for the one hundred twenty month period following the Service Commencement Date will escalate annually by 2.5% and is defined in Table 1: Variable Rate.

Table 1: Variable Rate

Calendar Year	Variable Rate
1999	0.0780
2000	0.0800
2001	0.0819
2002	0.0840
2003	0.0861
2004	0.0882
2005	0.0905
2006	0.0927
2007	0.0950
2008	0.0974
2009**	0.0998
2010**	0.1023
2011**	0.1049

** Note: Years 2009-2011 apply only if Service Commencement Date begins later than 1999

The Monthly Operating Costs shall be calculated as follows:
Monthly Operating Costs = billed monthly ton-hours x Variable Rate

(b) The Operating Costs commencing with month one hundred twenty one (following the Service Commencement Date) through the conclusion of the initial Term (and specifically excluding any options to extend the Term) of this Agreement shall be determined as follows:

(i) Three (3) months before the beginning of year eleven of the Term of this Agreement, and on or soon after each anniversary thereof, Company shall prepare an estimated cost ("Estimated Variable Cost") per ton-hour which Company anticipates in furnishing service to Customer and other customers during the

subsequent calendar year. Such Estimated Variable Cost shall be calculated on a calendar year basis, rather than an anniversary year basis of the Service Commencement Date. (The Estimated Variable Cost for the calendar year in which the Service Commencement Date occurs shall be based from the Service Commencement Date through the end of such respective calendar year in which the Service Commencement Date occurs.) Notwithstanding the foregoing, at any time during any such calendar year (but not more often than once per calendar quarter), the Company reserves the right to modify the Estimated Variable Cost based upon unforeseen anomalies occurring in the actual costs incurred by Company which impact the Operating Cost. The Estimated Monthly Operating Cost shall be calculated as follows:

Estimated Monthly Operating Cost = billed monthly ton-hours
x Estimated Variable Cost (\$/ton-hour)

(ii) Within 90 days after each anniversary date of the Service Commencement Date, Company shall prepare and deliver to Customer a statement of actual cost per ton-hour of district cooling service delivered which Company incurred during the twelve (12) months preceding the anniversary date of the Service Commencement Date for ton-hours produced by Company whether sold to Customer or other customers ("Actual Cost"). Actual Cost shall not include any payments made by the Company in connection with the provision of temporary chilled water services as contemplated by this Agreement, payment made by the Company pursuant to section 16(a) and supervisory expenses of the Company above the level of plant superintendent. Such statement shall include a detailed breakdown of information related to the total quantity of chilled water produced by Company during such calendar year. For purposes of clarity, the Actual Cost shall be based upon ton-hours actually produced by the Company in the respective anniversary year, and not upon the total ton-hour capacity or ability of the district cooling plant. The Actual Cost shall be applied to the Customer's annual billed ton-hours to determine the actual operating cost ("Actual Operating Cost"). The Actual Operating Cost shall be calculated as follows:

Actual Operating Cost = Annual billed ton-hours x
Actual Costs (\$/ton-hour)

(iii) The Actual Operating Cost shall be compared to the Annual Estimated Operating Cost for the same twelve month period. The difference between the two figures will produce an additional charge or credit ("Operating Cost Adjustment"). Any Operating Cost Adjustment owing by Company to Customer shall be either returned or credited within thirty (30) days within the calculation thereof and any Operating Cost Adjustment owing by Customer to Company shall be paid by Customer to Company within thirty (30) days of the invoice thereof.

Operating Cost Adjustment = Actual Costs -
Annual Estimated Operating Cost

(iv) Actual Costs hereunder shall be the Customer's proportionate share of costs based on ton-hour usage which Company shall incur in furnishing district cooling service to Customer including without limitation the following: fuel, electric power, water, utilities, water treatment, insurance premiums and deductibles (to the extent incurred), fees (including, but not limited to, permitting fees, license fees, application fees, or right-of-way fees), charges, taxes (of any type or description whatsoever), including, but not limited to, sales or use taxes or other legally imposed federal, state or local taxes, levies, fees, duties, tariffs or similar charges, except federal income taxes imposed upon the Company's income. Actual Costs may also include (a) amortization over the useful life of supplemental equipment, the installation of which is necessary to comply with federal, state or local laws, rules, regulations or ordinances, environmental or otherwise required after initial construction of the district cooling plant, and (b) amortization of supplemental equipment which, when combined with other operating costs, will result in a lower cost to the Customer than if such supplemental equipment were not installed, but only to the extent of any actual savings. Such equipment costs to be paid by Customer hereunder shall be amortized over the useful life of the supplemental equipment.

(v) It is expressly agreed that the Customer shall not pay personal property or real estate taxes due to County and/or the City of Miami related to ownership of the plant and associated equipment. Therefore, Operating Costs shall not include personal property or real estate taxes.

5.3 Other Costs

(a) The other costs (the "Other Costs") shall include any and all other charges described in this Agreement but not specifically included in the calculations set forth above, including (but not limited to) charges for special events as defined in Section 4(f), the Premium Charge (as hereinafter defined), the Permanent Increase In Load Demand Charge, water quality improvement costs as described in Section 9, Lost Water Cost as defined in Section 9, late charges as defined in Section 12, Permanent Demand Charge, and any other amounts payable by Customer pursuant to the terms of this Agreement.

(b) During the Remaining Period the Incremental Demand shall be used to calculate the premium charge (the "Premium Charge"). The Incremental Contract Demand Rate ("Incremental Contract Demand Rate") shall be equal to the Contract Demand Rate which shall be increased or decreased by the percentage increase or decrease, as the case may be, in the National Index of Consumer Price Index for

All Urban Households ("CPI-U") issued by the Bureau of Labor Statistics for the period beginning at the Service Commencement Date up to the date of the Contract Demand change. The Incremental Contract Demand Rate will continue to be annually increased or decreased as referenced above until the end of the Term of this Agreement. In the event that the Bureau of Labor Statistics ceases to publish the CPI-U, then the parties hereto agree that any revised or replacement cost of living index shall be used and applied in such a manner as to result in an equitable adjustment to the rates as determined hereunder as though the CPI-U were still published. The Premium Charge is calculated as follows:

$$\text{Premium Charge} = \text{Incremental Demand (tons)} \times \text{two (2)} \\ \times \text{Incremental Contract Demand Rate}$$

(c) For delivery of chilled water for any Special Event set forth in Section 4(f), the Company shall bill the Customer the applicable Monthly Billing Charge for all tons delivered, plus the Contract Demand Rate multiplied by 1.5 for such excess ton hours over the Threshold Amount.

(d) During the Remaining Period the Permanent Increase In Load Demand Charge shall be used to calculate the payment associated with the Permanent Increase In Load Demand ("Permanent Increase In Load Demand Charge"):

$$\text{Permanent Increase In Load Demand Charge} = \text{Permanent Increase In Load Demand (tons)} \times \text{Incremental Contract Demand Rate}$$

5.4 Additional Billing and Payment Terms

(a) If, after the Effective Date of this Agreement, any taxes (of any type or description whatsoever, including, but not limited to, sales or use taxes or other legally imposed federal, state or local taxes, levies, fees, duties, tariffs or similar charges), except federal income taxes imposed upon the Company's income hereunder or real estate or personal property taxes or equivalent imposed on the plant), are imposed directly or indirectly by, for, or to any governmental authority, agency, or instrumentality, and are applicable to the production, delivery, sale, or other transacting of chilled water or services under this Agreement, Company shall invoice Customer for such amounts and provide a description thereof, and Customer shall pay Company the full sum thereof. Notwithstanding the foregoing, if the County, as the owner of the Property and the Arena, is exempt from any sales or use taxes or other legally imposed federal, state or local taxes, levies, fees, duties, tariffs or similar charges when the Company is acting on behalf of the government as a collector, and Customer provides Company with evidence of such exemption is applicable to the charges under this Agreement, Company shall not collect from Customer such taxes, levies, fees, duties or other charges, unless such exemption shall cease, be terminated or otherwise be

challenged by the applicable taxing authority. Without limiting its rights to protest such action, in the event that such exemption shall cease, be terminated or otherwise be challenged by the applicable taxing authority, Customer shall pay the Company, or as applicable, the taxing authority, any and all amounts due or claimed to be due to the taxing authority.

(b) Notwithstanding the terms set forth in Section 5, and for purposes of clarity, the charges, rates, prices, and amounts set forth in Section 5 shall not apply to any renewal or extension of the Term set forth in Sections 3(d) and 3(e), and any charges, rates, prices, and amounts for any extension thereunder shall be subject to mutual agreement of the parties.

(c) The Customer may, within 90 days of the billing of an Operating Cost Adjustment to the Customer, give notice and commence an audit of the Company's books relating to the Operating Costs. Auditing can only be conducted for the previous two (2) years of Operating Cost Adjustments. The Customer shall have the right to examine the books and records of the Company for the purpose of determining that the Operating Cost Adjustment charged or credited to the Customer is correct. The Company agrees to make such books and records available for this purpose. In the event the Company has made an error in the calculation of Actual Operating Costs of 2% or more, the reasonable cost of the audit incurred by the Customer, shall be paid by the Company, otherwise the cost of audit shall be paid by the Customer. The Company, in determining Estimated Operating Costs and Actual Operating Costs, shall use generally accepted accounting principals and the Customer shall be bound thereby. This right of examination of the books of the Company shall under no circumstances give the Customer the right to withhold payment of any billings made by the Company to the Customer in accordance with this Agreement and the Customer's sole remedy, in the event the Customer's audit proves an error by the Company, shall be to receive a credit against Monthly Billing Charges currently due or to become next due, when the error is proved for any overpayment made by the Customer to the Company or a refund of the amount of the overpayment if discovered at the end of the term. If it is found that the Customer has underpaid the Company, the Customer shall pay the Company within 30 days of billing date. Any audit hereunder shall be subject to the accountant(s) and parties entering into a confidentiality agreement which prohibits disclosure (except as expressly required by applicable law) by the accounting firm, accountant(s), and Customer of the information obtained in connection with such audit to any third party (including, but not limited to, competitors of the Company) and/or use of the information for any purpose other than the audit hereunder. In the event that any disclosure of information obtained hereunder is requested or is required by law, notice shall be given to the Company prior to such disclosure so that Company, at its own expense, has the opportunity to seek a protective order either limiting or prohibiting such disclosure.

(d) In the event that, after completing its audit, the Customer gives notice that it disagrees with the Operating Cost Adjustment charged by the Company, the respective auditors shall meet and attempt to resolve the difference in calculation or opinion. In the event that the respective auditors are unable to resolve the difference, then either the Company, or the Customer, as applicable may submit the matter to binding arbitration as provided herein. Arbitration shall be conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the "Arbitration Rules") of the American Arbitration Association (the "AAA") and Title 9 of the U.S. Code. All arbitration hearings shall be conducted in Miami, Florida. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable. A judgment upon the award may be entered in any court having jurisdiction. The panel from which all arbitrators are selected shall be comprised of licensed attorneys or accountants. The single arbitrator selected shall be a retired judge from the highest court of general jurisdiction, state or federal, of the state where the hearing will be conducted or if such person is not available to serve, the single arbitrator may be a licensed attorney or an accountant.

(e) Any amounts payable by Customer under this Agreement shall not be affected by any circumstance whatsoever, including, without limitation, (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right that the Customer may have against Company or any other person or entity for any reason whatsoever, except as expressly permitted and provided in Section 2(c) of this Agreement, or (ii) any insolvency, bankruptcy, reorganization or similar proceeding by or against Company, (iii) or any lack of right, power or authority of the Customer or Company to enter into this Agreement. Each payment made by the Customer hereunder shall be final as to any assignee or assignees of the Company for any reason whatsoever. Notwithstanding the foregoing, nothing contained herein shall be construed to affect any obligation of Company to the Customer or to waive any rights the Customer may have to pursue any claim against Company, or any reimbursement of any overpayment by Customer, as permitted or provided in this Agreement.

(f) For purposes of clarity, except for Estimated Monthly Operating Cost, the monthly bills of Company to Customer are for payment in arrears based upon the actual measured amounts, or applicable stipulated amounts as provided for in this Agreement, for the previous calendar month.

6. Right to Terminate this Agreement.

(a) The Company may terminate this Agreement by delivering written notice to the Customer on or before May 15, 1998, based upon any of the following:

(i) Company shall not have received and retained or be satisfied that Company will be able to obtain where necessary, all applicable federal, state and local approvals, permits, licenses and authorizations necessary for the operation, production, transportation and delivery of district cooling service hereunder and for the construction of all facilities necessary therefore.

(ii) Company shall not have obtained from all parties necessary easements, licenses and other rights necessary or desirable to provide Customer with district cooling services under this Agreement and for the construction of all facilities necessary therefore.

(b) The Customer may terminate this Agreement by delivering written notice to the Company on or before April 28, 2001 of any of the following, subject to the provisions of Section 6(c):

(i) Customer shall not have received and retained where necessary, all applicable federal, state and local approvals, permits, licenses and authorizations necessary for the development, construction and operation of the Arena and all facilities appropriate or necessary therefore.

(ii) All of the conditions set forth in Section 22.31 of the Assurance Agreement executed as of April 28, 1997 by and between the County and the Customer shall not have been satisfied or waived by the Customer and the County.

(c) If Customer terminates this Agreement pursuant to Section 6(b) at any time prior to the Service Commencement Date, the Customer shall be liable for liquidated damages as provided in Section 3(c) except if the Customer terminates this Agreement prior to May 15, 1998, in which event, no termination fee shall be due. If Customer terminates this Agreement pursuant to Section 6(b) at any time upon or after the Service Commencement Date, the Customer shall be liable for payment of the termination amount provided in Section 6(d).

(d) From the Service Commencement Date, the Customer may terminate this Agreement at any time during the Term (and any extension options) for any reason and for its convenience provided Customer pays the Company, along with the notice of termination, a termination fee which shall be the lesser of Five Million and No/100 Dollars (\$5,000,000.00) or a fee determined by taking the present value (utilizing an eight percent (8%) discount rate) of the result obtained by multiplying the Contract Demand Charge and any Permanent Increase in Load Demand Charge for the then applicable Contract Demand and any Incremental Contract Demand, respectively, by the remaining months in the Term of this Agreement. The Customer agrees to give at least thirty (30) days

prior written notice before exercising its right of termination contained in the preceding sentence. The Company agrees to provide district cooling service to the Customer until the termination date requested by the Customer in such written notice.

(e) If the Company does not elect to terminate this Agreement pursuant to Section 6(a) on or before May 15, 1998 and thereafter fails to construct or abandon construction of the facility to provide the district cooling service contemplated by this Agreement as a result of the failure of the Company to obtain the permits, licenses, authorizations and easements contemplated by Section 6(a)(i) and 6(a)(ii), the Company may provide written notice of termination to the Customer, in which event the Company shall:

(i) arrange for, install, operate and maintain a temporary source of district cooling service such as mobile chillers, at the Company's sole cost and expense, capable of providing 3,000 tons of chilled water at a supply temperature not to exceed 45 degrees F. at a flow rate of 4,235 gallons per minute at a temperature difference delta of 17 degrees F. from the Service Commencement Date until the earlier of (a) one year from the date the Customer receives the notice of termination from the Company or (b) the date the Customer provides the Company with written notice that the Customer has obtained permanent chilled water service in sufficient quantities to service the Project from another source. The Company shall utilize its good faith efforts to cause any temporary chillers to be located off the Property; and

(ii) reimburse the Customer within thirty (30) days of written demand for all documented third party costs and expenses incurred by the Customer (not to exceed \$2,000,000.00) to: (a) redesign of the Project to accommodate the inclusion of a chilled water facility as part of the Project and the acceleration thereof; (b) accelerate the design of the chilled water facility for the Project; (c) accelerate the construction schedule for the chilled water facility to be constructed as part of the Project, including, without limitation, acceleration costs associated with other aspects of the Project required to be accelerated as a result of the inclusion of the chilled water facility as part of the Project; and (d) costs associated with accelerating the delivery schedule of chillers and other equipment required for the chilled water facility to be constructed as part of the Project.

(f) If the Company does not elect to terminate this Agreement pursuant to Section 6(a) on or before May 15, 1998 and thereafter fails to construct or abandons construction of the facility to provide the district cooling service contemplated by this Agreement, notwithstanding the fact that the Company has obtained all of the permits, licenses, authorizations and easements contemplated by Sections 6(a)(i) and 6(a)(ii) of this Agreement, the Company may provide written notice of termination to the

Customer, in which event, in addition to the remedies provided for in Section 6(e) above, the Company shall also be liable for all costs and expenses incurred by the Customer to design the chilled water facility for the Project, provided, however, same shall remain subject to the cap of \$2,000,000.00 described in Section 6(e) above.

(g) Termination pursuant to Section 6(a) shall be without cost or liability to the Company. The remedies provided for termination by the Company pursuant to Sections 6(e) and 6(f), respectively, are the sole and exclusive remedies to Customer and to any other person or entity for the termination by Company thereunder after May 15, 1998. In the event of any termination by Company as permitted in this Agreement, upon the payment of the amounts due as provided in this Agreement and compliance with the obligations of Company as provided in Section 6(e)(i) if applicable, Company shall be released from all obligations upon such termination in compliance therewith.

7. **Covenants, Representations and Warranties of the Company**

The Company covenants that:

(a) The Company shall use its best and continuous efforts to obtain and thereafter maintain all of the permits and rights referred to in Section 6(a) above.

(b) The Company shall cooperate and assist the Customer with the procurement and maintenance of all necessary permits and rights required in connection with the construction and/or operation of the facilities at the Property and in designing the interconnection of the Company's pipes to the Customer's facilities.

(c) The Company shall not cause or voluntarily permit any modification or alteration to any part of the Customer's equipment located in the Property, including without limitation any and all metering equipment, valves, conduits and piping, except in an emergency where life or property is threatened.

(d) Except as otherwise permitted by this Agreement, the Company shall not in whole or part assign, sell, subcontract or transfer its right to sell district cooling service under this Agreement.

(e) The Company shall maintain, repair and replace its chilled water facility, piping, equipment, and the interconnection of the Company's pipes to the Customer's facilities, all as necessary in accordance with prudent engineering practice so that same is in a condition suitable to provide and distribute chilled water and complies with all applicable laws and industry standards.

The Company makes the following express representations and warranties to the Customer:

(f) The execution and delivery by the Company of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of the Company's organizational documents or to the best of our knowledge any applicable law, rule or regulation; and to the best of our knowledge do not and will not conflict with or cause any breach or default under any agreement or instrument to which the Company is a party or by which it or any of its properties is bound. This shall not be deemed or construed to imply that the Company has all the necessary licenses, permits, approvals and easements contemplated by Section 6(a).

(g) This Agreement has been duly executed and delivered by the Company and constitutes the valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

(h) Company has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable laws, ordinances, regulations, rules, judgment, writ, decrees, awards, permits or orders which may have a material adverse effect on its ability to perform hereunder.

(i) Company has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which may have a material adverse effect on its ability to perform hereunder.

8. Covenants; Representations and Warranties of the Customer:

The Customer represents, warrants, and covenants that:

(a) The Customer shall not cause or voluntarily permit any modification or alteration to any part of the Company's equipment located in the Property, including without limitation any and all metering equipment, valves, conduits and piping, except in an emergency where life or property is threatened.

(b) Except as otherwise permitted by this Agreement, the Customer shall not in whole or part assign, sell, subcontract to other buildings or structures or transfer its right to receive district cooling service or resell district cooling service to any third party (other than resale to leasehold tenants of the Arena). Except as otherwise permitted by this Agreement, the Customer shall

not in whole or part assign, sell, subcontract or transfer its rights or obligations under this Agreement.

(c) The Customer shall maintain, repair and replace its chilled water piping and equipment as necessary in accordance with prudent engineering practice so that its equipment within the Property is in a condition suitable to receive and distribute chilled water and complies with all applicable laws and industry standards.

(d) To the extent necessary for Company to perform its obligations under this Agreement, the Customer shall provide Company with any blueprints, plans, surveys, drawings or other information of a technical nature which the Company may reasonably request which are relevant to the connection of the chilled water service.

(e) Customer shall use and exercise its best efforts to obtain and maintain in effect all necessary permits, licenses and approvals required in order to perform its obligations under this Agreement.

(f) Except as otherwise expressly provided in this Agreement, during the Term of this Agreement the Customer shall purchase all of its district cooling requirements for the Property, on an exclusive basis, from the Company as provided in this Agreement.

(g) The execution and delivery by the Customer of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of the Customer's organizational documents or to the best of our knowledge any applicable law, rule or regulation; and to the best of our knowledge do not and will not conflict with or cause any breach or default under any agreement or instrument to which the Customer is a party or by which it or any of its properties is bound;

(h) This Agreement has been duly executed and delivered by the Customer and constitutes the valid and legally binding obligation of the Customer, enforceable against the Customer in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles;

(i) Customer has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable laws, ordinances, regulations, rules, judgment, writ, decrees, awards, permits or orders which may have a material adverse effect on its ability to perform hereunder; and

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(j) Customer has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which may have a material adverse effect on its ability to perform hereunder.

9. Interconnection Obligations; and Water Quality Obligations.

(a) Exhibit "4" sets forth the specifications related to the interconnection between the Company and the Customer, and the rights and obligations of the respective parties to provide equipment at the interconnection point. As set forth in Exhibit "4", the Company shall provide all necessary piping requirements to the interconnection point within the Property which point shall be five (5) feet from the entry point into the Arena. The water meters shall be installed at those locations specified in Exhibit "4". Exhibit "4" is a conceptual drawing and not to scale. It is mutually anticipated by the parties that the Customer shall have a minimum of two (2) heat exchangers, and that the Company's water meters shall be located inside the Customer's facility.

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(b) The Company is solely responsible for its side of the interconnection and is solely responsible for all equipment, maintenance and repairs associated with its side of the interconnection and any Company equipment located on the Customer's side of the interconnection, except for damage caused, or repairs required resulting from the negligence or intentional misconduct of the Customer, its employee's agents and contractors. Customer shall be responsible for any damage caused, or repairs required, to the Company's side of the interconnection and the Company's equipment resulting from the negligence or intentional misconduct of the Customer, its employees, agents, and contractors.

(c) Except for damage caused, or repairs required, resulting from the negligence or intentional misconduct of the Company, its employees, agents and contractors the Customer is solely responsible for its side of the interconnection and is solely responsible for all equipment, maintenance and repairs associated with its side of the interconnection, and any damage or casualty incurred by Company equipment located on Customer's side of the interconnection (e.g. meters, controls, data lines, etc.). Company shall be responsible for any damage caused, or repairs required, to the Customer's side of the interconnection and the Customer's equipment resulting from the negligence or intentional misconduct of the Company, its employees, agents, and contractors.

(d) Except for damage caused, or repairs required, resulting from the negligence or intentional misconduct of the Company, its employees, agents and contractors, the Customer is solely responsible for the installation and maintenance of the heat exchanger(s). Company shall be responsible for any damage caused, or repairs required, to the Customer's heat exchanger resulting

from the negligence or intentional misconduct of the Company, its employees, agents, and contractors, including, without limitation, damage to the heat exchanger resulting from the failure of the Company to maintain the water quality standards required by this Agreement.

(e) Each party agrees and understands that the other party has the right, but not the duty, to inspect the interconnection point for the purpose of determining that such inspecting party's equipment and piping will not be damaged or otherwise rendered ineffective because of the operation of the other party's equipment. Each party agrees and understands that such inspection right does not in any way impose a duty or a liability on the inspecting party to make any determinations with regard to the lawful, safe, or proper operation of the other party's equipment and piping.

(f) The Company shall be responsible for any damage caused, or repairs required (on its side and on the Customer's side of the interconnection), resulting from its failure to maintain the applicable water quality standards as required in this Agreement, provided, however, that Customer shall be responsible for any damage caused, or repairs required (on its side and on the Company's side of the interconnection), resulting from degradation in water quality caused by Customer.

(g) All chilled water provided by the Company to the Customer shall comply with the water quality standards described on Exhibit "5" attached hereto. The return water from Property at the point of interconnection shall be the same general quality as provided by the Company. The Company shall be responsible for any degradation of the water quality attributable to the Company, and the Customer shall be responsible for any degradation of the water quality attributable to the Customer.

10. Supply Water Temperature.

(a) Except as otherwise provided in this Agreement, the Company shall provide district cooling service at the point of connection at a temperature between 35 and 39 degrees F. Company represents to Customer that the system is designed to deliver chilled water at a temperature of 35 degrees F. during and throughout the ordinary operation of the system. Notwithstanding such range of a delivery temperature between 35 and 39 degrees F. referred to above, during and throughout the Term of this Agreement, Company shall exercise its best efforts to deliver the chilled water at a target temperature of 35 degrees F. from the hours of 7:00 a.m. through 12 midnight daily and also during any Event (as defined in Section 14(d)) throughout the Term of this Agreement. The Contract Demand under normal operating purposes of this supply specification provision shall be based upon 2,800 tons at a flow rate of 3,953 gallons per minute, at a temperature

difference delta of 17 degrees F., and a supply temperature of 35 degrees F. The cooling supply specification will vary based on the changing chilled water temperature difference and flowrate based on the equation contained in 10(b). Except when (a) temporary chillers are in use, such as circumstances described in Section 2, and (b) when a Force Majeure Event has occurred as described and required to be handled in Section 2, if there occurs any continuous six (6) hour period when the chilled water delivered to the Property exceeds 39 degrees F., the Company shall take the actions as set forth in Section 2 (c)(iii) to remedy such situation. The Company shall also consult with Customer to determine how to best address Customer's chilled water needs during such remedy period.

(b) Chilled Water Supply Specification Equation. The following equation will be used to predict changing chilled water supply conditions.

Chilled water load (tons) = 500 X Gallons per minute X Temperature difference delta ÷ 12,000 BTUs per ton.

11. Delivered Ton-Hours. The ton-hours delivered to Customer shall be based on the greater of (a) the actual ton-hours delivered or (b) the ton-hours delivered calculated with a minimum return water temperature difference delta of 17 degrees F., provided; however, that if Section 11(b) is the greater amount of delivered ton-hours, the calculation of the delivered ton-hours pursuant to Section 11(b) shall be subject to a cap of ten percent (10%) over the actual ton hours delivered as calculated pursuant to Section 11(a). The Company shall provide a cooling supply control system designed to respond to the Customer's changing cooling demand conditions.

12. Meters and Payment of Bills.

(a) The Company shall install meters, at the Company's sole cost and expense, to measure the amount of chilled water used by the Customer. The Customer shall provide the Company adequate space for such meters. The Company at its sole expense shall provide calibration testing of the meters prior to their installation and thereafter periodically if deemed by the Company to be necessary, to ensure the accuracy of such meters. The Customer shall be entitled to witness such calibration tests. No more than once per calendar year, the Customer may request that the Company perform meter calibration, and in the event that the meters are found to be properly calibrated within 2% of manufacturer's tolerance, then the cost of such calibration shall be borne by the Customer, otherwise, such cost shall be borne by the Company.

(b) As a maintenance obligation, and without imposing any obligation to recalculate for prior billing, once per every five year interval after the Service Commencement Date, the Company

shall (at its cost) perform a water meter calibration to calibrate the water meters which it owns within manufacturer specifications.

(c) Meters shall be read monthly by and at the expense of the Company, unless otherwise agreed to in writing by the parties, and the Company shall render bills based on the meter readings or the applicable amount to be billed to Customer per the terms of this Agreement.

(d) In the event either party finds that a meter is malfunctioning, such malfunction shall immediately be reported to the other party, and the Company shall replace or repair the meter forthwith. During the period of malfunction, the bill for district cooling service during the period of meter malfunction will be computed based upon prior usage considering the events that occur at the Arena during such period.

(e) Any and all invoiced amounts under this Agreement shall be due and payable by the Customer upon receipt of invoice from the Company. In the event that any invoice from the Company has not been paid within thirty (30) days of billing date, then the Company shall be entitled to charge a late charge of 1.5% per month on all amounts past due.

13. Easements and Access.

(a) The Customer, for areas in which Customer has ownership or authority, shall grant, at no costs and by appropriate conveyance, mutually agreeable rights-of-way, access rights, easements, or permission to construct as may be required by the Company to connect the district cooling system to the points of entry and exit at Property. The Customer also agrees to execute such conveyances in a timely manner as may be required by the Company. In the event that any person other than the Customer holds the rights to such necessary rights-of-way, access rights, easements, or other rights described hereunder, the Customer agrees to provide reasonable assistance to the Company in its efforts to obtain the consent and approval of such other person.

(b) The Customer shall provide the Company access to the Customer facilities and the Property on a twenty-four (24) hour basis for the legitimate business activities of Company related to its provision of district cooling services pursuant to this Agreement, to permit the Company to access its equipment, to read and test meters, to make repairs, and to perform any other functions as may be necessary for the Company to fulfill its obligations under the Agreement. The Company shall be responsible for any damage caused, or repairs required, arising from the negligence or intentional misconduct of the Company and its employees, agents and contractors related to such access hereunder.

14. Default by Company; Termination by Customer. The Customer may terminate this Agreement, upon the occurrence of any one of the following events:

(a) Default by Company in the performance of any of its obligations under this Agreement, and such non-performance is not curable, or if curable continues for a period of thirty (30) days after written notice thereof from the Customer to the Company, or, if it may not reasonably be cured within such thirty (30) day period, such longer period provided that same shall be diligently and continuously endeavored to be cured.

(b) The Company shall voluntarily file, or have filed against it, a bankruptcy petition or similar proceedings, or enters into an assignment of its assets for the benefit of creditors, or otherwise becomes insolvent, unless with respect to any involuntary proceeding, such proceeding is dismissed within a period of sixty (60) days from the date instituted; provided, however, if the Company's chilled water facility continues to operate and continues to deliver chilled water to the Customer as required pursuant to this Agreement, the Customer shall have no right to terminate pursuant to this Section 14(b).

(c) Upon the failure of the Company to provide the applicable Contract Demand at the temperature and flow rate described in Section 10, for any thirty (30) consecutive day period.

(d) Upon failure by the Company to provide, except due to a Force Majeure Event, the Contract Demand as required by this Agreement, which results in the Customer canceling at least six (6) Events at the Arena during any consecutive twelve month period. For purposes of this subsection (d), an "Event" shall be any pre-scheduled use of the Arena (other than standard office or retail use) in consideration of payment of compensation to the Company for any concert, meeting, game, conference, or other large scale group function, provided, however, that no more than one "Event" shall be deemed to occur on any one calendar day. Any and all of which are intended to attract more than 3,000 people.

The exercise of such termination right by Customer as contained above shall be without liability for any additional payment or termination fee, except all charges accrued to the effective date of termination shall remain due and payable. Notwithstanding that the Customer has terminated this Agreement pursuant to its rights as set forth above, the Company agrees to provide district cooling service to the Customer pursuant to the terms of this Agreement (at the prices and on the terms and conditions in this Agreement) until the Customer is able, through its exercise of best efforts, to obtain alternative district cooling service for use within the Property in substitution of the service provided by Customer under this Agreement. Notwithstanding

the foregoing, the Company's obligation to provide district cooling service after the termination of this Agreement hereunder shall not exceed twelve (12) months from the date of termination.

15. **Default by Customer; Termination by Company.** The Company may terminate this Agreement, discontinue the delivery of district cooling service to Customer, and remove all of Company's equipment located within the Property, including without limitation, all meters installed thereon, upon the occurrence of any one of the following events:

(a) Failure of Customer to pay in full the Monthly Billing Charge for district cooling service furnished by Company pursuant to this Agreement on or before the later of (i) sixty (60) days from the date of invoice or (ii) thirty (30) days after receipt by the Customer of written notice of non payment.

(b) Default by Customer in the performance of any of its obligations under this Agreement, and such non-performance is not curable, or if curable continues for a period of thirty (30) days after written notice thereof from the Company to the Customer, or, if it may not reasonably be cured within such thirty (30) day period, such longer period provided that same shall be diligently and continuously endeavored to be cured.

(c) Customer shall voluntarily file or have filed against it a bankruptcy petition, or enters into an assignment of its assets for the benefit of creditors, or otherwise becomes insolvent, unless with respect to any involuntary proceeding, such proceeding is dismissed within a period of ninety (90) days from the date instituted; provided, however, if the Arena continues to operate and the Customer pays in full the Monthly Billing Charge and all other amounts owed to Company for district cooling service furnished by Company pursuant to this Agreement within thirty (30) days of notice of nonpayment, the Company shall have no right to terminate pursuant to this Section 15(c).

16. Remedies and Damages.

(a) Company.

(i) In the event at any time during the term of this Agreement, whether or not the Company is in default under Section 14, and irrespective of any action the Company is required to take as described in Section 2(c) through (e) and/or any other applicable cure or remedy that exists for the Company as set forth in this Agreement, in the event that at any time after the Service Commencement Date the Company fails to deliver the Contract Demand and, as a result of such failure, the Customer suffers or incurs a loss not covered by the insurance that the Customer is required to maintain pursuant to Section 19 of this Agreement, then in such event, the Company shall reimburse the Customer for all direct damages that the Customer suffers or incurs as a result of the failure of the Company to provide the Contract Demand, up to a maximum amount of \$250,000 during any twelve (12) month period.

(ii) In the event that Company has not completed construction of the chilled water service facility as required in Section 2(a) and Company is unable to provide Customer with district cooling service as required under Section 4 on the Service Commencement Date, Company shall, at its sole cost and expense, arrange for, install operate and maintain a temporary source of district cooling service such as mobile chiller to meet the Customer's district cooling needs as provided in Section 4. The Company shall provide such temporary source of district cooling service until such time Company completes construction of the chilled water service facility and is able to provide district cooling service in accordance with the requirements of this Agreement.

(b) Customer.

(i). If a default occurs (that^s continues beyond any applicable notice and cure period) under Section 15(a), (b) or (c) above and as a result thereof, the Company terminates this Agreement as provided in Section 16, then the Customer shall be liable to the Company for a sum (the "Liquidated Damages Sum") which is the lesser of the sum equal to the present value (utilizing an eight percent (8%) discount rate) of the result obtained by multiplying the Contract Demand Charge by the remaining months in the Term of this Agreement, or the sum of Five Million and No/100 Dollars (\$5,000,000.00) plus reasonable attorney's fees incurred in the enforcement of the Company's rights hereunder. The Liquidated Damages Sum shall be sole and exclusive remedy of the Company.

(ii) If the Customer provides the notice of the Completion Date as contemplated in Section 3(a) hereof and thereafter delivers notice to the Company (prior to the Company's

completion of the construction of the district cooling service facility) that the Customer is unable to complete construction of the Arena, then, the Customer shall be liable to the Company in the amount specified in Section 3 (b).

(c) Consequential Damages

Notwithstanding any provision of this Agreement to the contrary, in no event shall either party, its officers, directors, partners, shareholders, employees or affiliates be liable to the other party or to any other person for special, indirect, exemplary, punitive or consequential damages of any nature whatsoever connected with or resulting from the services or from performance or non-performance of this Agreement, or delivery or non-delivery of district cooling services or chilled water, including damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise.

17. Indemnification

(a) General Indemnity. To the fullest extent permitted by law, each party hereto (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party hereto and the directors, officers, shareholders, partners, agents and employees of such other party, and the affiliates of the same (collectively, the "Indemnified Parties"), from and against all loss, damage, expense and liability (including court costs and reasonable attorney's fees) resulting from injury to or death of persons, and damage to or loss of property, to the extent caused by or arising out of the fault of or negligent acts or omissions of the Indemnifying Party, its employees, agents and contractors in connection with the performance of this Agreement. The Indemnified Parties shall also include the County.

(b) Comparative Negligence. It is the intent of the parties hereto that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that party's negligence.

(c) Defense of Claims. An Indemnifying Party shall have the right to defend an Indemnified Party by counsel (including insurance counsel) of the Indemnifying Party's selection reasonably satisfactory to the Indemnified Party, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No Indemnified

Party shall settle any such claims or actions without prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

(d) Worker's Compensation Limits. In any and all claims against an Indemnified Party by an employee of an Indemnifying Party or of anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations in this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnitor under any applicable worker's compensation law, disability law, or other employee benefit law.

(e) Survival. The provisions of this Section shall survive the expiration or termination of this Agreement.

18. No Waiver. The failure of a party to enforce any term of this Agreement or a party's waiver of the nonperformance of a term by the other party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. This Agreement can only be amended by written agreement of the Parties.

19. Insurance.

(a) During and throughout the term of this Agreement, the Customer agrees to maintain public liability insurance for personal injury, death or property damage with a limit of not less than \$10,000,000 for any one occurrence and in the aggregate. The Company and its assignees shall be named as additional insured arising out of the operations of the named insured. During and throughout the term of this Agreement, the Customer shall maintain such other insurance as it deems prudent.

(b) During and throughout the term of this Agreement, the Company agrees to maintain, at a minimum, comprehensive property insurance, including all risk, physical damage insurance on the facilities or equipment by or from which Company produces or distributes district cooling service with replacement cost (new) coverage. The Company shall carry public liability insurance for bodily injury, death, or property damage of not less than \$5,000,000 per occurrence. The Customer and its assignees shall be named as additional insured (for liabilities) arising out of the operations of the named insured. The County shall also be named as an additional insured arising out of the operations of the named insured. However, the Company shall have the right to use the proceeds specifically paid to Customer under any property insurance policy to pay for the restoration, repair or replacement of the Company's equipment and the County and the Customer shall execute such documents and endorse to Company any checks issued by the insurer in order to permit Company to so use such proceeds.

(c) Each party shall carry such coverages with recognized insurers authorized to conduct business in the State of Florida, from insurance companies with a "Bests" insurance guide rating of at least "A" or better and with a financial size rating of "VII" or better. Each party shall direct its insurer or insurance agent to issue an insurance certificate to the other party verifying the existence of insurance coverage in accordance with these requirements, including evidence of additional insured coverage as each party's respective interests appear. Each party's insurance carrier or agent must agree to notify the other party in writing of any cancellation or material modification of the insurance required hereunder at least thirty (30) days prior to the effective date of any such cancellation or material modification, except for non-payment of premium which shall require ten (10) days prior notice.

(d) The parties mutually agree to release and waive and require that their respective insurers release and waive any right of subrogation their insurers may have for any claim arising out of or relating to any injury, loss, or damage arising out of or resulting from the operations or work of either party.

20. Scheduled Interruption of Service.

(a) Provided that such interruption does not occur on a date that an event is scheduled at the Arena or otherwise adversely affect any such event or interfere with the normal business hours of operation of any office, restaurant, or retail operation at the Arena, Company shall have the right to arrange for, and to interrupt the delivery of district cooling service for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of district cooling service. The Company agrees to provide the Customer with a temporary source of district cooling service, such as mobile chillers so that activities at the Property will not be adversely affected. With respect to scheduled maintenance of the equipment, the Company shall give written notice to Customer of any interruption of delivery of district cooling service at least thirty (30) days prior to the date of such interruption and shall inform Customer of the expected length of any interruption and to schedule such interruption to minimize disruption to Customer and the use of its Property. With respect to all interruptions, excepting scheduled maintenance, the Company shall give written notice to Customer of any interruption of delivery of district cooling service at least ten (10) days prior to the date of such interruption and shall inform Customer of the expected length of any interruption and Company shall use its best efforts to schedule such interruption to minimize disruption to Customer and the use of its Property. In the event Company needs to interrupt delivery of district cooling service due to an emergency, Company shall not be required to give notice of such interruption; nevertheless, Company shall inform Customer of the

expected length of the interruption and Company shall use its best efforts to minimize disruption to Customer and the use of its Property. Customer agrees to obtain reasonable rights in its leases or concession agreement with office, restaurant, and retail tenants or concessionaires at the Arena to permit for scheduled outages (as described in this Section 20) during times outside of, and which shall not adversely affect, standard business operating hours.

(b) From time to time the Customer may desire to perform inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for its receipt and use of the district cooling service. The Customer shall give written notice to Company of any interruption of its receipt of district cooling service at least ten (10) days prior to the date of such interruption and shall inform Company of the expected length of any interruption and to schedule such interruption to minimize disruption to Company and its operation of the district cooling facility. For purposes of clarity, such interruptions shall not affect Customer's obligation to pay the Monthly Billing Charges during and throughout the period of such interruption.

21. Notices. All notices, certificates or other communications hereunder shall be deemed given when mailed by certified or registered mail, postage prepaid, with proper address as indicated below.

To the Customer:

The Miami Heat
2300 SunTrust International Center
One Southeast Third Avenue
Miami, Florida 33131
Attn: L. Jay Cross, President

With a copy to:

Holland & Knight LLP
701 Brickell Avenue
Miami, Florida 33131
Attn: William R. Bloom, Esq.

To the Company:

FPL Energy Services, Inc.
11770 U.S. Highway 1
Golden Bear Plaza, Suite 500
North Palm Beach, FL 33408-3013
Attn: General Manager

or to such other address with respect to either party hereto as such party shall notify the other in writing. Any notice so given,

if mailed, shall be deemed received the third business day after it is deposited in the mail.

22. Permitted Assignment.

(a) Except as provided herein, this Agreement shall not be assignable by either party, in whole or part, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

(b) Each party may assign its rights and obligations under this Agreement to a successor or to an entity acquiring all or a controlling interest in the business assets of such party without consent of the other party.

(c) The Customer may assign its rights and/or its obligations under this Agreement to the County without the consent of the Company.

(d) The Customer may collaterally assign this Agreement and any of the Customer's rights hereunder to any lender(s) which is providing financing or refinancing to the Customer or which is accepting this Agreement as an assignment as security for Customer's obligations under any loan agreements, notes, indentures, security agreements, mortgages and other documents from time to time in effect, without the consent of the Company. Unless otherwise expressly agreed by the parties, the Customer shall remain liable and responsible to the Company for all of the Customer's obligations and other performance requirements set forth in this Agreement. No collateral assignee shall be responsible for any obligations of the Customer unless and until the Company receives express written notice from such assignee which expressly states that such assignee has exercised its rights under the assignment and assumed the obligations of the Customer, and assumption of any of the Customer's obligations shall not bind any other assignee unless such assignee also expressly assumes such obligations in a written notice issued to the Company. Any assignee shall have the right (but not the obligation) to cure, or to select any nominee to cure, any default or breach by the Customer of its obligations to the Company in accordance with the terms of this Agreement. No curing of any defaults or breaches by any assignee shall be construed as an assumption by any assignee or its nominee of any of the obligations, covenants, or agreements of the Customer.

(e) The Company may assign this Agreement and any of the Company's rights hereunder to any lender(s) providing financing or refinancing to the Company, or as security for its obligations under any loan agreements, notes, indentures, security agreements, mortgages and other documents from time to time in effect, without the consent of the Customer. Unless otherwise expressly agreed by the parties, the Company shall remain liable and responsible to the

Customer for all of the Company's obligations and other performance requirements set forth in this Agreement. No assignee shall be responsible for any obligations of the Company unless and until the Customer receives express written notice from such assignee which expressly states that such assignee has assumed the obligations of the Company, and assumption of any of the Company's obligations shall not bind any other assignee unless such assignee also expressly assumes such obligations in a written notice issued to the Customer. Any assignee shall have the right (but not the obligation) to cure, or to select any nominee to cure, any default or breach by the Company of its obligations to the Customer in accordance with the terms of this Agreement. No curing of any defaults or breaches by any assignee shall be construed as an assumption by any assignee or its nominee of any of the obligations, covenants, or agreements of the Company.

(f) Any assignment of rights permitted herein must be in writing and require the assignee and the party assigning this Agreement to notify, at least ten (10) days prior to such assignment, the other party of the identity and address of the assignee, and the other party will provide on request of the assignee or the party making the assignment a written estoppel certificate which will identify whether this Agreement is in effect and all amendments to it, amounts still owing under this Agreement by the assigning party to the other party as of a specific date, and whether there is a default of any obligations under this Agreement by the assigning party.

(g) Any assignment of obligations permitted herein must be in writing and, except for a collateral assignment pursuant to Section 22(d) and Section 22(e), must require the assignee and the party assigning this Agreement to notify, at least ten (10) days prior to such assignment, the other party that the assignee is obligated to, and shall comply with and perform all obligations under this Agreement in accordance with all of its terms and conditions, and that the assignee of the obligations assumes all obligations imposed by this Agreement of the party making the Assignment, even those obligations which accrued prior to the assignment. In the case of a collateral assignment, pursuant to Section 22(d) and Section 22(e), the collateral assignment must provide that the assignee is obligated to and shall comply with and perform in accordance with all the terms and conditions of this Agreement all obligations under this Agreement for the party making this Assignment from and after the date that the assignee exercises its rights under the collateral assignment. The other party will provide on request of the assignee or the party making the assignment a written estoppel certificate which will identify whether this Agreement is in effect and all amendments to it, amounts still owing under this Agreement by the assigning party to the other party as of a specific date, and whether there is a default of any obligations under this Agreement by the assigning party.

(h) The rights and obligations for any subsequent assignment of rights or obligations under this Agreement by any assignee shall be subject to the preceding terms and conditions.

(i) In the event of any permitted assignment under this Agreement, each party agrees to execute such other documents and instruments reasonably requested and reasonably related and necessary for such assignment or in connection with any financing, provided that such documents and instruments shall not alter any of the terms of this Agreement or cause the executing party to undertake any additional or different obligations, and provided that the requesting party shall reimburse the other party for its reasonable costs associated with having counsel review such documents or instruments and any other reasonable fees associated with the execution and delivery thereof.

23. **All Requirements.** If the Customer desires additional cooling in excess of the then applicable Contract Demand, the Customer shall notify the Company of such requirements, and provide the Company with the first right to negotiate to provide such additional cooling. (For purposes of clarity, this provision shall not entitle Customer to negotiate prices and terms for cooling which is already covered within the scope of, or anticipated by, any other provisions in this Agreement, including, but not limited to, Contract Demand, Actual Demand, Threshold Amount, or any excess of the Threshold Amount.) If Company is reasonably capable of providing such additional requested cooling to Customer (in light of all existing cooling plant limitations and other delivery obligations of Company to other customers), then the parties shall negotiate in good faith for a period of thirty (30) days in an attempt to reach mutually agreeable terms and conditions and rates associated with such additional cooling. If the Company, in its reasonable determination, cannot provide such additional cooling, or if the parties have negotiated as set forth above and are unable to reach mutually agreeable terms, the Customer may elect to obtain such additional cooling from other persons or sources. For purposes of clarity: (a) this provision shall not affect or reduce the Customer's obligations under this Agreement, including purchase of the Contract Demand as in effect; (b) Except as otherwise expressly provided in this Agreement, Company shall not at any time be required to meet or deliver any or all of Customer's additional requirements (unless the parties enter into a contract for such additional requirements); and (c) Company may sell cooling services to any other customers or persons from time to time without consent of the Customer, and without reserving additional cooling for purposes of meeting additional Customer cooling requirements.

24. **Nondiscrimination Provision.** In performing under this Agreement, Company shall not discriminate against any worker, employee or applicant, or any member of the public because of race, creed, ancestry, color, religion, sex, marital status, disability or national origin, nor otherwise commit an unfair employment

practice. Company shall take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, creed, color, ancestry, religion, sex, marital status, disability or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Company further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

25. **Exculpatory Clause.** With the express exception of (a) the Customer, and (b) the County in the event that the County becomes obligated pursuant to the assignment provisions set forth in Section 22 of this Agreement, the Company acknowledges that this Agreement imposes no contractual obligations upon the County and that the County and each of its members elected officials, other officials, officers, agents, employees, independent contractors and consultants (the "Exculpated Parties") only as to the indemnities set forth in Section 17 of this Agreement) is an express third party beneficiary of this Agreement only for such indemnities; and that in the event of a default under this Agreement, of any kind or nature whatsoever, Company shall look solely to the Customer at the time of the default for remedy or relief and shall not look to or proceed against any Exculpated Parties; and that no member, elected official, officer, employee, agent, independent contractor or consultant to the County, shall be liable to Company, or any successor in interest to Company, in the event of any default or breach by the County under any of the Related Agreements (as such term is defined in the Management Agreement), or on any other obligation under the terms of this Agreement.

26. **Cuba Affidavit.** Concurrently with the execution of this Agreement, Company has executed the Miami-Dade County Cuba Affidavit attached hereto as Exhibit "6" in compliance with Miami-Dade County Resolutions No. R-202-96 and R-206-96.

27. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto regarding the subject matter of this Agreement, and this Agreement supersedes all prior agreements, understandings, representations, and statements, whether oral or written.

28. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of Florida.

29. **Financial Statements.** The Company shall provide Customer with financial statements and any other documents in a form satisfactory to Customer's lender, reasonably required by

Customer's lender. The Customer shall provide Company with financial statements and any other documents, in a form satisfactory to Company's lender, reasonably required by Company's lender.

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

Customer:

Basketball Properties, Ltd.

By: Basketball Properties,
Inc., general partner

By: 

William Senn
Vice President

Company:

FPL Energy Services, Inc.

By: 

John R. Haney
General Manager

MIA4-610684.8

AMENDMENT

THIS AMENDMENT is made and entered into this 11th day of May, 1998 by and between FPL Energy Services, Inc., a Florida corporation ("Company") and Basketball Properties, Ltd., a Florida limited partnership ("Customer").

R E C I T A L S

A. Company and Customer entered into a District Cooling Service Agreement (the "Agreement") dated April 15, 1998, by which the Company provides to the Customer and the Customer purchases from the Company, district cooling service (the "Agreement").

B. Company and Customer desire to modify and amend certain terms and provisions of the Agreement as hereinafter set forth.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Company and Customer agree as follows:

1. Recitals. The Recitals to this Amendment are true and correct and are hereby incorporated by reference and made a part hereof.

2. Defined Terms. Any defined terms utilized herein but not defined in this Amendment shall have the meanings ascribed to said terms in the Agreement.

3. Right to Terminate this Agreement.

A. Section 6(a) is hereby amended to read as follows:

(a) Company may terminate this Agreement by delivering written notice to the Customer on or before June 30, 1998, based upon the Company not receiving final approval from the City of Miami (with the approval of the City of Miami Oversight

Board) for a franchise agreement satisfactory to the Company to allow the Company to operate, produce, transport and deliver chilled water service as contemplated under this Agreement.

B. Sections 6(e), 6(f) and 6(g) of the Agreement are hereby amended to replace the reference to May 15, 1998 to June 30, 1998.

4. Ratification. Except as herein modified, Company and Customer hereby ratify and reaffirm all the terms and provisions of the Agreement. To the extent of a conflict between the terms and provisions of the Agreement and this Amendment, the terms and provisions of the Amendment shall control.

IN WITNESS WHEREOF, Company and Customer have caused this Amendment to be executed on the date first above written.

Signed and sealed in
the presence of:

QWR Bloom
BJE

COMPANY:

FPL Energy Services, Inc.

By: [Signature]
John R. Haney
General Manager

CUSTOMER:

Basketball Properties, Ltd.

By: Basketball Properties,
Inc., general partner

QWR Bloom
BJE

By: [Signature]
William Senn
Vice President

MIA4-617835.1

EXHIBIT 1

THE PROPERTY
LEGAL DESCRIPTION

A tract of land in Section 37, Townships 53 and 54 South, Range 42 East, in Section 31, Township 53 South, Range 42 East and Section 6, Township 54 South, Range 42 East, said tract of land lying, situate and being in the City of Miami, Dade County, Florida, being more particularly described as follows:

COMMENCE at the point of intersection of the Easterly extension of the centerline of 3rd Street (now known as N.E. 9th Street) as shown on the plat of A.L. KNOWLTON'S MAP OF MIAMI, according to the plat thereof recorded in Plat Book "B" at Page 41 of the Public Records of Dade County, Florida, with the Easterly right of way boundary of BISCAYNE BOULEVARD, said Easterly right of way boundary of BISCAYNE BOULEVARD being parallel with and 53 feet Easterly of, as measured at right angles to, the Easterly right of way boundary of BISCAYNE DRIVE as shown on said A.L. KNOWLTON'S MAP OF MIAMI; thence run $S89^{\circ}57'43''E$, along said Easterly extension of the centerline of said N.E. 9th Street (formerly known as 3rd Street), a distance of 1354.57 feet to the point of intersection with the BULKHEAD LINE as shown on REVISED PLAT OF SHEET 3- METROPOLITAN DADE COUNTY, FLORIDA BULKHEAD LINE- PART THREE, according to the plat thereof recorded in Plat Book 74 at Page 18 of the Public Records of Dade County, Florida; thence $S00^{\circ}17'33''W$; along said BULKHEAD LINE, a distance of 318.83 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; thence continue $S00^{\circ}17'33''W$, along said BULKHEAD LINE, a distance of 611.17 feet to the point of intersection with a line that is 143.50 feet Northerly of and parallel with the Easterly extension of the Southerly right of way boundary of 6th Street (now known as N.E. 6 Street) as shown on said plat of A.L. KNOWLTON'S MAP OF MIAMI; thence $N89^{\circ}59'55''W$, along the last described line, a distance of 211.87 feet to a point of deflection; thence $S85^{\circ}40'53''W$ a distance of 321.37 feet to a point of deflection; thence $S87^{\circ}28'45''W$ a distance of 190.87 feet to a point of deflection; thence $S85^{\circ}04'25''W$ a distance of 208.28 feet to a point of deflection, said point of deflection also to be known as POINT "A" for purposes of this description; thence $S81^{\circ}57'30''W$ a distance of 208.28 feet to the point of curvature of a circular curve to the right; thence Westerly to Northwesterly along the arc of said circular curve to the right, having a radius of 55.00 feet, through a central angle of $76^{\circ}21'01''$, for an arc distance of 73.29 feet; thence $N21^{\circ}41'29''W$, tangent to the last described curve, a distance of 294.95 feet to a point of deflection; thence $N16^{\circ}20'23''W$ a distance of 139.23 feet to the point of intersection with the Easterly right of way boundary of BISCAYNE BOULEVARD, said Easterly right of way boundary of BISCAYNE BOULEVARD being parallel with and 53 feet Easterly of, as measured at right angles to, the Easterly right of way boundary of said BISCAYNE DRIVE, said last eight (8) described courses being along

the Northerly right of way boundary of PORT BOULEVARD as described in O.R. Book 13849 at Page 1026 of the Public Records of Dade, County, Florida; thence $N01^{\circ}57'43''W$, along said Easterly right of way boundary of BISCAYNE BOULEVARD, a distance of 191.96 feet to a point of deflection; thence $N00^{\circ}04'29''E$, along said Easterly right of way boundary of BISCAYNE BOULEVARD, a distance of 58.01 feet to the point of intersection with a line 6.25 feet North of and parallel with the Easterly prolongation of the North right of way boundary of 4th Street (now known as N.E. 8th Street); thence $S89^{\circ}57'43''E$ along a line lying 6.25 feet North of and parallel with the Easterly prolongation of the North right of way boundary of 4th Street (now known as N.E. 8th Street) as shown on said plat of A.L. KNOWLTON'S MAP OF MIAMI, a distance of 1353.56 feet to the POINT OF BEGINNING; together with all riparian rights appertaining thereto and together with all existing seawalls, bulkheads, docks, fill and upland improvements extending from the aforesaid property Easterly into Biscayne Bay;

LESS AND EXCEPTING THEREFROM the following described 30 foot wide tract of land lying 15.00 feet on each side of the centerline of the Florida East Coast Railway Company's Spur Tract No. 181 serving Dodge Island Seaport, but including all air rights to said Tract beginning 23 feet above the top of the rails, and being more particularly described as follows:

COMMENCE at the aforesaid described POINT "A"; thence run $S81^{\circ}57'30''W$, along the Northerly right of way boundary of said PORT BOULEVARD, for a distance of 1.95 feet to the point of intersection with a line that is parallel with and 15.00 feet Northeasterly of, as measured at right angles to, the centerline of said Railway's Spur Tract No. 181, and the POINT OF BEGINNING of the parcel of land hereinafter described; thence $N70^{\circ}58'03''W$, along the line that is parallel with and 15.00 feet Northeasterly of, as measured at right angles to, the centerline of said Railway's Spur Tract No. 181, a distance of 298.58 feet to the point of curvature of a circular curve to the left; thence Westerly along the arc of said circular curve to the left, having a radius of 506.31 feet, through a central angle of $02^{\circ}23'03.5''$, for an arc distance of 21.07 feet to the point of intersection with the Northeasterly right of way boundary of said PORT BOULEVARD, said point of intersection bearing $N16^{\circ}38'53.5''E$ from the center of said curve; thence $S21^{\circ}41'29''E$, along said Northeasterly right of way boundary of PORT BOULEVARD, a distance of 39.01 feet to the point of intersection with a line that is 15.00 feet Southwesterly of, as measured at right angles to, the centerline of said Railway's Spur Tract No. 181; thence $S70^{\circ}58'03''E$, along the last described line, a distance of 235.49 feet to the point of intersection with the Northerly right of way boundary of said PORT BOULEVARD; thence $N81^{\circ}57'30''E$, along the Northerly right of way boundary of said PORT BOULEVARD, a distance of 65.91 feet to the POINT OF BEGINNING.

Containing 19.0420 acres, more or less.
maritime.leg

LESS AND EXCEPT:

A tract of land in Section 37, Townships 53 and 54 South, Range 42 East, in Section 31, Township 53 South, Range 42 East and Section 6, Township 54 South, Range 42 East, said tract of land lying, situate and being in the City of Miami, Dade County, Florida, being more particularly described as follows:

COMMENCE at the point of intersection of the Easterly extension of the centerline of 3rd Street (now known as N.E. 9th Street) as shown on the plat of A.L. KNOWLTON'S MAP OF MIAMI, according to the plat thereof recorded in Plat Book "B" at Page 41 of the Public Records of Dade County, Florida, with the Easterly right of way boundary of BISCAYNE BOULEVARD, said Easterly right of way boundary of BISCAYNE BOULEVARD being parallel with and 53 feet Easterly of, as measured at right angles to, the Easterly right of way boundary of BISCAYNE DRIVE as shown on said A.L. KNOWLTON'S MAP OF MIAMI; thence run $S00^{\circ}04'29''W$, along said Easterly right of way boundary of Biscayne Boulevard a distance of 318.83 feet to the point of intersection with a line lying 6.25 feet North of and parallel with the Easterly prolongation of the North right of way boundary of 4th Street (now known as N.E. 8th Street) as shown on said plat of A.L. KNOWLTON'S MAP OF MIAMI, said point of intersection also being the POINT OF BEGINNING of the parcel of land hereinafter described; thence run $S89^{\circ}57'43''E$ along said line lying 6.25 feet North of and parallel with the Easterly prolongation of the North right of way boundary of 4th Street (now known as N.E. 8th Street) a distance of 1038.30 feet to a point lying 315.06 feet Westerly of, as measured at right angles to, the BULKHEAD LINE as shown on REVISED PLAT OF SHEET 3- METROPOLITAN DADE COUNTY, FLORIDA BULKHEAD LINE- PART THREE, according to the plat thereof recorded in Plat Book 74 at Page 18 of the Public Records of Dade County, Florida; thence run, perpendicular to the last described course, $S00^{\circ}02'17''W$ for a distance of 618.94 feet, said point lying 135.91 feet North of, as measured at right angles to, the Easterly extension of the Southerly right of way boundary of 6th Street (now known as N.E. 6th Street) as shown on said plat of A.L. KNOWLTON'S MAP OF MIAMI; thence $S85^{\circ}40'53''W$ a distance of 220.60 feet to a point of deflection; thence $S87^{\circ}28'45''W$ a distance of 190.87 feet to a point of deflection; thence $S85^{\circ}04'25''W$ a distance of 208.28 feet to a point of deflection, said point of deflection also to be known as POINT "A" for purposes of this description; thence $S81^{\circ}57'30''W$ a distance of 208.28 feet to the point of curvature of a circular curve to the right; thence Westerly to Northwesterly along the arc of said circular curve to the right, having a radius of 55.00 feet, through a central angle of $76^{\circ}21'01''$, for an arc distance of 73.29 feet; thence $N21^{\circ}41'29''E$, tangent to the last described curve, a distance of 294.95 feet to a point of deflection; thence $N16^{\circ}20'23''W$ a distance of 139.23 feet to the point of intersection with the Easterly right of way boundary of BISCAYNE BOULEVARD, said Easterly right of way boundary of BISCAYNE BOULEVARD being parallel with and 53 feet Easterly of, as measured at right angles to, the Easterly right of way boundary of said BISCAYNE DRIVE, said last

seven (7) described courses being along the Northerly right of way boundary of PORT BOULEVARD, as described in O.R. Book 13849 at Page 1026 of the Public Records of Dade County, Florida; thence $N01^{\circ}57'43''W$, along said Easterly right of way boundary of BISCAYNE BOULEVARD, a distance of 191.96 feet to a point of deflection; thence $N00^{\circ}04'29''E$, along said Easterly right of way boundary of BISCAYNE BOULEVARD, a distance of 58.01 feet to the POINT OF BEGINNING;

Containing 4.41 acres, more or less.

remmarit.leg

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Rev.03-18-98

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EXHIBIT 3

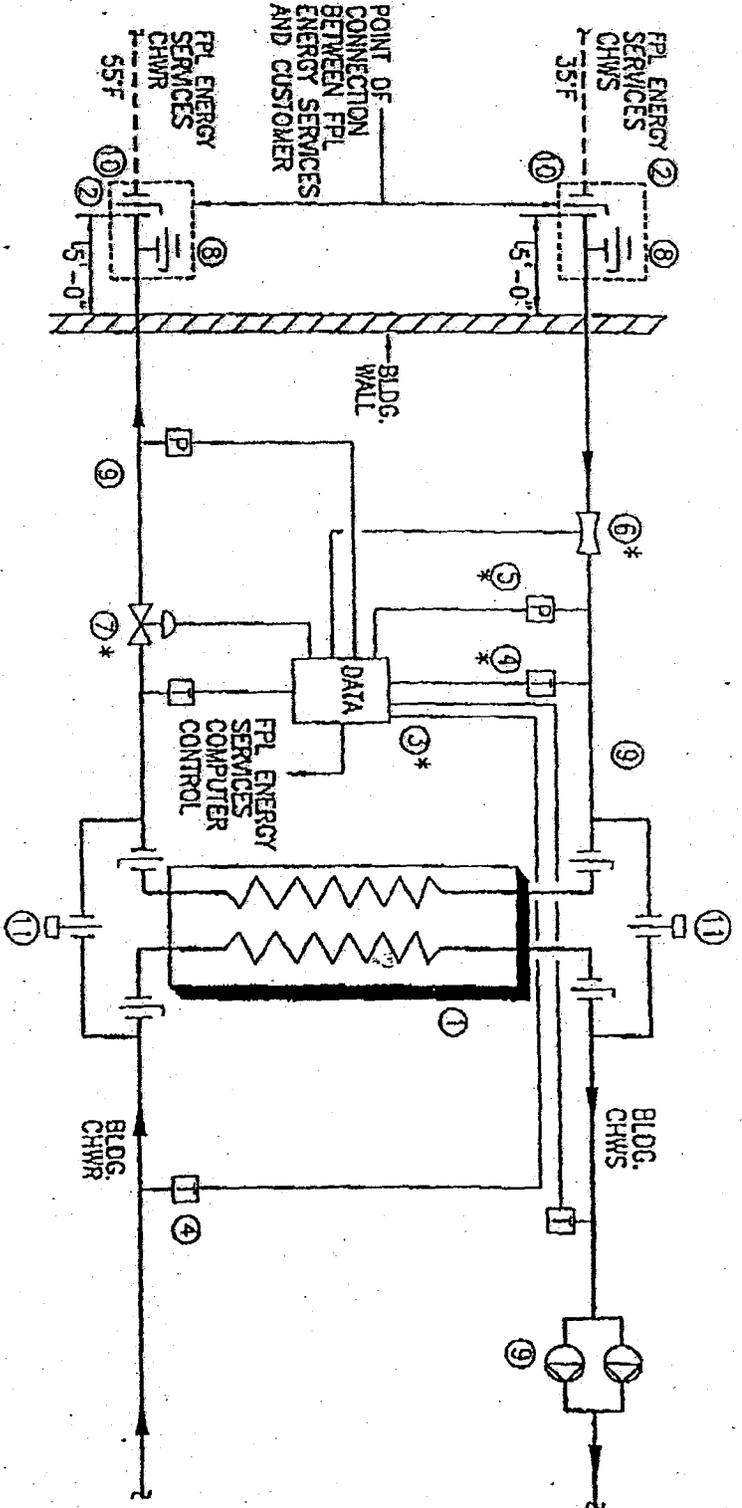
A tract of land in Section 37, Townships 53 and 54 South, Range 42 East, in Section 31, Township 53 South, Range 42 East and Section 6, Township 54 South, Range 42 East, said tract of land lying, situate and being in the City of Miami, Dade County, Florida, being more particularly described as follows:

COMMENCE at the point of intersection of the Easterly extension of the centerline of 3rd Street (now known as N.E. 9th Street) as shown on the plat of A.L. KNOWLTON'S MAP OF MIAMI, according to the plat thereof recorded in Plat Book "B" at Page 41 of the Public Records of Dade County, Florida, with the Easterly right of way boundary of BISCAYNE BOULEVARD, said Easterly right of way boundary of BISCAYNE BOULEVARD being parallel with and 53 feet Easterly of, as measured at right angles to, the Easterly right of way boundary of BISCAYNE DRIVE as shown on said A.L. KNOWLTON'S MAP OF MIAMI; thence run $S00^{\circ}04'29''W$, along said Easterly right of way boundary of Biscayne Boulevard; distance of 318.83 feet to the point of intersection with a line lying 6.25 feet North of and parallel with the Easterly prolongation of the North right of way boundary of 4th Street (now known as N.E. 8th Street) as shown on said plat of A.L. KNOWLTON'S MAP OF MIAMI, said point of intersection also being the POINT OF BEGINNING of the parcel of land hereinafter described; thence run $S89^{\circ}57'43''E$ along said line lying 6.25 feet North of and parallel with the Easterly prolongation of the North right of way boundary of 4th Street (now known as N.E. 8th Street) a distance of 1038.30 feet to a point lying 315.06 feet Westerly of, as measured at right angles to, the BULKHEAD LINE as shown on REVISED PLAT OF SHEET 3- METROPOLITAN DADE COUNTY, FLORIDA BULKHEAD LINE- PART THREE, according to the plat thereof recorded in Plat Book 74 at Page 18 of the Public Records of Dade County, Florida; thence run, perpendicular to the last described course, $S00^{\circ}02'17''W$ for a distance of 618.94 feet, said point lying 135.91 feet North of, as measured at right angles to, the Easterly extension of the Southerly right of way boundary of 6th Street (now known as N.E. 6th Street) as shown on said plat of A.L. KNOWLTON'S MAP OF MIAMI; thence $S85^{\circ}40'53''W$ a distance of 220.60 feet to a point of deflection; thence $S87^{\circ}28'45''W$ a distance of 190.87 feet to a point of deflection; thence $S85^{\circ}04'25''W$ a distance of 208.28 feet to a point of deflection, said point of deflection also to be known as POINT "A" for purposes of this description; thence $S81^{\circ}57'30''W$ a distance of 208.28 feet to the point of curvature of a circular curve to the right; thence Westerly to Northwesterly along the arc of said circular curve to the right, having a radius of 55.00 feet, through a central angle of $76^{\circ}21'01''$, for an arc distance of 73.29 feet; thence $N21^{\circ}41'29''W$, tangent to the last described curve, a distance of 294.95 feet to a point of deflection; thence $N16^{\circ}20'23''W$ a distance of 139.23 feet to the point of intersection with the Easterly right of way boundary of BISCAYNE BOULEVARD, said Easterly right of way boundary of BISCAYNE BOULEVARD being parallel with and 53 feet Easterly of, as measured at right angles to, the Easterly right of way boundary of said BISCAYNE DRIVE, said last

seven (7) described courses being along the Northerly right of way boundary of PORT BOULEVARD, as described in O.R. Book 13849 at Page 1026 of the Public Records of Dade County, Florida; thence N01°57'43"W, along said Easterly right of way boundary of BISCAYNE BOULEVARD, a distance of 191.96 feet to a point of deflection; thence N00°04'29"E, along said Easterly right of way boundary of BISCAYNE BOULEVARD, a distance of 58.01 feet to the POINT OF BEGINNING;

Containing 4.41 acres, more or less.

EXHIBIT 4 CHILLED WATER INTERCONNECTION DIAGRAM



- LEGEND**
- ① PLATE AND FRAME HEAT EXCHANGER(S) BY CUSTOMER.
 - ② ISOLATION VALVE (TYPICAL).
 - ③ D.D.C. DATA COLLECTION/CONTROL PANEL.
 - ④ TEMPERATURE TRANSMITTER (TYPICAL).
 - ⑤ PRESSURE TRANSMITTER (TYPICAL).
 - ⑥ FLOWMETER.
 - ⑦ TEMPERATURE CONTROL VALVE.
 - ⑧ VALVED TAPS FOR EMERGENCY CHILLER EQUIPMENT.
 - ⑨ BUILDING CHILLED WATER PIPING, PUMPS, VALVES, CONTROLS AND ACCESSORIES BY CUSTOMER.
 - ⑩ FPL ENERGY SERVICES VALVE PIT
 - ⑪ LOCKED BYPASS VALVE FOR EMERGENCY SERVICE

- NOTES:**
- (1) ALL DATA AND FLOW CONTROL DEVICES (*) SHALL BE FURNISHED AND INSTALLED BY FPL ENERGY SERVICES WITHIN CUSTOMER'S EQUIPMENT ROOM.
 - (2) ALL WELLS, PETCOCKS, TAPS AND PIPE SPACING REQUIRED FOR FPL ENERGY SERVICES DATA INSTRUMENTATION SHALL BE PROVIDED AND INSTALLED BY THE CUSTOMER.

EXHIBIT "5"

CHILLED WATER QUALITY STANDARDS

WATER TREATMENT PARAMETERS

The water quality and chemical treatment will be monitored using an active, on-line automatic system located at the District Cooling Plant. Chemical injection will be based on changes in the conductivity level and the pH level of the water.

Chemicals to be used for water treatment will be organic/polymer types as follows:

- inhibitor for scale and corrosion control
- biocide to control microbial contents

Acid will not be used at any time.

Water quality parameters will be maintained at the following levels:

- mineral hardness (calcium, magnesium, etc.) . . . 60 to 70 ppm
- conductivity range 1000 to 3000 micromhos
- pH level 9.5 to 10.8
- nitrite level 400 to 600 ppm

HEAT EXCHANGERS

Plate heat exchangers shall be of corrosion resistant construction. Typically, type 304 or 316 stainless steel plates are recommended for the fluid handling sections.

MIA4-610684.8

SERVICE AGREEMENT

between

TECO ENERGY SERVICES, INC.

and

TECO THERMAL SYSTEMS, INC.

BOA

dated as of

December 31, 2003

**BGA, Inc.**

3550 West Waters Avenue
Tampa, Florida 33614
Phone 813.375.3399
Fax 813.375.3400

VIA HAND DELIVERY

November 16, 2005

Bruce Narzissenfeld
Assistant Controller
Peoples Gas System
702 North Franklin Street
Tampa, FL 33602

Subject: **TECO THERMAL SYSTEMS SERVICE AGREEMENT -- Monthly Fee Increase**

Dear Bruce:

Attached is BGA's invoice for its monthly fee for services to be provided in December, under the Service Agreement for the TECO Thermal Plant. Please note that we've increased the Monthly Fee by 6%, or an additional \$1,650, starting with this December 2005 invoice for January 2006 services. This is the first increase since the Service Agreement was executed on January 1, 2004 (almost two years ago), and reflects BGA's increase in its internal and subcontractor costs to operate the plant.

If you have any questions concerning this invoice or the new Monthly Fee, please call me at (813) 375-3369. Otherwise, we will assume payment of BGA's invoices with the increase will constitute TECO's acknowledgement and acceptance of such increase, through the end of the TECO Thermal Systems Service Agreement.

Thank you.

Sincerely,

Sunil A. Shah
Vice President

cc: Bruce Christmas

SERVICE AGREEMENT

This Agreement, dated December 31, 2003, is entered into by and between TECO Energy Services, Inc. ("TESCO"), and TECO Thermal Systems, Inc. ("Owner") (the "Agreement").

WHEREAS, TESCO has prior experience in the operation and maintenance of the TECO Thermal Systems, Inc. facility ("Facility") located in Miami, Florida; and

WHEREAS, Owner desires to use TESCO to continue to perform such operation and maintenance services for the Facility;

WHEREAS, TESCO desires to continue to perform such operation and maintenance services for the Facility;

NOW, THEREFORE, for the consideration hereinafter provided, and in consideration of the mutual promises and other benefits accruing to the parties stated herein, the parties hereto agree as follows:

ARTICLE I. - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below.

"Administrative Services" shall mean all services necessary for the operation of the business of the Facility, including any administrative, customer service and accounting functions (invoicing, collections and formulation of data to be used by Owner for financial reporting purposes), and specifically the services described in Section 2.1(a) and in Part III of Schedule A attached hereto.

"Agreement" shall mean this service agreement and any and all exhibits attached hereto as the same may be amended or modified from time to time.

"Chilled Water Agreement" shall mean any agreement for the provision of chilled water and/or ancillary services between Owner and any of its customers, as amended from time to time.

"Commencement Date" shall mean December 31, 2003.

"Force Majeure" shall mean any cause beyond the reasonable control of the nonperforming party, including in such cases, the following causes which shall not be understood as limiting, but as examples: strike, blockages or other economic sanctions of an official nature, flood, earthquake, storm, sand storm, lightning, fire, epidemic, war, explosion, riot, plague, holocaust, public enemy acts, civil or military authority acts,

terrorist or guerilla activity, civil riots or disobedience, sabotage, restrictions by order of a court or public authority, in the case of the Owner, impossibility to obtain power, water or other public services necessary for the operation of the Facility, any other action or non-action on the part of a Government Agency that directly or indirectly prevents or delays performance by TESCO of its obligations under this Agreement including sabotage, misuse or abuse of the equipment set forth in Exhibit A as well as Owner and Owner's representatives' failure to repair or maintain equipment not included in Exhibit A, for which the party asserting Force Majeure shall furnish the other party hereto with any pertinent information when so required.

"Franchise Agreement" shall mean the Franchise Agreement between TECO Thermal Systems, Inc. (formerly, FPL Energy Services, Inc.) and the City of Miami, dated June 8, 1998.

"Government Agency" shall mean any governmental department, ministry, political division, agency, authority, corporation or committee.

"Prudent Industry Practices" means those practices, methods, techniques and standards, as the same may change during the Term, that are generally accepted for use in the central station chilled water service industry in the United States to test, operate and maintain equipment lawfully, safely, reliably, efficiently and economically as applicable to equipment of the size, service and type used in the Facility. Prudent Industry Practices shall in all events include compliance with applicable Laws.

"Law" shall mean any law, regulations, rule, treaty, order, Permit, statute, or decree, including decisions, findings, and judgments made by any government agency applicable to the Facility or the Parties.

"Maintenance Services" shall mean routine and scheduled maintenance that must be performed periodically to keep the Facility in working order including without limitation lubrication, repacking of valves, leak repair, adjustments, calibrations, replacement of consumables, waste removal and disposal and similar work, periodic overhaul and repair of the mechanical and electrical equipment of the Facility in accordance with manufacturers' recommendations and the reasonable recommendations of the Owner, and specifically the services described in Part II of Schedule A attached hereto.

"Operation Services" shall mean all services necessary for the operation of the Facility, including specifically the services described in Section 2.1(b) and in Part I of Schedule A attached hereto.

"Permit" shall mean any approval, permit, authorization, notice, environmental permit, discharge, exemption, acknowledgment, agreement, license, consent, decision, or any similar matter to be obtained from any government agency in connection with the Operation and Maintenance of the Facility.

"Services" shall mean the **Administrative Services, Operation Services, Maintenance Services and Unscheduled Maintenance Services** to be performed by **TESCO** pursuant to the provisions of this Agreement.

"Unscheduled Maintenance Services" shall mean non-routine maintenance and repair of the Facility equipment, whether of an emergency or non-emergency nature, other than Maintenance as defined herein.

ARTICLE 2. - SCOPE OF TESCO'S DUTIES

2.1 TESCO Duties. TESCO shall perform the Services in a timely fashion and in compliance with Law and each applicable Chilled Water Agreement. In addition, TESCO shall perform the Operation Services, Maintenance Services and Unscheduled Maintenance Services in accordance with Prudent Industry Practices, and shall perform the Administrative Services in a good and workmanlike manner observing the standard of care applicable to persons performing such services for hire generally.

- (a) As part of the Administrative Services, TESCO shall:
 - i. Provide a detailed service report to Owner upon completion of any Unscheduled Maintenance;
 - ii. Maintain all Facility records, manuals, instructions, drawings, and information;
 - iii. Facilitate and assist Owner in the maintenance by Owner of all Permits necessary for the continued operation of the Facility;
 - iv. Report to the Owner on a monthly basis regarding the status, condition, performance, expenditures, requirements, and projections for the Facility, and promptly notify the Owner of any event having a material adverse effect on the operation of the Facility; and
 - v. Administer equipment and parts warranty claims procedure(s).

- (b) As part of the Operation Services, TESCO shall:
 - i. Provide Facility operational inspection services as requested by the Owner;
 - ii. Initiate the review of, recommendations for, and procurement of spare parts for the Facility, subject to the approval of the Owner; and

- iii. Take such action as may be reasonably necessary to respond appropriately to, and to mitigate, emergency situations which involve the safety of persons or the security of property and that interfere with the normal operation of the Facility, follow established procedures for a safe and orderly shutdown of the Facility in the event of an emergency, and notify the Owner's Representative immediately of any such emergency situations.

(c) In addition, TESCO shall:

- i. Promptly after the execution hereof, appoint an operator's representative having full authority to bind TESCO;
- ii. Provide qualified and capable operation, management and staff personnel for the provision of the Services;
- iii. Implement all required personnel, managerial, maintenance, operational, dispatch, environmental, safety, plant accounting, inventory, procurement, security, and other procedures and programs necessary for Facility operation, including administrative procedures particular to the Services provided hereunder; and
- iv. Perform such other activities as may be mutually agreed upon in writing between the parties from time to time.

2.2 Changes to the Facility. TESCO shall not make any material changes to the Facility, other than necessary Maintenance (including Unscheduled Maintenance), or any changes in the exterior appearance of the Facility without the prior written approval of the Owner. Any repairs to the Facility previously authorized in writing by the Owner and effected by TESCO hereunder shall be at the expense of Owner.

2.3 Scope of Authority TESCO shall not, without the prior written consent of Owner, do or, to the extent the same is within its control, permit to occur or to continue, any of the following:

- (a) initiate any lawsuit by the Owner or intentionally and expressly compromise any claim or lawsuit brought by or against the Owner;
- (b) create, incur or assume any lien, security interest or encumbrance upon the Facility;
- (c) sell, lease, pledge, mortgage, assign, transfer or otherwise dispose of any of Owner's now owned or hereafter acquired assets or interests,

- (d) make any expenditure of, or otherwise use, any funds of Owner (including the making of any loans or advances to any person) except as part of the Budget;
- (e) directly commit Owner to be or to become directly or contingently responsible or liable for obligations of any other person, by assumption, guarantee, endorsement or otherwise;
- (f) enter into, execute, amend, revise or terminate any Chilled Water Agreement or any other contract on behalf of the Owner;
- (g) waive any breach by any party under any Chilled Water Agreement or any other contract of the Owner;
- (h) remove or replace any vendor of goods or services to the Owner;
- (i) commence or cause any person to commence any bankruptcy, reorganization, arrangement, insolvency, or receivership proceeding under applicable Law on behalf of the Owner;
- (j) retain, on behalf of and for the account of the Owner (i) legal counsel or (ii) accounting firms or auditors; or
- (k) make any Tax election or change any method of accounting of the Owner.

2.4 Qualifications . TESCO represents and warrants that it has: (i) examined this Agreement thoroughly and become familiar with the terms; (ii) full experience and proper qualifications to perform its Services; and (iii) carefully reviewed, or shall review, all Chilled Water Agreements, documents, plans, drawings and other information that it deems necessary regarding the Facility and its performance of the Services.

ARTICLE 3 - RESPONSIBILITIES OF THE OWNER

3.1 The Owner shall be responsible for providing TESCO with unlimited access to copies of all manuals, drawings, information, and documents required for TESCO to perform the Services, and for making such business and strategy decisions as may be required from time to time in connection with the Operation and Maintenance of the Facility.

ARTICLE 4. - COMPENSATION

4.1 Compensation for Services. In exchange for performing the Services hereunder, Owner shall pay TESCO a flat fee of Twenty Seven Thousand Five Hundred Dollars (\$27,500) per month ("Monthly Fee"), prorated for any partial month. Each monthly payment of the Monthly Fee shall be due in advance and payable by Owner to TESCO on the first of each month, beginning January 1, 2004. This Monthly Fee shall cover all

materials, consumables, parts, supplies, replacements, travel charges, subcontracted services and insurance required for TESCO to provide the Services, except for items described in Part V of Schedule A attached hereto.

4.2 Compensation for Unscheduled Maintenance. For all Unscheduled Maintenance, as previously defined, TESCO shall pass all charges relating to labor and materials onto Owner at cost plus 10%. TESCO shall provide Owner with an invoice for any Unscheduled Maintenance, with appropriate backup, which shall be due and payable by Owner to TESCO within 20 calendar days from the date of the invoice.

4.3 Interest on Overdue Amounts . If Owner fails to make timely payments of any amount due hereunder, interest on such amount shall accrue on a monthly basis from the date due, at a rate equal to the average of the prime rates published in Wall Street Journal on the last day of each month of the arrearage, plus 2% per annum.

4.4 Taxes and Franchise Fees. TESCO and Owner shall be responsible, respectively, for payment of all income taxes incumbent upon each of them. Owner shall be responsible for all other taxes, fees, payments, assessments, permits, licenses and approvals from any and all public/governmental and private entities resulting from the ownership and operation of the Facility.

ARTICLE 5 - TERM

5.1. Term . This Agreement shall become effective upon the Commencement Date and, unless subject to prior termination as provided elsewhere, shall remain in full force and effect until December 31, 2004 ("Term"). Thereafter, this Agreement shall extend automatically from month to month until either party gives at least sixty (60) days' written notice to the other of its intention to terminate this Agreement ("Extension Term").

ARTICLE 6 - [RESERVED]

ARTICLE 7 - TERMINATION

7.1 Owner's Right to Terminate for Default. Owner shall have the right, upon written notice to TESCO ("Default Termination Notice"), to terminate this Agreement upon the happening of any of the following events, which termination shall be effective upon receipt of the Default Termination Notice:

- (a) TESCO becomes insolvent or files or has filed against it a petition for bankruptcy, reorganization, composition or compromise for protection of creditors, or a similar proceeding, and TESCO fails to take prompt action to cure said insolvency or to vacate or stay such proceeding within thirty (30) days of

R3

receipt of Owner's written preliminary notice of intent to terminate identifying the basis therefor.

(b) TESCO is in default of any of its material obligations hereunder, and has failed to cure the default within thirty (30) days of receipt of notice thereof ("Preliminary Default Notice"). In the event the default cannot be reasonably cured within thirty (30) days of receipt of the Preliminary Default Notice (excluding the obligation to pay money when due), TESCO shall submit to Owner, within five (5) days of receipt of said Preliminary Default Notice, a plan to cure, and shall commence to effect the cure and thereafter diligently pursue the cure, which cure shall be completed within sixty (60) days of receipt of such Preliminary Default Notice.

7.2 Owner's Right to Terminate for Convenience. Owner shall have the right, upon written notice to TESCO ("Convenience Termination Notice"), to terminate this Agreement for Owner's convenience, which termination shall be effective sixty (60) days from the receipt of the Convenience Termination Notice.

7.3 TESCO's Obligations Upon Termination. Upon receipt of a Default Termination Notice or Convenience Termination Notice, TESCO shall take the following actions as of the date specified in said notice, unless the Termination Notice requires otherwise:

(a) TESCO shall convey to Owner the policies, procedures, manuals, records, and equipment belonging to Owner or generated or purchased by TESCO for use in connection with the Facility;

(b) Reasonably cooperate with Owner and the new operator to ensure a smooth transition of the Services, such that there is a minimal impact to the operation and maintenance of the Facility;

(c) Place no further orders or enter into any subcontracts for materials, equipment, or services, other than as may be approved in writing by Owner;

(d) TESCO shall, at Owner's request and at Owner's expense, reasonably assist Owner in preparing an inventory of all equipment, fuel, and supplies in use or in storage at the Facility and move from the Site all such equipment, supplies, and rubbish as Owner may reasonably request.

7.4 TESCO's Termination for Certain Defaults. If Owner is in default of any of its obligations involving the payment of money hereunder and has failed to cure such default within fifteen (15) days of receiving written notice of the default from TESCO (except in the case of amounts disputed in good faith by Owner), TESCO shall have the right to terminate this Agreement.

7.5 TESCO's Right to Terminate for Convenience. TESCO shall have the right, upon written notice to Owner ("Convenience Termination Notice"), to terminate this

Agreement for TESCO's convenience, which termination shall be effective sixty (60) days from the receipt of the Convenience Termination Notice.

7.6 Transition Services. Upon termination or expiration of the Agreement for any reason, and at the request of the Owner, any purchaser of the Facility, or any successor to or assignee of the Owner (other than TESCO), TESCO shall continue to operate and maintain the Facility and shall train, at the Owner's expense, Owner or any new operator engaged by the Owner and the managers and employees of Owner or any such new operator. TESCO shall continue to fulfill all of its obligations hereunder until such new operator assumes the duties of TESCO hereunder, provided, however, that TESCO shall not be required to continue to perform its obligations hereunder for a period in excess of sixty (60) days after the selection of such new operator. During any such transition period, TESCO shall be reimbursed for its reasonable out-of-pocket costs incurred including the cost of training or double coverages of operating shifts or non-shift positions as well as all other fees and payments due under Article 4 hereof.

7.7 Right to Take Over. Upon written notice to TESCO, Owner shall have the right from time to time during the term hereof to take over and provide for itself any or all of the Services otherwise provided hereunder. TESCO agrees to cooperate with any such action by the Owner and to vacate the Facility from time to time upon request. During any such period of take-over, so long as this Agreement remains in effect and TESCO is not in default hereunder, TESCO shall continue to earn the Monthly Fee.

ARTICLE 8 -- [Reserved]

ARTICLE 9 INDEMNIFICATION

9.1 Indemnification By TESCO. Notwithstanding any other provision herein to the contrary, TESCO expressly agrees, in the event that claims are made against Owner or either becomes a party in a lawsuit, to defend, indemnify and hold harmless Owner and its respective affiliates, officers, directors, agents, servants, employees, successors and assigns of and from any and all claims:

(a) for personal injury (including bodily injury and mental injury), death or property damage (including damage to the property of Owner and environmentally-related claims caused by TESCO) and any other losses, damages, taxes, fines, penalties, charges or expenses, including reasonable attorneys' fees and costs incurred in connection with the defense of such claims, to the extent such arise or are alleged to have arisen out of, or in connection with, or by reason of TESCO's performance or non-performance of the Services under this Agreement;

(b) for fines or penalties (including reasonable attorneys' fees and costs incurred in connection with the defense of such fines or penalties) payable to any

governmental authority arising out of TESCO's failure to comply with any Laws, including without limitation Laws pertaining to health, safety or the environment in connection with the performance of this Services under this Agreement; or

(c) for the breach of any representation, warranty or covenant of this Agreement.

9.2 Indemnification by Owner. Owner expressly agrees, in the event that claims are made against TESCO or either becomes a party in a lawsuit, to defend, indemnify and hold harmless TESCO and its respective affiliates, officers, directors, agents, servants, employees, successors and assigns of and from any and all claims:

(a) for personal injury (including bodily injury and mental injury), death or property damage and any other losses, damages, taxes, fines, penalties, charges or expenses, including reasonable attorneys' fees and costs incurred in connection with the defense of such claims, to the extent such arise or are alleged to have arisen out of, or in connection with, or by reason of Owner's willful misconduct or Owner's negligence, but only to the extent that such damages are determined to be caused by such willful misconduct or negligence; or

(b) for the breach of any representation, warranty or covenant of this Agreement.

ARTICLE 10 - INSURANCE

10.1 Owner's Insurance. Owner shall secure and maintain (or cause to be secured and maintained) during the term of this Agreement, the following insurance (or in lieu thereof, Owner may self-insure):

(a) Commercial General Liability insurance on a comprehensive general liability coverage form, or its equivalent, the limits of which shall not be less than Two Million Dollars (\$2,000,000) per occurrence combined single limit for bodily injury and property damage, including, but not limited to, contractual liability, products and completed operations, personal injury, and premises and operations coverage against all claims, demands or actions, bodily injury, personal injury, death or property damage resulting from the operations of the Facility.

(b) Pollution/Environmental Impairment Liability insurance coverage on an occurrence basis with limits of One Million Dollars (\$1,000,000) per occurrence, providing coverage for the damage caused by spillage of any hazardous substances, whether those substances are solid, liquid or gaseous. Said policy of insurance shall also provide coverage for the cost of cleanup of the affected area and for the removal, transportation and safe disposal of any contaminated area.

(c) Property Insurance on an "All Risk" basis covering loss to real and personal property of Owner located at the Facility and other equipment for which Owner has an insurable interest.

Owner shall provide TESCO one or more certificates of insurance evidencing the foregoing coverage, except to the extent Owner elects to self-insure for such coverage.

10.2 TESCO's Insurance. TESCO shall secure and maintain (or cause to be secured and maintained) during the term of this Agreement, the following insurance:

- (a) Worker's Compensation insurance in the amounts and types required by Chapter 440, Florida Statutes or other applicable Law.
- (b) Employer's Liability, with minimum limits as follows:
 - (i) Bodily Injury by Accident - U.S. \$1,000,000 per accident;
 - (ii) Bodily Injury by Disease - U.S. \$1,000,000 policy limit.
- (c) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit of One Million Dollars (U.S. \$1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall name Owner as an additional insured.
- (d) Commercial General Liability insurance on a comprehensive general liability coverage form, or its equivalent, the limits of which shall not be less than Two Million Dollars (\$2,000,000) per occurrence combined single limit for bodily injury and property damage, including, but not limited to, contractual liability, products and completed operations, personal injury, and premises and operations coverage against all claims, demands or actions, bodily injury, personal injury, death or property damage resulting from the operations of the Facility. The City of Miami shall be named additional insured on such policy of insurance, as required in the Franchise Agreement, as well as Owner as a named insured with cross-liability endorsement for the Services to be performed pursuant to this Agreement only.
- (e) Owner shall be named as additional insured in all of the foregoing policies (except for any workers' compensation), including the policies of any subcontractor or agent of TESCO performing Services hereunder, with respect to liability arising out of the Services being performed under this Agreement. Such insurance shall be primary coverage afforded the additional insured and shall contain a cross-liability or severability of interest clause. TESCO hereby waives and shall cause its subcontractors and suppliers and their insurers to waive all rights of subrogation against Owner in the event of any covered loss under the policies.

- (f) The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by TESCO (or any of TESCO's subcontractors), are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by TESCO under this Agreement. TESCO shall be solely responsible for any unpaid premium or breach of warranty by TESCO. TESCO shall permit any authorized representative of Owner to examine TESCO's original insurance policies, should Owner so request. Should TESCO (or any of TESCO's subcontractors) at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, without waiving any other rights or remedies which Owner may have under the circumstances, Owner shall have the right to purchase such insurance and the cost thereof shall be deducted from monies due TESCO. Failure to provide insurance in accordance with this clause shall constitute a material breach of this Agreement.
- (g) TESCO shall not commence Services under this Agreement until the Owner has been furnished a certificate from TESCO's insurance carrier, certifying that policies of insurance providing coverage, as listed above, have been issued to the TESCO and are in force, and until the certificate has been examined and approved by Owner. The certificates of insurance shall clearly evidence that TESCO's insurance policies contain the minimum limits of coverage and special provisions prescribed in this Article of the Agreement. In addition, the certificate shall state that the insurance carrier will give the Company thirty (30) days' prior written notice of any cancellation of, termination of or change in coverage of these policies. Additionally, the following statement, in substance, shall be quoted in full on the certificate: "It is further expressly certified that the General Liability Policy includes contractual coverage to the full limits of the policy for all bodily injury and property damage liability assumed by [TESCO] under Article 9 of [this Agreement]."

ARTICLE 11 - FORCE MAJEURE

11.1 Effects of Force Majeure. If either party hereto should be delayed in or prevented from performing or carrying out any of the agreements, covenants, and obligations made by and imposed upon said party by this Agreement, by reason of or through Force Majeure, then and in such case or cases, the affected party shall be excused, to the extent it has been affected by such Force Majeure, without cost or liability to the other for failure or delay in performance of any obligation set forth in this Agreement except the obligation to pay money when due and any obligation of either party that arose before the Force Majeure event, and in the event of a delay, all times of performance shall be extended by a period equal to the time lost solely by reason of such delay; provided, however, that the affected party shall use due and practicable diligence to remove the cause or causes thereof; and provided, further, that neither party nor its contractors shall be required by the foregoing provisions to settle a labor action, legal action or

administrative proceeding except when, in its sole discretion, such a settlement seems advisable. The term of this Agreement shall not be extended by the duration of any events of Force Majeure. In the event of a Force Majeure that extends beyond a period of thirty (30) continuous days, the non-affected party may terminate this Agreement by written notice to the other party hereto.

11.2. Required Notice. The party affected by such Force Majeure event shall notify the other party in writing of the occurrence of the event including a description of the event as soon as practicable but no later than three (3) days from the date the affected party becomes aware of the Force Majeure event. Within five (5) days of the date on which performance was suspended, the party that is prevented from performing its obligations under this Agreement because of a Force Majeure event shall give written detailed notice to the other party with respect to its plan to cure the situation and shall begin to perform the repairs or take the reasonable measures necessary in order to cure its inability to perform its obligations. If despite its acting with reasonable diligence the affected party continues to be unable to formulate a corrective plan within the five (5) day period, said party shall submit its corrective plan as soon as reasonably possible, but in no instance later than ten (10) days following the date on which the Force Majeure occurred.

ARTICLE 12 - DISPUTES

12.1 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.

12.2 Submission to Jurisdiction; Service of Process. With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:

(a) submits to the exclusive jurisdiction of the courts of the State of Florida and the United States District Court for the Middle District of Florida; and

(b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

12.3 Continuing Obligations. Regardless of the nature of the dispute between the parties, TESCO agrees to continue to perform the Services during the course of any proceeding for resolution of a dispute (other than a dispute respecting an event of Force Majeure regarding which TESCO has given notice to Owner), and Owner agrees to continue to make payments to TESCO of all amounts which are due and owing to TESCO and which are not disputed in good faith by Owner.

ARTICLE 13 - OWNER'S REPRESENTATIVE

13.1 Promptly upon execution hereof, Owner shall appoint and designate in writing to TESCO a person ("Owner's Representative") authorized to act on behalf of Owner under this Agreement. Until such designation is received by TESCO, the individual who signs this Agreement on behalf of the Owner shall be deemed to be the Owner's Representative.

ARTICLE 14 - ASSIGNMENT AND SUBCONTRACTING

14.1 Assignment. Neither party shall assign this Agreement or its duties, rights or obligations hereunder without the prior written consent of the non-assigning party; provided, however, that the Owner may assign its rights hereunder as security for the financing of the Facility. Any other attempted assignment by the Owner or TESCO, whether by operation of law or otherwise, shall be void.

14.2 Subcontracting. TESCO shall have the right to subcontract with third parties its obligations hereunder, provided such subcontracting is conducted in accordance with TESCO's ordinary business practice, and provided further that Owner gives its written consent to any such subcontract (provided that such consent shall be presumed to have been given if TESCO has not indicated its non-consent, in whole or in part, to the subcontract within five (5) business days after notice by TESCO to Owner requesting such consent.). TESCO shall ensure that all subcontracts are expressly assignable to the Owner and its permitted successors and assigns in the event of the termination of TESCO under this Agreement.

ARTICLE 15 - COMPLIANCE WITH LAWS

15.1 In the performance of this Agreement, TESCO shall comply with all applicable Laws as in effect from time to time, and shall comply with any and all Permits required of TESCO to operate the Facility.

15.2 In the performance of this Agreement, Owner shall be responsible for compliance with all applicable Laws as in effect from time to time, and shall comply with and pay for all Permits required as the owner of the Facility.

ARTICLE 16 - NOTICE

16.1 All notices required or provided for in this Agreement shall be in writing and shall be delivered by hand or sent by telefacsimile or by overnight courier service, addressed to the parties at the addresses or numbers listed below; provided, however, that such addresses may be changed from time to time by written notice given by one party to the

other. Notices shall be deemed effective when hand delivered or otherwise received.

If to TESCO:

TECO Energy Services, Inc.
3550 W. Waters Avenue
Tampa, Florida 33614
Attention: Eric Lawton
Fax: (813)375-3400

With a copy to:

R. Reid Haney, Esq.
Ward, Rovell & VanEepoel
101 E. Kennedy Boulevard, Suite 4100
Tampa, Florida 33601
Tel: (813) 222-8700
Fax: (813) 222-8701

If to the Owner:

TECO Thermal Systems, Inc.
c/o Peoples Gas System
702 North Franklin Street
Tampa, Florida 33602
Facsimile No.: (813) 228-4643
Attn: Bruce Narzissenfeld

With a copy to:

TECO Energy, Inc.
Legal Department
702 North Franklin Street
Tampa, Florida 33602
Facsimile No.: (813) 228-1328
Attn: Douglas M. Bagge
Assistant General Counsel

ARTICLE 17 - MISCELLANEOUS

17.1 Independent Contractor . TESCO shall at all times be deemed an independent contractor and none of its employees or the employees of its subcontractors shall be considered employees of the Owner under the meaning or application of the Law, including any federal or state unemployment or insurance laws or Workers'

Compensation laws, or otherwise. Nothing in this Agreement shall be construed as creating a partnership, joint venture, corporation or entity taxable as a corporation between Owner and TESCO. TESCO assumes all liabilities or obligations imposed by any one or more of such laws with respect to employees of TESCO in the performance of this Agreement. Without Owner's prior written consent, TESCO shall not have any authority to assume or create any obligation, expressed or implied, on behalf of Owner.

17.2 Inspections. The Owner and the Owner's designees shall have full right of access to the Facility at all times. TESCO agrees to cooperate with inspections of the Facility, upon reasonable notice, by the Owner and their designated representatives, provided such cooperation does not materially interfere with TESCO's safe and timely performance of obligations under this Agreement.

17.3 Books and Records. The Owner and the Owner's designees shall have the right to inspect and audit TESCO's books and records relating to the Facility and TESCO's performance of its obligations under this Agreement during normal business hours and upon reasonable request. TESCO shall retain all such information for a minimum of three (3) years, or for such longer period as the Owner may, in writing, reasonably request.

17.4 Visitors. Visitors invited for a tour of the Facility by TESCO shall be allowed access only with the express approval of the Owner and provided that such visits do not materially interfere with TESCO's safe and timely performance of obligations under this Agreement. Visitors invited for a tour of the Facility by Owner shall be allowed access provided that the Owner gives adequate notice to TESCO and that such visits do not materially interfere with TESCO's safe and timely performance of its obligations under this Agreement. Any party hereto inviting visitors for a tour of a Facility shall advise said visitors of the site regulations applicable to visitors and secure agreement by each visitor to comply with same.

17.5 Consequential Damages. In no event shall either party be liable, whether in contract, tort, negligence, strict liability or otherwise for any special, indirect, incidental or consequential damages of any nature arising at any time from any cause arising out of or relating to this Agreement whatsoever, except as provided in Section 9.1 hereof.

17.6 Confidentiality. TESCO shall hold in confidence and shall not disclose to any third party without the prior written consent of Owner any business and financial information furnished to TESCO by Owner in connection with performance of the Services by TESCO under this Agreement.

17.7 Severability. The invalidity, in whole or in part, of any of the foregoing articles, sections or paragraphs of this Agreement shall not affect the validity of the remainder of such articles, sections or paragraphs.

17.8 Entire Agreement. This Agreement together with Schedule A contains the complete agreement between the Owner and TESCO with respect to the matters contained herein and supersedes all other agreements, whether written or oral, with

respect to the matters contained herein.

17.9 Amendment. No modification, amendment, or other change to this Agreement shall be binding on any party unless consented to in writing by the Owner's and TESCO's authorized representatives.

17.10 Interpretation. This Agreement shall be interpreted and construed according to the laws of the State of Florida as applied to contracts made and to be performed wholly within such state.

17.11 Waiver. Unless otherwise specifically provided by the terms of this Agreement, failure by either party to exercise any of its rights under this Agreement shall not constitute a waiver of such rights. Neither party shall be deemed to have waived any right resulting from any failure to perform by the other unless it has made such waiver specifically in writing.

17.12 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

17.13 Captions and Headings. Captions and headings in this Agreement are for ease of reference only and are not intended to, nor shall they define, limit or interpret the substantive provisions of this Agreement.

17.14 Survival. Notwithstanding the expiration or earlier termination of this Agreement pursuant to Article 6, the obligations of each party to the other under this Agreement on the date of such expiration or termination, including any obligation to indemnify the other party, shall survive such expiration or termination.

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Schedule A

I. Operation Work Inclusions

- Daily plant operation with on-site Plant Operator; Monday through Friday 7:30 AM to 4:00 PM:
 - Maintain and modify equipment operating schedules via the energy management system.
 - Change Lead/Lag rotation schedule for chillers & pumps on a monthly basis.
 - Create and maintain daily operational & maintenance logs for all major pieces of equipment.
- American Airlines Arena Event plant operation and monitoring with on-site Plant Operator as required in Chilled Water Services Agreement:
 - During an Event, Plant Operator will be on-site 1-hour before the scheduled start time of the event until ½-hour after the actual completion time of the event.
- 24-hour remote monitoring of Plant Operation, including at minimum:
 - Weeknights - Two 15-minute intervals, once at changeover and once before retiring to bed.
 - Weekends - 15-minute intervals approximately every 4-hours during waking hours.
- For all Alarm responses:
 - Plant Operator will carry a pager at all times and will respond to all alarms.
 - ALARMS - Any time the pager receives an alarm from the plant control system, an attempt will be made to connect to the plant control system (via dial-up) and attempt to remedy the situation remotely. If and when the situation is returned to normal, that person will contact the General Manager (via cell phone) to communicate the cause of the alarm and the corrective measures taken.
 - EMERGENCIES - Should there be a situation when an alarm can not be mitigated remotely, then the Plant Operator shall immediately proceed to the facility and attempt to resolve the problem. If the Plant Operator is unable to correct the problem on his/her own, then that person will contact the General Manager (via cell phone) to communicate the cause of the alarm and the proposed corrective measures. The General Manager will determine whether the emergency constitutes Unscheduled Maintenance Work per Section 4.2. The General Manager will then contact the Owner for notice to proceed with repairs, in the event the Owner cannot be reached and the repairs are such that they are required to return the plant to normal operation, they will be provided under Section 4.2.
- Daily/weekly logging of water chemistry as directed by Chem-Treat or successor.

II. Maintenance Work Inclusions

- Cooling tower cleaning twice per year per manufacturer's published recommendations.
- Routine lawn maintenance.
- Routine plant and office housekeeping.

- All preventive maintenance and housekeeping materials including air filters, cleaners, bearing grease, etc.
- All maintenance and/or minor repair labor that can be accomplished by Plant Operator during normal working hours without supplemental labor:
 - tube cleaning
 - grease motor bearings
 - changing of belts and oils
 - changing filters
 - minor piping, plumbing and/or electrical service
 - painting equipment to maintain appearance
- Water treatment services via subcontractor (currently Chem-Treat).
- Crankcase oils including air pumps, chillers and tower gear-drives, OEM gasketing, etc. for tear down maintenance.
- Any other specialty or OEM materials required for maintenance.
- Diesel fuel for Emergency Generator as needed.
- Outside contractor services as may be required for chiller annual maintenance per manufacturer's published recommendations. (York, Cutler Hammer).
- Outside contractor services as required for annual maintenance on Emergency Generator per manufacturer's published recommendations (Sun Power Diesel).
- Monthly trash removal via local service.
- Any/all small tools required to perform services herein.

III. Administrative Work Inclusions

- Monthly chilled water meter reading and recording.
- Preparation of distribution of monthly invoices to customers for chilled water services.
- Responses to customer billing concerns, questions, problems, etc.
- General business accounting associated with keeping books and records according to GAAP such as accounts payable, accounts receivable, general ledger and check preparation for signature. Checks will be collected and deposited to an Owner designated account or collected and held for Owner's use, as directed by Owner's Representative.
- Monthly review meetings of financials with Owner.
- Annually preparing billing rate adjustments per terms and conditions of Chilled Water Services Agreements with Customers.
- Budgetary projections as required for Owner's accounting purposes.

IV. Additional Costs/Services

- Emergency responses requiring more than 1 man, for time periods beyond 4 hours or for responses in excess of 24 total per year will be deemed to be **Unscheduled Maintenance Work** and will incur charges per Section 4.2.

**TECHNOLOGY CENTER OF THE
AMERICAS**

**DISTRICT COOLING SERVICE
AGREEMENT**

DISTRICT COOLING SERVICE AGREEMENT

Service Schedule

This Service Schedule is a part of the District Cooling Service Agreement (the "Agreement") dated and effective as of December 1, 2000 (the "Effective Date"), by and between FPL Thermal Systems, Inc., a Delaware corporation (as "Seller"), and Technology Center of the Americas LLC, a Delaware limited liability company (as "Purchaser"). As used in the Agreement the capitalized terms listed below shall have the following meanings:

Purchaser:	Technology Center of the Americas LLC, a Delaware limited liability company, as operator of the Premises
Premises:	The 38,055 square foot area, constituting the common areas and retail space, owned by Purchaser and located within the building(s) at 50 N.E. 9 th Street, Miami, Florida 33132, as more fully described in Exhibit A
Owner:	Technology Center of the Americas LLC, a Delaware limited liability company, as owner of the Premises and the building(s) within which the Premises is located
Service Commencement Date:	The later of the following dates: (i) April 1, 2001 (subject to extension as a result of an Event of Force Majeure) and (ii) the date which Owner has completed the construction and installation of the Owner's Equipment (as defined in the District Cooling Access and Easement Agreement between Seller and Owner as amended from time to time ("Access and Easement Agreement")) and the Pumps (as defined in the Access and Easement Agreement) at the Property (as defined in the Access and Easement Agreement).
Initial Term:	30 years

Contract Demand: 150 tons of chilled water service*

Contract Demand Rate: \$352.00 per ton for months 1 through 12
\$518.00 per ton for months 13 through 24
\$518.00 per ton for months 25 through 36
\$602.00 per ton for months 37 through 48
\$602.00 per ton for months 49 through 60
\$185.00 per ton after month 60*

There will be no CPI adjustments through month 60;
there will be a 5-year cumulative CPI adjustment of the
rate applicable after month 60.

Annual Ton-Hours: 1,051,200 Ton-Hours

Peak Water Temperature: A temperature not to exceed 41 degrees F.*

Return Differential: 17 degrees F.

Interconnection Cost: \$0.00

A. Electricity Charge: \$0.06065 per ton-hour of chilled water service*

B. Water Charge: \$0.01545 per ton-hour of chilled water service*

C. Base Charge: \$0.03500 per ton-hour of chilled water service*

Consumption Charge (A+B+C): \$0.11110 per ton-hour of chilled water service*

*Subject to adjustment in accordance with the terms of the Agreement.

Notices pursuant to Section 25 of the Agreement should be sent to the following addresses or facsimile numbers--

If to Purchaser: Technology Center of the Americas LLC
2601 S. Bayshore Drive, Suite 900
Miami Florida 33133
Attn: Brian Goodkind
Facsimile number: (305) 856-8190

With a copy, in the case of any notice pursuant to Section 11(p) to:
Ocean Bank
780 NW 42nd Avenue
Miami, Florida 33126
Attention: Jorge Heremdez
Facsimile number: (305) 569-5631

If to Seller: FPL Thermal Systems, Inc.
700 Universe Boulevard, Juno Beach, Florida 33408
Attn: Vice President-District Cooling
Facsimile number: (561) 691-7698

With a copy to:
700 Universe Boulevard
Juno Beach, Florida 33408
Attn: General Counsel
Facsimile number: (561) 691-7698

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date listed above.

PURCHASER:
Technology Center of the Americas LLC

By: Telecom Routing Exchange
Developers, Inc., its manager

By: Susan Traino
Name: Susan Traino
Title: Vice President

SELLER:
FPL Thermal Systems, Inc.

By: John R. Haney
Name: John R. Haney
Title: VP

**FPL THERMAL SYSTEMS, INC.
DISTRICT COOLING SERVICE AGREEMENT**

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District Cooling Service Agreement

The attached Service Schedule is a part of this Agreement and the Service Schedule and this Agreement together constitute one instrument. Seller and Purchaser have completed and executed this Agreement as of the Effective Date by signing the Service Schedule. Certain capitalized terms that are used hereinafter are defined on the Service Schedule.

Recitals

WHEREAS, Seller is a district cooling company engaged in the business of producing and delivering district cooling service pursuant to a franchise with the City of Miami and Seller's rights are subject to the terms and conditions thereof; and

WHEREAS, Purchaser occupies and operates the Premises (the Premises being more fully described in Exhibit A) and the Seller offers such cooling service to occupants of the building within which the Premises is located (the "Property"); and

WHEREAS, Purchaser has agreed to enter into a long-term contract with Seller to purchase district cooling service for the Premises pursuant to the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser hereby agree as follows.

1. Purchase and Sale of District Cooling Service.

Subject to the terms and conditions of this Agreement, upon and after the Service Commencement Date, Seller shall deliver and sell to Purchaser, and Purchaser shall accept and purchase district cooling services and/or chilled water cooling services from Seller on an all requirements basis for use within the Premises for the Term of this Agreement. This provision shall not be deemed or construed to prohibit Purchaser or its contractors or agents from providing cooling services or installing air conditioning equipment on the Premises or the Property so long as Purchaser or its contractors or agents install such equipment solely within the Premises or the Property and are providing cooling services solely for use within the Premises. Purchaser shall take all required action, not otherwise the obligation of Seller hereunder, to enable it to purchase district cooling service commencing on the Service Commencement Date and continuing throughout the Term in accordance with this Agreement.

2. Term.

This Agreement is in full force and effect, and the Initial Term of this Agreement commences, as of the Effective Date. This Agreement cannot be terminated or canceled except as otherwise expressly set forth herein. Seller shall furnish district cooling service in accordance with the terms of this Agreement commencing on the Service Commencement Date and continuing through the duration of the Initial Term, which shall be automatically renewed for additional ten-year terms

(each a "Renewal Term" and, together with the Initial Term, the "Term"), subject to the terms and conditions set forth in this Agreement, for an indefinite number of renewals, until and unless Purchaser or Seller gives notice at least one (1) year prior to expiration of the Initial Term or any Renewal Term, provided that no Renewal Term shall extend beyond the term (including any renewal term) of the Access and Easement Agreement (as defined hereinafter).

3. Contract Demand.

(a) The Contract Demand for district cooling service during the Term of this Agreement shall be as set forth on the Service Schedule, subject to permanent increase or decrease as provided in this Section 3. A ton means refrigeration capacity equivalent to the cooling capacity of one ton of ice melting in a period of 24 hours (at a rate of 12,000 British thermal units per hour).

(b) The design temperatures for purposes of this Agreement shall be based on ASHRAE standards of one percent (1%) of mean for Miami, Florida, 91 degrees Fahrenheit dry bulb and 77 degrees Fahrenheit wet bulb. For purposes hereof, ASHRAE means the American Society of Heating, Refrigeration and Air Conditioning Engineers.

(c) The actual demand ("Actual Demand") shall be Purchaser's maximum demand for district cooling service, in tons, in any one-hour period during any month.

(d) Seller and Purchaser have estimated Purchaser's Actual Demand since Seller has no way of metering Purchaser's actual consumption. If at any time Purchaser's Actual Demand exceeds the Contract Demand, Seller shall, subject to Section 3(e), provide such Actual Demand as utilized by Purchaser (the "Excess Contract Demand"). If Seller is able to demonstrate by a preponderance of the evidence available (but without the need for Seller to meter such demand) that Purchaser's installation, modification or use of cooling equipment in the Premises has resulted in Excess Contract Demand, the Contract Demand shall be increased to the level of such Excess Contract Demand and Purchaser shall pay an increased Contract Demand Charge beginning in the calendar month following the month in which such Excess Contract Demand was determined. Such Excess Contract Demand shall thereupon become the new Contract Demand for all purposes of this Agreement. The Contract Demand Rate for any such Excess Contract Demand shall be \$185.00 per ton subject to CPI adjustments.

(e) Seller shall provide the required excess cooling capacity to Purchaser under Section 3(d) during the Term of this Agreement if Seller's applicable facilities: (i) have the capacity to deliver and are not otherwise reserved, or (ii) can be reasonably, economically and practically expanded, in Seller's judgment, to meet such new capacity and such new capacity is not otherwise reserved. Seller shall undertake to provide information on available additional capacity from time to time upon the request of Purchaser.

4. Rates and Charges.

The rates and charges hereunder, subject to adjustment as provided in this Section 4 from and after the Effective Date, are as follows:

(a) (i) Beginning on the first day of the month in which the Service Commencement Date falls and continuing during and throughout the Term, Purchaser shall pay a Monthly Billing Charge for district cooling services and for the availability of the Contract Demand under this Agreement. The Monthly Billing Charge shall be determined as follows:

$$\text{Monthly Billing Charge} = \text{Contract Demand Charge}/12 + \text{Consumption Charge}/12 + \text{Other Charges} + \text{Franchise Fee.}$$

(ii) If Purchaser is unable to receive or utilize district cooling service at the time of the Service Commencement Date or at any time during or throughout the Term of this Agreement, Purchaser shall continue to pay the Monthly Billing Charge and all other amounts due under this Agreement, regardless of any Event of Force Majeure or other cause of any type or description (other than any act or omission of Seller, which shall be governed by Section 23 hereof).

(b) The Contract Demand Charge ("Contract Demand Charge") is determined as follows:

$$\text{Contract Demand Charge} = \text{Contract Demand (tons)} \times \text{Contract Demand Rate (\$/ton)}$$

Effective at the beginning of each and every calendar year throughout the Term of this Agreement, the Contract Demand Rate then in effect shall be subject to increase or decrease in accordance with the Index (as defined in, and in accordance with, Section 4(c)(iii)).

(c) The Consumption Charge includes the following, as measured in ton-hours, which amount shall be billed monthly in arrears: Consumption Charge = Electricity Charge + Water Charge + Base Charge. An annual adjustment under subsections 4(c)(i)-(iii) shall take effect on each January 1 during the Term and Seller shall endeavor to notify Purchaser in writing of any such adjustment(s) approximately 60 days before the end of each calendar year. The adjustments under Section 4(c)(i) and (iii) shall be measured by the previous 12 month percentage increase or decrease in the applicable index or rate as measured between the month of August immediately preceding the adjustment (or if the index or rate is not published for such month then the index or rate published for the month closest to, but after, such month) and the month of August in the preceding year (or if the index or rate is not published for such month then the index or rate published for the month closest to, but after, such month) or, if the index or rate is not available, Seller shall utilize a reasonable substitute as prepared by any successor agency charged with maintenance of such index or rate or any third party not affiliated with Seller.

(i) The Electricity Charge shall be adjusted annually by multiplying the Electricity Charge then payable immediately prior to the adjustment by the percentage

increase or decrease in the Consumer Price Index -- All Urban Consumers for Electricity (Miami/Ft. Lauderdale) as published by the United States Department of Labor, Bureau of Labor Statistics.

(ii) The Water Charge shall be adjusted annually based upon the annual average percentage change in the applicable Miami-Dade Water and Sewer Authority (or other applicable authority) rate as in effect as of August of each year (the "MWASA Rate Adjustment").

(iii) The Base Charge shall be adjusted annually by multiplying the Base Charge then payable immediately prior to the adjustment by the percentage increase or decrease in the Consumer Price Index -- All Urban Consumers (CPI - U.S. City Average All Items; base year 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index").

Notwithstanding any annual adjustment under subsections 4(c)(i)-(iii), if at any time an increase or decrease in either the Electricity Charge or Water Charge of greater than ten percent (10%) shall have occurred during the period subsequent to the last applicable adjustment measurement month used in calculating the last preceding adjustment, then either party may give written notice detailing such cost increase or decrease and thereafter an additional adjustment to the Electricity Charge and/or Water Charge, as applicable, shall take effect on the first day of the next succeeding month, provided that if the notice detailing such cost increase or decrease is sent or delivered after the 15th day of a month such adjustment shall take effect on the first day of the second succeeding month.

(d) The Other Charges shall include, but not be limited to, (A) any and all other amounts billable to Purchaser under this Agreement such as costs due to Purchaser's failure to maintain water quality standards as provided in Section 7(b), late charges described in Section 19(b), indemnity payments under Section 17, and additional services as provided in Section 3; (B) an amount equal to the Deficit Consumption Amount (as hereinafter defined), if any, and (C) on a pro rata basis, as appropriate (based upon Purchaser's pro rata share of service provided or reserved by Seller), of all costs and expenses incurred by Seller due to a change in any local, state or federal Law or interpretation thereof by judicial decision or regulatory or governmental agency or the enactment or promulgation of any new local, state or federal Law after the date of this Agreement, which requires Seller to incur additional costs and expenses in the performance under this Agreement (other than Seller's income taxes), but expressly excluding any penalties assessed against Seller for the failure to comply with any Law. Notwithstanding the foregoing, in the event that the Other Charges in this subsection (d)(i)(C) increase by a one-time charge of (A) more than \$5,000 (but less than \$100,000), then Purchaser shall have the option to pay such increase in equal monthly installments over a 12-month period, commencing with the month immediately following Purchaser's receipt of written notice thereof; or (B) \$100,000 or more, then Purchaser shall have the option to pay such increase, in equal monthly installments of principal and interest, over the balance of the then current term, which amount shall bear interest at the lower of (1) the prime rate plus 400 basis points per annum, compounded monthly, or (2) the highest rate then permitted by

law, from the date of such charge until paid in full. Purchaser may prepay these charges at any time, which prepayments shall be applied first to accrued and unpaid interest, if any, and thereafter to the balance. For purposes hereof, (x) Laws shall mean all federal, state, local or municipal law, statute, ordinance, rule, regulation, restriction (including, without limitation, zoning), order, judgment, administrative order, decree, administrative and judicial decision; and (y) "prime rate" shall mean the "prime rate" as published in the *Wall Street Journal (Eastern Edition)* on the date of such charge; provided, however, that if on such date the *Wall Street Journal (Eastern Edition)* does not publish the "prime rate" or the *Wall Street Journal (Eastern Edition)* is not published, then the "prime rate" shall be determined as aforesaid by taking the average of the "prime rates" or "base rates" of three (3) "money center" banks selected by Seller and quoted by such banks on the business day for which the determination of the prime rate as aforesaid shall be made by Seller. Interest shall be calculated as aforesaid and shall remain fixed over the balance of the then current term. Seller's calculation of the Other Charges, absent manifest error, shall be binding and conclusive.

(e) Franchise Fee shall mean the then current franchise fee percentage payable by Seller to the City of Miami pursuant to that certain Franchise Agreement between Seller and the City of Miami with respect to the operations of Seller at the Premises and the applicable gross revenues payable to Seller by Purchaser.

(f) Purchaser shall have the right to audit the books and records of Seller with respect to the Other Charges, Franchise Fee percentage and Transfer Costs (as defined in Section 3(e)) not more frequently than annually at its sole cost and expense, provided that, if any final audit shows an overall discrepancy of more than five percent (5%) in favor of Seller, then Seller shall reimburse Purchaser for the costs and expenses of such audit, as well as making any required reimbursement. If Seller disputes such audit results, then each party shall select an auditor (which shall be unrelated to such party and shall not have done business with such party or its affiliates within the last five years), and the two auditors shall select a third auditor (which shall be unrelated to both parties and shall not have done business with either party or their respective affiliates within the last five years). The decision of such third auditor shall be final and binding upon the parties absent manifest error. The fees and expenses of such third auditor shall be borne by the parties in proportion to the amount by which the determination of such accounting firm differs from the respective determinations of the parties.

5. Supply Standards and Water Temperature.

Seller represents, warrants and covenants to Purchaser as follows, provided that Purchaser acknowledges and agrees that the exclusive remedies for breach or default of this Section 5 are the remedies provided in Sections 15, 23 and 24, as applicable:

(a) Seller agrees to construct, operate, and maintain the facility and its equipment, piping and fixtures providing district cooling service under this Agreement in accordance with prevailing industry standards and generally accepted engineering practices.

(b) Seller shall provide chilled water on Seller side of the heat exchanger, if any, or at the interconnection point to the Premises if there is no heat exchanger, at or below the Peak Water Temperature, however, for maintenance purposes or unplanned outages, the temperature shall not exceed 41 degrees F.

(c) The following equation will be used to predict changing chilled water supply conditions:

$$\text{Chilled water load (tons)} = 500 \times \text{Gallons per minute} \times \text{Temperature difference } \Delta \div 12,000 \text{ BTUs per ton.}$$

6. Delivered Ton-Hours.

The ton-hours deemed delivered to Purchaser by Seller shall be based on the Annual Ton-Hours set forth in the Service Schedule, provided, however, that in the event of an increase in Contract Demand pursuant to Section 3 of this Agreement the Annual Ton-Hours set forth in the Service Schedule shall be adjusted pro rata.

7. Interconnection Responsibilities.

(a) Seller shall provide and maintain all necessary piping up to the connection point agreed to and described in Exhibit B. The Purchaser shall design, purchase, install, own and maintain the heat exchanger, if any, and maintain associated piping as referenced on Exhibit B, which are (or upon completion of installation, shall become) the responsibility of Purchaser. Purchaser is solely responsible for all of its own equipment and related maintenance and repairs, and Seller is solely responsible for all of Seller's equipment and the maintenance and repair thereof. Seller shall also be responsible for the maintenance and repair of all Owner's equipment in accordance with the District Cooling Access and Easement Agreement between Seller and Owner as amended from time to time ("Access and Easement Agreement"). Purchaser agrees that Seller has the right, but not the duty, to inspect the interconnection and related equipment and piping for the purpose of determining that Seller's and Owner's equipment and piping will not be damaged or otherwise rendered ineffective because of the operation of Purchaser's equipment. Purchaser agrees that Seller's inspection right does not in any way impose a duty or a liability on Seller in conjunction with the lawful, safe, or proper operation of Purchaser's equipment and piping. Without imposing any duty, obligation, or liability upon Seller, if an inspection by Seller does indicate a condition that has caused, or is anticipated by Seller to cause, damage to Seller's equipment, Owner's equipment or personal injury, Seller shall notify Purchaser of such condition.

(b) If there is no heat exchanger at the interconnection point to the Premises, Seller shall be responsible for maintaining chilled water quality standards in accordance with Exhibit C with respect to water entering the Premises at the interconnection point, and Purchaser shall be responsible for ensuring that there is no deterioration in the quality of the water exiting the Premises from the quality of the water entering the Premises. If there is a heat exchanger at the interconnection point to the Premises, Purchaser shall be responsible for maintaining chilled water quality standards in accordance with Exhibit C with respect to water in the secondary loop on

Purchaser's side of the interconnection point, and Seller shall be responsible for maintaining chilled water quality standards in accordance with Exhibit C with respect to water in the primary loop on Seller's side of the interconnection point. In the event that either party determines that the other party is not meeting such chilled water quality standards, then it shall give written notice thereof in reasonable detail to the other party and said other party shall have 30 days after such notice to cause such water quality standards to be met. Each party will be responsible for damage to any heat exchanger at the interconnection point (including, without limitation, replacement thereof if reasonably necessary) resulting from such party's failure to meet the chilled water standards. Seller shall be liable to for any damage to Purchaser's chilled water handling equipment (including, without limitation, replacement thereof if reasonably necessary) resulting from Seller's failure to meet the chilled water standards. Purchaser shall be liable to for any damage to Seller's chilled water handling equipment and any third party's chilled water handling equipment within the Property (including, without limitation, replacement thereof if reasonably necessary) resulting from Purchaser's failure to meet the chilled water standards.

(d) Seller shall have the right to immediately suspend service to Purchaser at such times as in Seller's sole judgment water quality or deterioration on the Premises shall pose a significant risk to the cooling system generally or any part thereof.

(c) Purchaser shall maintain, repair and replace its chilled water piping, chilled water distribution equipment and all other Purchaser owned or operated equipment in accordance with prudent engineering practice and applicable maintenance standards so that its equipment is in a condition suitable to receive and utilize chilled water and complies with all applicable codes and prevailing industry standards.

8. [Intentionally omitted]

9. Easements and Access.

Purchaser, for areas in which Purchaser has occupancy, control or authority, shall execute and in a timely manner all documents necessary to grant to Seller at no additional cost all necessary access rights or permission to construct as may be required by Seller to connect the district cooling system to the points of entry and exit at the Premises and to otherwise operate and maintain the system in accordance with this Agreement, free and clear of all liens, rights of third parties, judgments, security interests and encumbrances whatsoever paramount to, or inconsistent with, the rights of Seller contemplated in this Agreement. Purchaser also agrees to execute in a timely manner such instruments giving further effect to the provisions of this Section 9 as may be reasonably required by Seller. Purchaser shall provide Seller access to Purchaser's facilities on a twenty-four (24)-hour basis, upon notice by Seller to Purchaser's premises manager, to permit Seller to access its equipment, to read and test meters, and to perform any other functions as may be necessary for Seller to fulfill its obligations under this Agreement.

10. Licenses and Easements.

The performance of Seller's obligations under this Agreement requires and is subject to the condition that Seller shall receive and retain or be satisfied that it will be able to obtain all applicable federal, state, local and Owner approvals, permits, licenses, easements, rights-of-way and authorizations necessary for the operation, production, transportation, and delivery of this district cooling service and for the construction of all necessary facilities for such district cooling service. Purchaser shall have primary responsibility for obtaining such items relating to the Owner or the Premises and Seller shall have primary responsibility for obtaining all other such items, including, without limitation, those relating to the operation, production, transportation, and delivery of district cooling services under federal, state or local law.

11. Representations, Warranties, and Covenants of Seller.

Seller expressly represents, warrants, and covenants, on an ongoing basis, that:

(a) Seller shall use its commercially reasonable efforts to obtain and thereafter maintain all of the permits and rights referred to in Section 10.

(b) Except as otherwise contemplated by this Agreement, Seller shall not cause or voluntarily permit any modification or alteration to any part of Purchaser's equipment located at the Premises, including without limitation any and all metering equipment, valves, conduits and piping, except in an emergency where life, property or service to Purchaser is threatened.

(c) The execution and delivery by Seller of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of Seller's organizational documents or to the best of its knowledge any applicable law, rule or regulation; and to the best of its knowledge do not and will not conflict with or cause any breach or default under any agreement or instrument to which Seller is a party or by which it or any of its properties is bound.

(d) This Agreement has been duly executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

(e) Seller has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable law, ordinance, regulation, rule, judgment, writ, decree, award, permit or order which would have a material adverse effect on its ability to perform hereunder.

(f) Seller has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which would have a material adverse effect on its ability to perform hereunder.

(g) Seller shall not transfer or assign its obligations to deliver district cooling service to Purchaser except as otherwise provided by Section 26(c) hereof or as otherwise expressly permitted in this Agreement.

(h) To the extent necessary for Purchaser to perform its connection obligations to Seller's heat exchanger, if any, under this Agreement, Seller will provide Purchaser with its blueprints, plans, surveys, drawings or other information of a technical nature which Purchaser may reasonably request which are relevant to the chilled water delivery interconnection, provided that, no warranties are given as to any such documentation by Seller or for the particular use to which such documentation may be made by Purchaser. Purchaser may rely upon the accuracy of any such documents provided by Seller without the need for separate investigation, and Purchaser shall not be responsible for damage or loss caused by such reliance.

(i) Seller shall maintain, repair and replace its chilled water facility, piping, equipment, and the interconnection of Owner's pipes to Purchaser's facilities (as well as the Owner's other equipment in accordance with the Access and Easement Agreement), all as necessary in accordance with prudent engineering practice so that same is in a condition suitable to provide and distribute chilled water and complies with all applicable laws and industry standards.

(p) Seller agrees that in the event it gives Purchaser notice of any breach of the terms of this Agreement by Purchaser it shall also (i) give Purchaser's lender notice thereof in accordance with Section 25 and (ii) permit such lender, if it elects to so perform, to cure any such breach to the same extent, if any, as Purchaser would be entitled to cure such breach and within the same period of time, if any, as would be available to Purchaser.

12. Representations, Warranties, and Covenants of Purchaser.

Purchaser expressly represents, warrants, and covenants, on an ongoing basis, that:

(a) Purchaser shall use its commercially reasonable efforts to assist Owner and Seller to obtain and thereafter maintain all of the permits and rights referred to in Section 10. Purchaser shall use and exercise its commercially reasonable efforts to obtain and maintain in effect all necessary permits, licenses and approvals required by it in order to perform its obligations under this Agreement.

(b) Purchaser shall not cause or voluntarily permit any modification or alteration to any part of Seller's equipment located on the Premises, including without limitation any and all metering equipment, valves, conduits and piping, except in an emergency where life or property is threatened.

(c) The execution and delivery by Purchaser (or its duly authorized representative) of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of Purchaser's organizational documents or to the best of its knowledge any applicable

law, rule or regulation; and to the best of its knowledge do not and will not conflict with or cause any breach or default under any agreement or instrument to which Purchaser is a party or by which it or any of its properties is bound.

(d) This Agreement has been duly executed and delivered by Purchaser (or its duly authorized representative) and constitutes the valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

(e) Purchaser has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable law, ordinance, regulation, rule, judgment, writ, decree, award, permit or order which would have a material adverse effect on its ability to perform hereunder.

(f) Purchaser has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which would have a material adverse effect on its ability to perform hereunder.

(g) Purchaser is, subject to the transfer provisions of Section 26(b), and shall continue to be the lessee, occupant and operator of the Premises and the improvements on the Premises where the chilled water is delivered and utilized under this Agreement. Purchaser shall not, in whole or part, assign, sell, subcontract to or for other buildings or structures, or transfer its rights to receive district cooling service for the Premises or resell or otherwise assign or transfer any district cooling service to any third party under this Agreement, or transfer or assign its obligations or rights under this Agreement, except in accordance with the provisions of Section 26(b) or as otherwise expressly permitted in this Agreement.

(h) To the extent necessary for Seller to perform its obligations under this Agreement, Purchaser shall provide or utilize its good faith efforts to cause the Owner to provide Seller at no cost to Seller with any blueprints, plans, surveys, drawings or other information of a technical nature which Seller may reasonably request which are relevant to the chilled water delivery and Seller's obligations hereunder. Seller may rely upon the accuracy of any such documents provided by Purchaser or Owner without the need for separate investigation, and Seller shall not be responsible for damage or loss caused by such reliance.

(i) During the Term of this Agreement, all district cooling equipment shall be owned by Seller and shall not be subject to liens for improvements made by, for or on behalf of Purchaser, its lessor, sub-tenants, contractors or others on the Premises, and it is specifically understood and agreed that in no event shall Seller or the interest of Seller in such district cooling equipment be liable for or subjected to any mechanic's, materialmen's or laborer's liens for improvements or work made by, for or on behalf of Purchaser, its tenants, contractors or others on, or with any interest in, the Premises. In the event that any district cooling equipment shall become subject to any mechanic's, materialmen's or laborer's liens for improvements or work made by, for or on

behalf of Purchaser, its lessor, sub-tenants, contractors or others, then Purchaser shall immediately take all action, at its cost and expense, necessary to remove such lien promptly. Purchaser shall advise its lessor, sub-tenants, contractors, subcontractors, creditors, materialmen and any other actual or potential lienors of this provision. In the event that Purchaser fails to promptly remove or cause to be removed any such lien within thirty (30) days, then Seller shall be entitled, at its option, to cause the removal of such lien and all amounts incurred by Seller in so doing (including, without limitation, attorneys' fees and disbursements) shall be billed to Purchaser and payable pursuant to Section 19 hereof.

13. Force Majeure.

Subject to Section 4(a)(ii) hereof, neither Seller nor Purchaser shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by acts of God, hurricanes, tornadoes, storms, acts of sabotage, terrorism, civil unrest, aircraft disasters, electric power interruptions, fires, explosions, restrictions or restraints imposed by law, rules or regulations of a public authority, acts of military, governmental, or public authorities, war, riots, civil disturbances and strikes or other labor disruptions or other causes of similar effect beyond the reasonable control of the affected party (an "Event of Force Majeure"). If a party is prevented or delayed in the performance of any such obligation by an Event of Force Majeure, such party shall immediately provide notice to the other party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The party so affected by an Event of Force Majeure shall use commercially reasonable efforts to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Nothing in this Section shall excuse any failure or delay in Purchaser's payment obligations during any Event of Force Majeure or otherwise.

14. Consequential Damages and Limitation of Liability.

NEITHER PARTY SHALL BE LIABLE, EVEN IF GIVEN PRIOR NOTICE, TO THE OTHER PARTY OR ANY THIRD PERSON FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER DUE OR CLAIMED TO BE DUE TO NEGLIGENCE, TORT, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO DAMAGES IN THE NATURE OF LOST PROFITS OR REVENUES, LOSS OF USE OF FACILITIES OR EQUIPMENT, AND CLAIMS OF THIRD PARTIES OR OF INABILITY TO PERFORM CONTRACTS WITH THIRD PARTIES.

15. Termination by Purchaser.

This Agreement cannot be terminated or canceled by Purchaser except as expressly provided below.

(a) In the event of any failure of Seller to provide Contract Demand (regardless of the reason), Purchaser shall utilize good faith effort to immediately provide oral notice to an authorized officer of Seller so that Seller is able to respond to such failure promptly, and, in the event that the failure exceeds 12 hours, Purchaser shall also give written notice thereof, specifying the date and the time when such failure commenced and, if applicable at the time of the notice, the time upon which service was reinstated. In the event of Seller's failure for a period of at least ten (10) consecutive days after such notice, or at least twenty (20) days in the aggregate in any calendar year, to provide the Contract Demand to Purchaser in accordance with Sections 3(a) and (b) of this Agreement (the "Default Event") (but expressly excluding from such days any days involving an Event of Force Majeure, a failure caused by the acts or omissions of Purchaser Persons, or any other event described in Section 23 (each a "Non-Default Event"), which days shall not apply to or constitute any such failure to provide the Contract Demand), then, provided Purchaser has complied with the notice provisions set forth above, Purchaser shall have the right to terminate this Agreement by written notice to Seller, which notice shall be delivered no later than thirty (30) days after the Default Event and shall include a proposed date of termination, which shall not be later than 365 days after receipt of such notice by Seller (the "Termination Date"). If Seller disputes such notice on the basis that such failure was due to a Non-Default Event, then Seller shall so advise Purchaser in writing within ten (10) business days of receipt of Purchaser's termination notice, describing in reasonable detail the basis of the Non-Default Event. If Seller does not send such notice, then this Agreement will terminate on the Termination Date. A termination by Purchaser pursuant to this subsection shall be without liability for any additional payment or termination fee, but all amounts and liabilities accrued through the effective date of termination shall remain due and payable.

(b) With not less than thirty (30) days advance written notice to Seller, Purchaser may terminate this Agreement for any reason and for its convenience provided that such notice shall set forth the date of termination and further provided that Purchaser (i) pays Seller along with the notice of termination, a termination fee equal to the present value of the Contract Demand (using a discount rate of six percent (6%) per annum) determined by multiplying one-twelfth (1/12) of the Contract Demand Charge by the remaining months in the Term of this Agreement; or (ii) provides its written agreement to continue to pay on a monthly basis the Monthly Billing Charge until the earlier of the expiration of the balance of the Term or a Resale Event (as hereinafter defined), provided that the option of Purchaser under this Section 15(b)(ii) shall not be available if an Act of Insolvency (as defined in Section 16.1(c)) has occurred.

(c) With not less than ninety (90) days advance written notice to Seller, Purchaser may terminate this Agreement provided that Purchaser identifies and brings to Seller substitute customer(s) who: (i) agree to collectively purchase the entirety of all of the applicable Contract Demand under this Agreement on a permanent basis for the remaining Term on terms and conditions (including, but not limited to, price and duration) at least as favorable to Seller as those terms and conditions set forth in this Agreement, as determined by Seller in its good faith sole discretion; and (ii) are of acceptable business standing and credit-worthiness as solely determined by Seller and any financing providers in accordance with Section 26(d) hereof. Pursuant to any termination under this provision, Purchaser shall also pay, as invoiced by Seller from time to time:

(1) any and all direct and indirect interconnection and transition fees associated with establishing delivery to the substitute customer(s) and concluding delivery to Purchaser; (2) any costs imposed upon Seller by any financing providers associated with such transition from Purchaser to the substitute customer(s); (3) all reasonable costs incurred by Seller in connection with the review, negotiation, documentation, and consummation of contracts with the substitute customer(s), including but not limited to internal and external financial and legal advisor fees and disbursements; and (4) all other amounts reasonably incurred by Seller in connection with the termination by Purchaser hereunder. In lieu of Purchaser identifying and bringing such substitute customer(s) to Seller as provided hereunder, Purchaser may elect to hire Seller to attempt to locate possible substitute customer(s), which shall be done at Purchaser's sole cost and expense, and for which Purchaser shall pay, as invoiced by Seller from time to time, any and all direct and indirect fees and costs associated therewith (including, but not limited to, the fully burdened costs, salaries, benefits, and all other actual costs incurred by Seller, whether or not Seller is successful in identifying and selling to any substitute customer(s)). Notwithstanding any provision to the contrary, in no event shall Purchaser be deemed to be released or discharged, in whole or in part, from any of its obligations under this Agreement unless and until Seller has issued a written notice to Purchaser which indicates that all of the conditions precedent set forth above have been fulfilled, including, without limitation, the execution and delivery of contracts with substitute customer(s) for the entire Contract Demand, and Purchaser has paid Seller all amounts due under this Agreement.

(d) If Purchaser terminates this Agreement, Seller may remove all of its equipment installed at the Premises. Any damage caused by such removal (and not ordinary wear and tear) shall be repaired by Seller.

16. Termination and/or Suspension by Seller.

16.1 Seller may terminate this Agreement without liability to Purchaser, and discontinue the delivery of district cooling service to Purchaser, and remove or abandon all of Seller's equipment located upon or at the Premises, including without limitation, all meters installed thereon, upon the occurrence of any one of the following events:

(a) In the event of the failure of Purchaser to pay in full the Monthly Billing Charge or any other amounts due under this Agreement within thirty (30) days of the date of any invoice, Seller may provide Purchaser with a late payment notice, and if Purchaser makes payment in full of the overdue amounts and interest thereon within ten (10) days of issuance of the late payment notice from Seller, then Seller's rights hereunder to terminate this Agreement shall lapse. However, if Purchaser does not make payment within such period, then Seller may suspend service to Purchaser, provided further, that if payment is not made within fifteen (15) days of such suspension, then Seller shall have the right to terminate this Agreement without further notice.

(b) Breach or default by Purchaser of any material non-monetary provision of this Agreement which is not cured within thirty (30) days after receipt of notice thereof from Seller or, if such breach or default cannot reasonably be cured within such 30-day period, such longer period

(but in no event more than sixty (60) days), provided that Purchaser commences to cure promptly and thereafter diligently prosecutes such cure to completion.

(c) Purchaser shall voluntarily file or have filed against it a bankruptcy petition, or enter into an assignment of its assets for the benefit of creditors, or otherwise become insolvent, unless with respect to any involuntary proceeding, such involuntary proceeding is dismissed within a period of sixty (60) days from the date instituted; or Purchaser shall admit in writing its inability to pay its debts as they become due and payable; or Purchaser causes, suffers, permits or consents to the appointment of a receiver, custodian, trustee, administrator, conservator, sequestrator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets and such appointment is not revoked or terminated and such official is not discharged of his duties within sixty (60) days of his appointment; or the attachment, execution or other judicial seizure of all or any substantial part of Purchaser's assets or any significant part thereof, remaining undismissed or undischarged for a period of thirty (30) days after the levy thereof; or the liquidation or dissolution of Purchaser (any of the foregoing events hereinafter referred to as an "Act of Insolvency").

(d) The assignment or transfer of its interest in the Premises by Purchaser or the assignment of this Agreement, except when expressly authorized in accordance with the provisions of Section 26 of this Agreement.

(e) Destruction, or a taking by eminent domain proceedings (including but not limited to any Event of Force Majeure) of the facilities or equipment by or from which Seller produces or distributes district cooling service, or taking by eminent domain proceedings of, such a part of such buildings or equipment, that district cooling service cannot reasonably be furnished by Seller substantially as required under the provisions of this Agreement.

(f) The withdrawal, cancellation or non-renewal by a governmental authority, the Owner or any other person of, or any failure to provide, rights-of-way, easements, permits, licenses or other authorizations necessary for performance under this Agreement including without limitation any governmental authorization essential for the furnishing of district cooling service by Seller as substantially required under the provisions of this Agreement (other than due to the bad faith or gross negligence of Seller) or the enforcement by any governmental authority of any rule or regulation which prevents Seller from furnishing district cooling service as substantially required under the provisions of this Agreement. Seller shall give prompt notice upon becoming aware of any thereof.

16.2 In the event Seller terminates this Agreement by reason of Sections 16.1(a), (b), (c) and/or (d), Purchaser shall pay all amounts and liabilities arising or accrued in connection with this Agreement through the date of the termination, plus a termination fee as liquidated damages for such termination in an amount equal to the present value of the Contract Demand (using a discount rate of six percent (6%) per annum) determined by multiplying one-twelfth (1/12) of the Contract Demand Charge by the remaining months in the Term of this Agreement. Seller shall use its reasonable efforts to resell the Contract Demand of Purchaser to other customers within twelve

months (12) from the date of termination. If Seller resells the entire Contract Demand within such twelve month period, Seller shall reimburse Purchaser for fifty percent (50%) of such damages paid by Purchaser to Seller by reason of a termination by Seller pursuant to this Section 16.2 within thirty (30) days of the date of the completed resale.

17. Indemnification.

(a) **General Indemnity.** To the fullest extent permitted by law but subject to the limitation in Section 14, each party hereto (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party and the directors, officers, shareholders, partners, members, agents and employees of such other party and the Affiliates thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, assessment, penalty, claim, charge, proceeding, investigation, suit, action and liability (including court costs and reasonable attorney's fees and disbursements), whether raised by the parties hereto or any third party (collectively, the "Liabilities"), resulting from injury to or death of persons, and/or damage to or loss of property or other action or claim, to the extent caused by or arising out of the negligent acts or omissions of the Indemnifying Party, its employees, agents, customers, lessees and contractors, in connection with the performance of this Agreement or any breach of its representations, warranties or covenants contained herein, provided that, as to Seller's indemnity obligations for an interruption of service or other breach of the covenants to provide chilled water under this Agreement, the remedies of Purchaser shall be limited to those contained in Sections 15, 23 and 24. For purposes of this Agreement, an "Affiliate" of any person or entity means any person, entity or group (currently existing or hereafter created or acquired) controlling, controlled by or under common control with, the specified person or entity, and "control" of a person or entity (including, with correlative meaning, the terms "control by" and "under common control with") means the power to direct or cause the direction of the management, policies or affairs of the controlled person, whether through ownership of securities or partnership or other ownership interests, by contract or otherwise.

(b) **Comparative Negligence.** It is the intent of the parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that party's negligence.

(c) **Defense of Claims.** In the event any person or entity not a party to this Agreement shall make any demand or claim or file or threaten to file or continue any lawsuit, which demand, claim or lawsuit may result in Liabilities hereunder or an Indemnified Party intends to seek indemnity under this Section 17, such Indemnified Party shall promptly notify the Indemnifying Party in writing of such claims setting forth the basis for and the amount of such claims in reasonable detail. An Indemnifying Party shall have the right to defend an Indemnified party by counsel (including insurance counsel) of the Indemnifying Party's selection reasonably satisfactory to the Indemnified Party, with respect to any Liabilities within the indemnification obligations hereof, by giving promptly notice to the Indemnified Party. Thereafter, the Indemnified party shall be permitted to participate in such defense at its own expense (but not control or otherwise

interfere in such action). In the event that the Indemnifying Party shall fail to elect to control such action, or shall have a conflict of interest making it inappropriate for it to do so, the Indemnified Party may retain counsel and conduct the defense of such demand, claim or lawsuit, as it may in its reasonable discretion deem proper, at the sole cost and expense of the Indemnifying Party. The parties shall give each other prompt notice of any asserted claims or actions indemnified against hereunder (provided, however, that the failure to give such Notice shall not relieve the indemnifying party of its obligations hereunder except (and only) to the extent that such failure caused the damages for which the Indemnifying party is obligated to be greater than they would otherwise have been had the Indemnified party given prompt notice hereunder) and, with respect to third party claims, shall reasonably cooperate (at the cost and expense of the Indemnifying Party) with each other in the defense of any such claims or actions.

18. No Waiver.

The failure of a party to enforce any term of this Agreement or a party's waiver of the nonperformance of a term by the other party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. Any waiver to be effective shall be in writing and signed by a duly authorized officer of the waiving party.

19. Payment.

(a) Except as otherwise expressly provided in this Agreement, any amounts payable by Purchaser under this Agreement shall be absolute and unconditional obligations and shall not be affected by any circumstance whatsoever, including, without limitation: (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right that Purchaser may have against Seller or any other person or entity for any reason whatsoever under this Agreement or otherwise; or (ii) any insolvency, bankruptcy, reorganization or similar proceeding by or against Seller or any other person or party. Each payment made by Purchaser hereunder shall be final as to any assignee or assignees of Seller for any reason whatsoever. Notwithstanding the foregoing, nothing contained herein shall be construed to affect any obligation of Seller to Purchaser or to waive any rights Purchaser may have to pursue any claim directly against Seller, or any reimbursement directly from Seller of any overpayment by Purchaser, as permitted or provided in this Agreement.

(b) Any amount payable by Purchaser or Seller under this Agreement shall be due and payable thirty (30) days after the date of invoice. Any amount which is not paid in full and received by the payee by such payment due date shall be subject to a late charge equal to the lesser of (i) the maximum interest rate permitted by applicable law, or (ii) 1.5% per month (18% per annum).

20. Damage.

(a) Seller shall be responsible for any damage caused, or repairs required, to Purchaser's side of the interconnection and Purchaser's equipment resulting from the acts or omissions of Seller, its employees, agents, contractors, tenants, licensees, partners, invitees, guests or other persons acting by or on behalf of Seller. With the exception of damage caused, or repairs required, resulting from the acts or omissions of Purchaser, its employees, agents, contractors, lessees, partners, guests, invitees, or other persons acting by or on behalf of Purchaser, Seller is solely responsible for its side of the interconnection and is solely responsible for all equipment, maintenance, and repairs associated with Seller's side of the interconnection, and any damage or casualty incurred by Purchaser's equipment located on Seller's side of the interconnection.

(b) Purchaser shall be responsible for any damage caused, or repairs required, to Seller's side of the interconnection and Seller's equipment resulting from the acts or omissions of Purchaser, its employees, agents, contractors, tenants, licensees, concessionaires, partners, invitees, or other persons acting by or on behalf of Purchaser. With the exception of damage caused, or repairs required, resulting from the acts or omissions of Seller, its employees, agents, contractors, tenants, licensees, partners, invitees, guests or other persons acting by or on behalf of Seller: (i) Purchaser is solely responsible for its side of the interconnection and is solely responsible for all equipment, maintenance, and repairs associated with Purchaser's side of the interconnection, and any damage or casualty incurred by Purchaser equipment located on Purchaser's side of the interconnection; and (ii) Purchaser is solely responsible for any damage or casualty incurred by Seller's equipment located on Purchaser's side of the interconnection (such as meters, controls, data lines, etc.).

21. No Additional Warranties.

Except as expressly stated herein, SELLER MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE DISTRICT COOLING SERVICE OR ANY SERVICES HEREUNDER, AND DISCLAIMS ANY WARRANTY IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EVEN IF ADVISED THEREOF. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND, EXCEPT AS PROVIDED ABOVE, A NEGATION OF ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY SELLER IN ANY CAPACITY, WITH RESPECT TO ANY SERVICE UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENT TO SUCH SERVICE, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

22. Insurance.

(a) During and throughout the Term of this Agreement, Purchaser agrees to maintain comprehensive property insurance, including all risk physical damage insurance, on the Premises (including all chilled water receiving and usage equipment therein) with replacement cost (new)

coverage. Purchaser shall carry public liability insurance for bodily injury, death, and property damage of not less than \$2 Million per occurrence. Seller and its assignees shall be named as additional insureds under all of Purchaser's public liability insurance policies for liabilities arising out of the operations, acts, or omissions of the named insured and such insurance shall be primary to any insurance maintained by Seller or its Affiliates or assignees.

(b) During and throughout the Term of this Agreement, Seller agrees to maintain comprehensive property insurance, including all risk physical damage insurance on the facilities or equipment by or from which Seller produces or distributes district cooling service to the interconnection point at Owner's facilities. Seller shall carry public liability insurance for bodily injury, death, or property damage of not less than \$2 Million per occurrence. Purchaser and its assignees and lender shall be named as additional insured for liabilities arising out of the operations, acts, or omissions of the named insured. Seller shall have the right to use the proceeds paid to Purchaser in respect of Seller's equipment under any property insurance policy to pay for the restoration, repair or replacement of Seller's equipment and Purchaser shall execute such documents and endorse to Seller any checks issued by the insurer in order to permit Seller to so use such proceeds.

(c) Such insurance coverage shall be with recognized insurers authorized to conduct business in the State of Florida, from insurance companies with a current rating by A.M. Best Company, Inc. of "A" or higher and with a financial size rating of "VII" or greater. Each party shall direct its insurer or insurance agent to issue an insurance certificate verifying the existence of insurance coverage in accordance with these requirements, including evidence of additional insured coverage. Each party's insurance carrier or agent must agree to notify the other party in writing of any cancellation or material modification of the insurance required hereunder at least thirty (30) days prior to the effective date of any such cancellation or material modification, except for non-payment of premium which shall require ten (10) days prior notice. Each party agrees to release and waive and require that their respective insurers release and waive any right of subrogation their insurers may have against the other party for any claim arising out of or relating to any injury, loss, or damage arising out of any claim covered by such insurance.

(d) At the conclusion of each five-year period during the Term of this Agreement, the amount of the general liability insurance required by subsections (a) and (b) above shall be increased automatically by \$200,000 per occurrence and in the aggregate, or such lesser amount as Seller may consent in writing to (which consent shall not be unreasonably withheld).

(e) If either party at any time fails to obtain and maintain the insurance coverage required hereunder, the other party shall be entitled to purchase such coverage and include as additional charges on any invoice thereafter delivered to the non-performing party pursuant to the terms of this Agreement, and the non-performing party shall pay the costs of such coverage and all other costs incurred in connection with obtaining such insurance.

23. Interruption of Service.

(a) If any of Purchaser, its officers, directors, employees, agents, lessors, lessees, licensees, concessionaires, customers, invitees, guests or contractors or others acting through or on behalf of Purchaser (collectively "Purchaser Persons") caused the interruption of service, Purchaser shall bear the costs required to restore normal service, including but not limited to the costs of repair or replacement of any damaged or destroyed equipment of Seller and Purchaser. If any of Seller, its officers, directors, employees, agents, lessors, lessees, licensees, concessionaires, customers, invitees, guests or contractors or others acting through or on behalf of Seller caused the interruption of service, Seller shall bear the costs required to restore normal service through the repair or replacement of Seller's district cooling equipment or Purchaser's damaged or destroyed piping or heat exchanger (if any) or other chilled water handling equipment of Purchaser.

(b) Notwithstanding anything to the contrary herein, Seller shall have the right to interrupt, reduce or discontinue the delivery of district cooling service (i) for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of district cooling service for a period not to exceed eight (8) business hours; or (ii) if the district cooling equipment has become dangerous in Seller's good faith judgment and, as a result thereof, Seller believes that an interruption or reduction is necessary to prevent injury to persons or damage to or destruction of property, provided that in the event of such occurrence under this clause (ii) Seller shall use its commercially reasonable efforts to restore full service as soon as possible (which reasonable efforts shall include overtime work by Seller staff). Seller shall use its commercially reasonable efforts to give notice to Purchaser of all expected interruption(s) of delivery of district cooling service at least ten (10) days prior to the date of such interruption and shall use its commercially reasonable efforts to inform Purchaser of the expected length of any interruption and to schedule such interruption to minimize overall disruption therefrom. Seller shall not be required to supply district cooling service to Purchaser at any time Seller reasonably believes Purchaser's cooling system to be unsafe, provided Seller shall have given notice of the basis for such belief at least thirty (30) days prior to suspension or termination of district cooling service for such reason unless Seller believes in good faith that such condition constitutes an emergency condition or Event of Force Majeure in which case Seller shall have the immediate right to interrupt service. In the event, during such 30-day period Purchaser cures, or demonstrates to the reasonable satisfaction of Seller that it has made progress toward cure of such unsafe condition and thereafter diligently pursues such cure to completion, then such suspension or termination shall be canceled or delayed by Seller.

(c) If Seller fails to deliver district cooling service for any reason after the Service Commencement Date, other than as provided in this Section 23(a) or (b), or during an Event of Force Majeure, then, subject only to Purchaser's right to terminate in Section 15(a) and Section 24(b), in each case to the extent applicable, as Purchaser's sole and exclusive remedy, the Contract Demand Charge then in effect under this Agreement shall be adjusted commencing 8 hours after Purchaser gives Seller notice of such failure to deliver based on the proportion of the period and the degree to which the delivery of such district cooling service is reduced.

24. Purchaser Remedies for Delayed or Canceled Connection of the District Cooling System.

(a) Excluding delay due to any Event of Force Majeure, any act or omission of Purchaser Persons which causes delay or any other permitted delay or extension under this Agreement, in the event that Seller has not completed its construction of the district cooling facility and is unable to provide Purchaser with cooling service as required on the Service Commencement Date, Seller shall arrange for, install, operate, and maintain a temporary source of district cooling service such as mobile chillers to meet the Contract Demand. Seller shall use commercially reasonable efforts to cause such mobile chillers when in use to maintain a Peak Water Temperature not to exceed 44 degrees F. Seller shall provide such temporary source of district cooling service until such time as Seller can provide district cooling service in accordance with the requirements of this Agreement. Such obligation is conditioned upon Owner and Purchaser permitting Seller, without charge, to place mobile chillers on Owner's and Purchaser's property near the interconnection point to the extent feasible. Purchaser shall pay the Monthly Billing Charge and all other amounts under this Agreement during and throughout such period, but Seller shall not charge Purchaser for any incremental additional premium or expense (in excess of what it would cost to provide service from the permanent district cooling facility) for delivery of the Contract Demand from the mobile chillers or other temporary source unless such delay was caused in whole or in part by an act or omission of Purchaser. This shall be Purchaser's sole and exclusive right and remedy in the event that Seller is unable to provide cooling service by the Service Commencement Date and such inability or date is not otherwise permitted or extended under this Agreement.

(b) Excluding Force Majeure or any act or omission of Purchaser Persons, if Seller elects not to provide the district cooling service and to abandon the delivery obligations under this Agreement, Seller shall provide written notice of termination to Purchaser, and the following shall be Purchaser's sole and exclusive remedy for such abandonment and termination. Seller shall reimburse Purchaser within thirty (30) days of demand for all direct, out-of-pocket documented third party costs and expenses reasonably incurred by Purchaser (the "Reimbursement Cost") to:

- (i) redesign Purchaser's Premises to accommodate the inclusion of a chilled water production facility;
- (ii) accelerate the design of the chilled water facility;
- (iii) accelerate the construction schedule for the chilled water facility;
- (iv) accelerate the delivery schedule of chillers and other equipment required for the chilled water facility to be constructed; and
- (v) renting temporary chillers or obtaining another temporary source of cooling.

Notwithstanding the foregoing, the Reimbursement Cost shall not exceed five hundred dollars per Contract Demand ton (\$500 per ton).

25. Notices.

(a) All notices, demands, offers or other such communications required or permitted to be given pursuant to this Agreement must be in a writing signed by the party giving such notice unless otherwise specified in this Agreement, and shall be mailed by U.S. Mail, sent by courier service, or faxed to the addresses or facsimile numbers set forth on the Service Schedule to this Agreement. Notices which do not comply with the foregoing requirement shall not be effective.

Each party shall have the right to change the place to which notices shall be sent or delivered or to specify two additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other party. Notices delivered by first class mail shall be deemed received three (3) business days after the date of the postmark, and notices delivered by overnight courier shall be deemed received on the date when left at the address of the recipient (unless such date is not a business day, in which event, it shall be deemed received on the next business day). Notices sent by fax shall be effective the date faxed, if a business day and received during normal business hours, or the following working day otherwise; provided that all faxes shall be confirmed by sending follow-up copies by mail or courier within three (3) business days. At the request of the Purchaser, Seller shall also provide notices to any lender of Purchaser.

(b) Notwithstanding the general notice provisions in clause (a) of this Section 25, the parties agree that in the event of any unscheduled disruption in service, equipment failure or occurrence of similar urgency relating to the district cooling service provided under this Agreement they will follow the emergency contact procedures set forth on Exhibit E hereto. The parties agree to meet from time to time, upon the request of either party, to review and update such emergency contact procedures.

26. Permitted Assignment.

(a) This Agreement entered into by the parties shall be binding upon, and shall inure to the benefit of, the parties and their successors and permitted assigns.

(b) Purchaser may not assign this Agreement, and may not convey any part of its interest in the Premises (other than pursuant to a sublease under which Purchaser remains the prime lessee and sub-lessor or pursuant to a co-location agreement under which Purchaser remains the prime lessee and licensor), in each case including, without limitation, by operation of law, except in accordance with the terms and conditions of this Section 26(b). Purchaser may assign this Agreement with the prior written consent of Seller, which consent shall not be unreasonably withheld and shall be given provided that (i) the assignee assumes all obligations of Purchaser hereunder in the form of the assignment and assumption agreement attached hereto as Exhibit D; (ii) all payment obligations of Purchaser are current at the time of assignment; and (iii) the assignee acquires the entirety of Purchaser's leasehold interest in the Premises (including, without limitation, the tenant improvements). Upon such assignment in accordance with the terms and conditions herein, Purchaser shall be released from all further obligations under this Agreement. In the event of any assignment not in accordance with the provisions of this Section 26(b), Purchaser shall not be released from its obligations under this Agreement and shall remain liable to Seller for full performance of this Agreement, and Seller shall have the right, at its option, to terminate this Agreement upon notice to Purchaser.

(c) Seller may, with the prior consent of Purchaser, assign this Agreement and any of Seller's rights hereunder, which consent shall not be unreasonably withheld and shall be given provided that (i) the assignee purchases or acquires the entirety of the district cooling facility serving Purchaser; and (ii) the assignee satisfies the warranties, representations, covenants, and

other criteria of this Agreement. Notwithstanding the foregoing, with ninety (90) days advance written notice to Purchaser, Seller may assign this Agreement to an Affiliate without obtaining such consent. In each case, such assignment must be by an assignment agreement reasonably acceptable to Purchaser wherein the assignee fully assumes all obligations and duties of Seller under this Agreement. Upon an assignment in accordance with the terms and conditions herein, Seller shall be released from all further obligations under this Agreement.

(d) Notwithstanding the foregoing, Seller shall have the right, without the consent of Purchaser, to assign: (i) all or any portion of its rights and interest (but not its obligations) under this Agreement, including without limitation Monthly Billing Charge amounts whether or not yet due, to any or all lenders, limited partnerships, corporations, or other financing entities (the "Financing Parties") from time to time providing debt and/or equity financing to Seller or an assignee or subcontractor of Seller for the construction, operation, or maintenance of its equipment as security for its obligations under the loan agreements, notes, indentures, security agreements, mortgages, leases and other documents from time to time in effect relating to any such financing (the "Financing Documents"). Purchaser acknowledges that as a result of any such assignment of Seller's rights and interest under this Agreement to the Financing Parties: (i) the Financing Parties may have the right upon the occurrence of a default under the Financing Documents to assume or cause a nominee or other third party to assume all of the rights and perform the obligations of Seller under this Agreement; (ii) the Financing Parties, their nominees and designated third parties may have the right to cure defaults by Seller under this Agreement on the same terms and during the same period available to Seller; (iii) the consent of the Financing Parties will be required for any material amendment, modifications or waiver of this Agreement; and (iv) none of the Financing Parties, their nominees or designated third parties or any bondholder or participant for whom they may act shall be obligated to perform any obligation or be deemed to incur any liability herein provided on the part of Seller unless and until such Financing Party, its nominee or designated third party shall have agreed to assume all of its rights and perform the obligations of Seller under this Agreement. No notice to or consent by Purchaser shall be required in connection with any such financing or assignment.

(e) Any assignment which does not comply with the provisions of this Section shall be null and void ab initio.

(f) Except as otherwise expressly provided herein, this Agreement shall not be construed as being for the benefit of any party not a signatory hereto.

27. Confidentiality.

Except as otherwise required by law, each party agrees that this Agreement, including but not limited to, the prices, terms, and costs of operation and service, and information which either party learns about the other party and the other party's business and operations are proprietary and confidential ("Confidential Information"), provided that Seller may refer to this Agreement and the services provided by Seller hereunder in connection with responding to requests for proposals, and further provided that Purchaser and Seller may disclose this Agreement to any financing

sources, and provided further that Seller or Purchaser may disclose this Agreement to a proposed assignee pursuant to Section 26 with whom Purchaser or Seller is negotiating, provided that such proposed assignee enters into a confidentiality agreement whereby it agrees to hold such information in confidence and not to use such information for any purpose other than in connection with the proposed assignment. Except as otherwise required by law, each party agrees that it shall not otherwise disclose the Confidential Information to any third parties (except the financial, legal, business and technical advisors of each party who need such Confidential Information for legitimate purposes and agree to maintain the confidentiality thereof and to further non-disclosure). Nothing in this Agreement shall restrict a party's use or disclosure of the other party's Confidential Information: (a) that is or becomes publicly available through no breach of this Agreement; (b) that is independently developed by it; (c) that was previously known to it without obligation of confidence; or (d) that was acquired by it from a third party which is not, to its best knowledge, under an obligation of confidence. In the event either party receives a subpoena or other valid process requesting disclosure of Confidential Information, the recipient shall promptly notify the other party of such and may, thereafter on the due date for disclosure under such subpoena or other valid process, comply with such subpoena or process to the extent permitted by law, unless the other party (at its own expense) has obtained a valid protective order and provided a copy of such order to the party being requested to disclose the Confidential Information.

28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties hereto regarding the subject matter of this Agreement, and this Agreement supersedes all prior agreements, understandings, representations, and statements, whether oral or written. The parties agree that parol or extrinsic evidence may not be used to vary or contradict the express terms of this Agreement and that recourse may not be had to alleged prior dealings or course of performance to explain or supplement the express terms of this Agreement. No course of dealing between the parties shall operate as a waiver of any rights hereunder.

29. Governing Law and Forum, Enforcement Costs.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to conflicts of law principles thereunder. The parties hereby irrevocably submit in any suit, action or proceeding arising out of or relating to this Agreement or any transactions contemplated hereby, to the exclusive jurisdiction of any court of competent jurisdiction located in Miami-Dade County, Florida, and waive any and all objections to such jurisdiction or venue that they may have under the laws of any state or country, including, without limitation, any argument that jurisdiction, situs and/or venue are inconvenient or otherwise improper. Each party further agrees that process may be served upon such party in any manner authorized under the laws of the United States or Florida, and waives any objections that such party may otherwise have to such process. **EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON OR ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED TRANSACTION OR**

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INSTRUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), ACTIONS OR OMISSIONS OF ANY PARTY RELATED HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THE TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT.

(b) If either party commences any action or proceeding against the other party to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party the actual costs, expenses and reasonable attorney's fees (both at the trial and appellate levels), incurred by such prevailing party in connection with such action or proceeding and in connection with obtaining and enforcing any judgment or order thereby obtained.

30. Amendments.

No change, amendment or modification of this Agreement shall be valid or binding upon the parties unless such change, amendment or modification shall be in writing and duly executed by both parties.

31. Status of the Parties; No Third Party Rights.

Seller shall be an independent contractor with respect to the services performed hereunder, and neither party nor the employees of either, shall be deemed to be the partners, employees, joint venturers, representatives or agents of the other party. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship, or as creating or implying any partnership, joint venture, trust or other relationship between Seller and Purchaser. This Agreement is for the benefit of the parties to this Agreement, their successors and permitted assigns, and no third parties (including, without limitation, creditors of the parties, or the Owner or any sub-tenant of the Premises) shall be entitled to rely on any matter set forth in, or have any rights on account of the performance or non-performance by any party of its obligations under, this Agreement.

32. Drafting Interpretations and Costs; Time of the Essence.

Preparation and negotiation of this Agreement has been a joint effort of the parties and their respective counsel and the resulting document shall not be construed more severely or strictly against one of the parties than against the other. Each party shall be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Agreement. Time is of the essence in the performance of obligations under this Agreement.

33. Captions.

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of such document or the intent of any provision contained therein.

34. Severability; Survivability.

The unenforceability or invalidity of one or more phrases, sentences, clauses or Sections contained in this Agreement shall not affect the enforceability or validity of the remaining portions thereof so long as the material purposes of such document can be determined and effectuated. Any obligations which have accrued prior to the termination or expiration of this Agreement and which are not otherwise expressly discharged pursuant to the terms of this Agreement shall remain in full force and effect until performed, including, without limitation, Sections 11, 12, 14, 17, 19, 20, 21, 25, 26, 27 and 29 through 35.

35. Further Assurances.

Seller and Purchaser each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.

36. License.

Purchaser hereby grants to Seller, its successors and assigns, a license with the right and privilege to (i) inspect, operate, protect, relocate, install, maintain, repair and replace all necessary piping and related facilities and equipment of Seller relating to the delivery system for the District Cooling Services within and about the Premises, whether now existing or constructed by Seller hereafter, and (ii) ingress and egress in connection with Seller's exercise of the rights and privileges granted in sub-section 36(i) herein, and (iii) any and all rights-of-way, access rights, licenses, permission, or privileges, in each case within the Premises, (a) needed by Seller to provide the District Cooling Service to the Premises and (b) to otherwise operate and maintain the District Cooling System within the Premises in accordance with this Agreement. Purchaser hereby covenants and warrants that it has the right and lawful authority to grant the rights described herein and that Purchaser shall execute such further assurances thereof as may be required. The rights, licenses and privileges granted herein shall terminate upon the termination of the Lease or, if later, upon Seller's receipt of written notice of such termination.

« _____ »

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**EXHIBIT A
DESCRIPTION OF PREMISES**

The 38,055 square foot area, constituting the common areas and retail space, owned by Purchaser and located within the building situated at 50 N.E. 9th Street, Miami, Florida 33132 upon all or portions of Lots 1 through 20, inclusive Block 38 North, in the City of Miami, according to the Plat thereof, as recorded in Plat Book "B" at Page 41 of the Public Records of Miami-Dade County, Florida, inclusive of the areas indicated below:

<u>Location</u>	<u>Area (Sq. Ft.)</u>
Ground floor common areas and retail space	7,216
Second floor common areas	1,312
Third floor common areas	5,427
Fourth floor common areas	5,427
Fifth floor common areas	5,427
Sixth floor common areas	1,312

**EXHIBIT B
DESCRIPTION OF INTERCONNECTION**

The interconnection points on the Property for the piping to provide District Cooling Services to the Premises from FPLTS' on-site pumping equipment are described in the following Plans and Specifications:

Plans prepared by Bermello Ajamil et al.
10/03/00 Rev 2 aka RCO #026
Technology Center of the Americas
50 NE 9th Street
Miami, Florida 33132

**EXHIBIT C
PURCHASER CHILLED WATER QUALITY STANDARDS**

All capitalized terms used and not defined in this Exhibit shall have the meanings attributed to them in the body of the District Cooling Service Agreement to which it is attached.

Purchaser owns plate heat exchanger, if any, and interconnect piping at the Premises specified in Exhibit B to the District Cooling Service Agreement. Efficient operation of the heat exchanger is critical to the supply of chilled water at projected cost and the ability to meet designed heat loads. The plate heat exchanger and the entire piping system must be protected from corrosion and fouling conditions that can negatively affect the operation of the system and the delivery of the District Cooling Services.

To ensure efficient and dependable operations Seller requires certain minimum standards for the control of water quality in the secondary systems, whether open or closed, servicing non-Seller-owned equipment on the Premises. Additionally, in the event of a heat exchanger leak or a bypass event the secondary system water treatment must be compatible with the primary system water treatment. Similarly, to ensure Purchaser's plate heat exchanger, if any, and piping are protected from corrosion and fouling conditions that can negatively affect their operation the Purchaser requires that Seller follow standards for the control of water quality in the primary system.

The following water treatment specification addresses procedures and standards in the secondary system for which Purchaser is responsible on its side of the interconnection. Seller shall be responsible for compliance with a identical water treatment specifications and standards with respect to the primary system on its side of the interconnection. Additionally, to permit Seller to appropriately monitor and protect its system, Purchaser shall give Seller at least five (5) days notice before making any equipment changes that may affect water quality in the primary or secondary systems.

Water treatment requirements begin when water is first introduced into a new piping system. The following water treatment specification addresses three phases of the water treatment program for which Purchaser is responsible on its side of the interconnection point and Seller is responsible on its side of the interconnection point:

**Hydrostatic Testing of New Piping
Chemical Cleaning of New or Existing Piping
Treatment and Monitoring**

I. Hydrostatic Testing of New Piping

- A. The following hydrostatic testing of new piping will be required by Purchaser on its side of the interconnection and Seller on its side of the interconnection:**

1. To prevent flash corrosion, at no time shall these systems be in contact with untreated water. Add a liquid corrosion inhibitor formulation consisting of sodium nitrite and borate to attain a pH range of 8.0 to 10.0 and a nitrite range of 1000 to 1500ppm as NO_2^- . Corrosion inhibitor is to be added concurrently with clean city water used for hydrostatic testing. System water is to be analyzed for corrosion inhibitor level and pH by the chemical treatment company and results are to be reported in writing to Seller and Purchaser.
2. Test hydraulically at one and one half the maximum design operating pressure; maintain for not less than 24 hours. Piping shall remain completely watertight during this time. Fill piping with clean water and corrosion inhibitor sufficiently in advance of test to allow it to come to room temperature, so that any sweating may evaporate.
3. Drain test water from piping systems after testing and repair work is completed. The piping is to remain flooded with water containing corrosion inhibitor until the cleaning and flushing process is to begin. Ideally chemical cleaning should immediately follow hydrostatic testing.

II. Cleaning of New and Old Piping

- A. With respect to the cleaning of new and old piping, Purchaser will have responsibility therefor on its side of the interconnection and Seller will have responsibility therefor on its side of the interconnection:
 1. Use an alkaline phosphate cleaning agent containing anti-foam which will not in anyway interact with any of the materials of construction in the system to produce corrosion, form deposits, weaken, reduce the life or in any way have a detrimental effect on any system components. A sample of circulation water with cleaner added is to be analyzed for pH, phosphate and conductivity. The test results are to be reported in writing to Seller and Purchaser.
 2. Circulate for a minimum of 12 hours with all circulating pumps in service and all isolating valves open to allow contact with all piping and equipment within the systems.
 3. Drain the system rapidly from all low points such as mud legs, flush with clean water, clean strainers and screens and refill the system with clean water. Immediately test for pH and conductivity. If conductivity is above 300 μS continue flushing until the conductivity is below 300 and the pH is within $\frac{1}{2}$ unit of city water and there is no nitrite residual. Immediately

drain the system and add clean water and water treatment chemicals.

4. The heat exchanger (if any) will not go into active service until the condition of the water is verified by the party responsible for such heat exchanger (if any).

III. Treatment and Monitoring

A. Water Piping

1. Water treatment chemicals must be compatible with the products used for treatment of Seller's primary chill system.
2. Treatment chemicals will consist of the following basic formulation:

Sodium Hydroxide
Sodium Molybdate
Tolytriazole
Biocide (gluteraldehyde or compatible product)

3. The following parameters shall be maintained:

PH	9.0 – 10.3
Molybdenum as Mo	80 – 100ppm
Tolytriazole	min 10ppm
Total Bacteria	max 1000 cfu/ml
Corrosion Rates-Mild Steel	max 0.5mpy
-Copper	max 0.1 mpy
No pitting	

4. Seller will periodically test the secondary chill water and primary chill water. Variance from the specified parameters will be reported in writing to Purchaser which shall perform corrective measures on its side of the interconnection and report as to the same in writing and in reasonable detail to Seller within one week. Seller shall perform corrective measures on its side of the interconnection and report as to the same in writing and in reasonable detail to Purchaser within one week.

EXHIBIT D

ASSIGNMENT

This ASSIGNMENT (the "Assignment"), dated this ___ day of _____, 20___, but effective as of 11:59 p.m. on _____, 20___ (the "Effective Date"), from _____, a corporation/general partnership/limited partnership/limited liability company (the "Assignor"), to _____, a corporation/general partnership/limited partnership/limited liability company (the "Assignee").

WHEREAS, the Assignee is acquiring in its entirety the Assignor's leasehold interest in the Premises described on Exhibit 1 hereto, together with all improvements thereto owned by Assignor;

WHEREAS, the Premises is subject to that certain District Cooling Service Agreement dated _____ (the "Cooling Agreement"), by and between the Assignor and FPL Thermal Systems, Inc., a Florida corporation ("FPLTS"), which provides that FPLTS has the right to provide district cooling services at the Premises for the term of the Cooling Agreement and this right concerns the premises and constitutes a covenant running with the assigned interest in the premises, binding upon the successors and assigns of the Assignor;

WHEREAS, under the Cooling Agreement, a condition precedent to the assignment of the entire leasehold interest in the Premises by the Assignor to the Assignee is that the Assignor assign, and the Assignee assume, the Cooling Agreement and all of its terms and conditions in form and substance reasonably satisfactory to FPLTS; and

WHEREAS, FPLTS is an intended third party beneficiary of the provisions of this Assignment;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and all other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the Assignor and the Assignee hereby agree as follows.

1. The Recitals to this Assignment are true and correct and incorporated herein by reference and made a part hereof.
2. Assignor hereby sells, grants, conveys, assigns, transfers and delivers to Assignee all of Assignor's right, title and interest in and to, and obligations and duties under, the Cooling Agreement and the Assignee hereby purchases, assumes and accepts the Cooling Agreement and agrees to perform and discharge all obligations thereunder from and after the Effective Date. Assignee agrees to be bound by all of the covenants and agreements of the Assignor under the Cooling Agreement.

3. Assignor and Assignee each hereby expressly represents and warrants, for the benefit of the other and of the FPLTS and its affiliates and assigns, that:

- (a) it is duly organized and existing and it has full right power and authority to take, and has taken, all action necessary to execute, deliver and perform this Assignment and the Cooling Agreement and any other documents required or permitted to be executed or delivered by it in connection therewith, and to fulfill its obligations hereunder.
- (b) no notices, consents, authorizations, filings or approvals of or to any person are required (other than any already given or obtained) for its due and lawful execution, delivery and performance of this Assignment.
- (c) this Assignment has been duly executed and delivered by it and constitutes its valid and legally binding obligation of it, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.
- (d) it has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable law, ordinance, regulation, rule, judgment, writ, decree, award, permit or order which would have a material adverse effect on its ability to perform hereunder.
- (e) it has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which would have a material adverse effect on its ability to perform hereunder.

4. The Assignor hereby represents and warrants to the Assignee that all payment and other obligations to be performed by it through the Effective Date under or pursuant to the Cooling Agreement have been fully performed and discharged.

5. Assignor shall indemnify and save Assignee harmless from and against any and all losses, damages, liabilities, costs or expenses, including attorneys' fees and costs (both prior to litigation and through all trial and appellate litigation) which are based upon or arise out of the Cooling Agreement prior to the Effective Date, including, without limitation, any breach by Assignor of any of the terms, covenants or conditions of the Cooling Agreement.

6. Assignee shall indemnify and save Assignor harmless from and against any and all losses, damages, liabilities, costs or expenses, including attorneys' fees and costs (both prior to litigation and through all trial and appellate litigation) which are based upon or arise out of the Cooling Agreement from and after the Effective Date, including, without limitation, any breach by Assignee of any of the terms, covenants or conditions of the Cooling Agreement.

7. Any individual, partnership, corporation or other entity may rely, without further inquiry, upon the powers and rights herein granted to the Assignee and upon any notarization, certification, verification or affidavit by any notary public of any state relating to the authorization, execution and delivery of this Assignment or to the authenticity of any copy, conformed or otherwise, hereof.

8. All of the terms and provisions of this Assignment will be binding upon Assignor and its successors and assigns and will inure to the benefit of Assignee and FPLTS and their respective successors and assigns.

9. This Assignment shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to conflicts of law principles thereunder.

10. This Assignment may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

STATE OF _____)
) ss:
COUNTY OF _____)

I hereby certify that on this ____ day of _____, 20____, personally appeared _____, [Title] of [Name of Assignor], a _____ under the laws of the State of _____, who is personally known to me or who produced the following identification (_____), and he acknowledged before me that he executed the foregoing document as his free act and deed as such officer, for the uses and purposes therein mentioned, and that said instrument is the act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and seal in the County and State aforesaid as of this ____ day of _____, 20__.

(Name of Notary)
Notary Public
State of _____
Commission or Serial No.: _____
My commission expires:

EXHIBIT 1
LEGAL DESCRIPTION OF PREMISES

EXHIBIT E

EMERGENCY CONTACT PROCEDURES

A. Seller's Emergency Contacts

First

Betsy Goll

Senior Engineer

305-372-3068 Office

305-372-3067 Fax

305-588-3945 Cell Phone

305-464-7430 Beeper

305-893-7442 Home

Second

Rex Noble

Manager Construction

561-691-7670 Office

561-691-7611 Fax

561-818-9730 Cell Phone

1-800-241-4653 #271-5369 Beeper

561-781-5521 Home

Third

Ed Cancio

Director Business

305-552-3308 Office

305-229-5855 Fax

305-606-5167 Cell Phone

305-228-9432 Beeper

305-663-0626 Home

B. Purchaser's Emergency Contacts

First

Michael Holmquist
Sr. Property Manager
Terremark Worldwide, Inc.

(305) 860-7852

(305) 856-8190

(305) 219-9739

(305) 365-0813

Office
Fax
Cell Phone
Beeper
Home

Second

Ed Jacobsen
President
Terremark Technology Contractors, Inc.

(305) 860-7805

(305) 856-8190

(305) 218-3105

(954) 772-0878

Office
Fax
Cell Phone
Beeper
Home

Third

Bill Biondi
President
Terremark Management Services, Inc.

(305) 860-7820

(305) 856-8190

(305) 582-4288

(305) 854-3363

Office
Fax
Cell Phone
Beeper
Home

NAP OF THE AMERICAS, INC.
DISTRICT COOLING SERVICE
AGREEMENT

DISTRICT COOLING SERVICE AGREEMENT

Service Schedule

This Service Schedule is a part of the District Cooling Service Agreement (the "Agreement") dated and effective as of December 1, 2000 (the "Effective Date"), by and between FPL Thermal Systems, Inc., a Delaware corporation (as "Seller"), and NAP of the Americas, Inc., a Florida corporation (as "Purchaser"). As used in the Agreement the capitalized terms listed below shall have the following meanings:

- Purchaser:** NAP of the Americas, Inc., a Florida corporation
- Premises:** The 109,290 square foot area, constituting substantially all of the second story, leased by Purchaser and located within the building(s) at 50 N.E. 9th Street, Miami, Florida 33132, as more fully described in Exhibit A
- Lease:** The Lease Agreement between Technology Center of the Americas LLC, as landlord, and NAP of the Americas, Inc., as tenant, dated as of the 16th day of October, 2000, with respect to the Premises
- Owner:** Technology Center of the Americas LLC, a Delaware limited liability company, as owner of the Premises and the building(s) within which the Premises is located
- Service Commencement Date:** The later of the following dates: (i) April 1, 2001 (subject to extension as a result of an Event of Force Majeure) and (ii) the date which Owner has completed the construction and installation of the Owner's Equipment (as defined in the District Cooling Access and Easement Agreement between Seller and Owner as amended from time to time ("Access and Easement Agreement")) and the Pumps (as defined in the Access and Easement Agreement) at the Property (as defined in the Access and Easement Agreement).

Initial Term: 20 years and 3 months from the Service Commencement Date. The Initial Term shall be adjusted by amendment hereto to be co-terminous with the initial term of the Lease, but shall in no event be less than 20 years nor more than 22 years.

Contract Demand: 2,000 tons of chilled water service* (except that through the end of the month in which the Service Commencement Date occurs the Contract Demand shall be up to 1,000 tons of chilled water service)

Contract Demand Rate: \$185.00 per ton*

Estimated Annual Ton-Hours: 14,700,000 Ton-Hours

Peak Water Temperature: A temperature not to exceed 41 degrees F.*

Return Differential: 17 degrees F.

Interconnection Cost: \$0.00

A. Electricity Charge: \$0.06065 per ton-hour of chilled water service*

B. Water Charge: \$0.01545 per ton-hour of chilled water service*

C. Base Charge: \$0.03500 per ton-hour of chilled water service*

Consumption Charge (A+B+C): \$0.11110 per ton-hour of chilled water service*

*Subject to adjustment in accordance with the terms of the Agreement.

Notices pursuant to Section 25 of the Agreement should be sent to the following addresses or facsimile numbers--

If to Purchaser: NAP of the Americas, Inc.
2601 S. Bayshore Drive, Suite 900
Miami Florida 33133
Attn: Brian Goodkind
Facsimile number: (305) 856-8190

If to Seller: FPL Thermal Systems, Inc.

700 Universe Boulevard, Juno Beach, Florida 33408
Attn: Vice President-District Cooling
Facsimile number: (561) 691-7698

With a copy to:
700 Universe Boulevard
Juno Beach, Florida 33408
Attn: General Counsel
Facsimile number: (561) 691-7698

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date listed above.

PURCHASER:
NAP of the Americas, Inc.

SELLER:
FPL Thermal Systems, Inc.

By: Susan Traino
Name: Susan Traino
Title: Vice President

By: John R. Haney
Name: **John R. Haney**
Title: V.P.

**FPL THERMAL SYSTEMS, INC.
DISTRICT COOLING SERVICE AGREEMENT**

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District Cooling Service Agreement

The attached Service Schedule is a part of this Agreement and the Service Schedule and this Agreement together constitute one instrument. Seller and Purchaser have completed and executed this Agreement as of the Effective Date by signing the Service Schedule. Certain capitalized terms that are used hereinafter are defined on the Service Schedule.

Recitals

WHEREAS, Seller is a district cooling company engaged in the business of producing and delivering district cooling service pursuant to a franchise with the City of Miami and Seller's rights are subject to the terms and conditions thereof; and

WHEREAS, Purchaser occupies and operates the Premises (the Premises being more fully described in Exhibit A) and the Seller offers such cooling service to occupants of the building within which the Premises is located (the "Property"); and

WHEREAS, Purchaser has agreed to enter into a long-term contract with Seller to purchase district cooling service for the Premises pursuant to the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser hereby agree as follows.

1. Purchase and Sale of District Cooling Service.

Subject to the terms and conditions of this Agreement, upon and after the Service Commencement Date, Seller shall deliver and sell to Purchaser, and Purchaser shall accept and purchase district cooling services and/or chilled water cooling services from Seller on an all requirements basis for use within the Premises for the Term of this Agreement. This provision shall not be deemed or construed to prohibit Purchaser or its contractors or agents from providing cooling services or installing air conditioning equipment on the Premises or the Property so long as Purchaser or its contractors or agents install such equipment solely within the Premises or the Property and are providing cooling services solely for use within the Premises. Purchaser shall take all required action, not otherwise the obligation of Seller hereunder, to enable it to purchase district cooling service commencing on the Service Commencement Date and continuing throughout the Term in accordance with this Agreement.

2. Term.

This Agreement is in full force and effect, and the Initial Term of this Agreement commences, as of the Effective Date. This Agreement cannot be terminated or canceled except as otherwise expressly set forth herein. Seller shall furnish district cooling service in accordance with the terms of this Agreement commencing on the Service Commencement Date and continuing through the duration of the Initial Term, which shall be renewed, subject to the agreement of Seller and

Purchaser, for terms equal to the renewal terms of the underlying Lease for (each a "Renewal Term" and, together with the Initial Term, the "Term"), subject to the terms and conditions set forth in this Agreement.

3. Contract Demand.

(a) The Contract Demand for district cooling service during the Term of this Agreement shall be as set forth on the Service Schedule, subject to permanent increase or decrease as provided in this Section 3. A ton means refrigeration capacity equivalent to the cooling capacity of one ton of ice melting in a period of 24 hours (at a rate of 12,000 British thermal units per hour).

(b) The design temperatures for purposes of this Agreement shall be based on ASHRAE standards of one percent (1%) of mean for Miami, Florida, 91 degrees Fahrenheit dry bulb and 77 degrees Fahrenheit wet bulb. For purposes hereof, ASHRAE means the American Society of Heating, Refrigeration and Air Conditioning Engineers.

(c) The actual demand ("Actual Demand") shall be Purchaser's maximum demand for district cooling service, in tons, in any one-hour period during any month.

(d) If at any time Purchaser's Actual Demand exceeds the Contract Demand, Seller shall, subject to Section 3(g), provide such Actual Demand as requested by Purchaser (the "Excess Contract Demand"). Purchaser shall pay the Contract Demand Charge for the entire month in which such Excess Contract Demand was incurred at the highest Excess Contract Demand for that month. Upon the fourth (4) month of Actual Demand exceeding Contract Demand during any five-year period, the average of the highest Excess Contract Demand occurrences in each of such four (4) months shall, at Seller's sole discretion but subject to Section 3(g), become the new Contract Demand for the balance of the Term of this Agreement.

(e) If Purchaser's Actual Demand is less than the Contract Demand by more than ten percent (10%) or three hundred (300) tons during and throughout any six (6) consecutive month period, Purchaser may provide written notice of such event stating to Seller that it wants a reduction and indicating the amount of such reduction (the "Requested Reduction"). Seller shall decrease the Contract Demand by the amount of the Requested Reduction, or portion thereof, provided such excess demand (or portion thereof, but in no event less than 300 tons per instance) is sold to other customer(s) with at least as favorable terms and pricing and subject to such new customers meeting the criteria set forth in Section 26(b). Purchaser shall pay the associated transition fee, i.e., the actual costs incurred by Seller for transferring the demand, at the time of the Contract Demand adjustment, including, without limitation, interconnection, administrative and legal fees and costs in negotiating with such new customers (collectively, the "Transfer Costs") on a pro rata basis measured by the Requested Reduction (or portion thereof so being sold to the new customer) and the total contract demand of the new customer. The new Contract Demand shall be effective on the date of the transfer of such excess demand to the new customer(s) and subject to Purchaser's payment of the Transfer Costs, and such new Contract Demand shall continue for the remainder of the Term of this Agreement.

(f) If Purchaser at any time desires to permanently increase its cooling service at the Premises, Purchaser may notify Seller in writing of Purchaser's request to permanently increase the Contract Demand under the terms and conditions of this Agreement. Such notice shall contain a designation of the exact number of additional tons which Purchaser desires. Within thirty (30) days of Seller's receipt of such notice from Purchaser, Seller shall, subject to Section 3(g), notify Purchaser of the new Contract Demand. Any delivery of new Contract Demand shall commence as soon as is reasonably practicable after.

(g) Seller shall provide the required excess cooling capacity to Purchaser under Section 3(d) or (f) during the Term of this Agreement if Seller's applicable facilities: (i) have the capacity to deliver and are not otherwise reserved, or (ii) can be reasonably, economically and practically expanded, in Seller's judgment, to meet such new capacity and such new capacity is not otherwise reserved. Seller shall undertake to provide information on available additional capacity from time to time upon the request of Purchaser.

4. Rates and Charges.

The rates and charges hereunder, subject to adjustment as provided in this Section 4 from and after the Effective Date, are as follows:

(a) (i) Beginning on the first day of the month in which the Service Commencement Date falls and continuing during and throughout the Term, Purchaser shall pay a Monthly Billing Charge for district cooling services and for the availability of the Contract Demand under this Agreement. The Monthly Billing Charge shall be determined as follows:

$$\text{Monthly Billing Charge} = \text{Contract Demand Charge}/12 + \text{Consumption Charge} \\ + \text{Other Charges} + \text{Franchise Fee.}$$

(ii) If Purchaser is unable to receive or utilize district cooling service at the time of the Service Commencement Date or at any time during or throughout the Term of this Agreement, Purchaser shall continue to pay the Monthly Billing Charge and all other amounts due under this Agreement, regardless of any Event of Force Majeure or other cause of any type or description (other than any act or omission of Seller, which shall be governed by Section 23 hereof).

(b) The Contract Demand Charge ("Contract Demand Charge") is determined as follows:

$$\text{Contract Demand Charge} = \text{Contract Demand (tons)} \times \text{Contract Demand Rate (\$/ton)}$$

Effective at the beginning of each and every calendar year throughout the Term of this Agreement, the Contract Demand Rate then in effect shall be subject to increase or decrease in accordance with the Index (as defined in, and in accordance with, Section 4(c)(iii)).

(c) The Consumption Charge includes the following, as measured in ton-hours, which amount shall be billed monthly in arrears: Consumption Charge = Electricity Charge + Water Charge + Base Charge. An annual adjustment under subsections 4(c)(i)-(iii) shall take effect on each January 1 during the Term and Seller shall endeavor to notify Purchaser in writing of any such adjustment(s) approximately 60 days before the end of each calendar year. The adjustments under Section 4(c)(i) and (iii) shall be measured by the previous 12 month percentage increase or decrease in the applicable index or rate as measured between the month of August immediately preceding the adjustment (or if the index or rate is not published for such month then the index or rate published for the month closest to, but after, such month) and the month of August in the preceding year (or if the index or rate is not published for such month then the index or rate published for the month closest to, but after, such month) or, if the index or rate is not available, Seller shall utilize a reasonable substitute as prepared by any successor agency charged with maintenance of such index or rate or any third party not affiliated with Seller.

(i) The Electricity Charge shall be adjusted annually by multiplying the Electricity Charge then payable immediately prior to the adjustment by the percentage increase or decrease in the Consumer Price Index -- All Urban Consumers for Electricity (Miami/Ft. Lauderdale) as published by the United States Department of Labor, Bureau of Labor Statistics.

(ii) The Water Charge shall be adjusted annually based upon the annual average percentage change in the applicable Miami-Dade Water and Sewer Authority (or other applicable authority) rate as in effect as of August of each year (the "MWASA Rate Adjustment").

(iii) The Base Charge shall be adjusted annually by multiplying the Base Charge then payable immediately prior to the adjustment by the percentage increase or decrease in the Consumer Price Index - All Urban Consumers (CPI - U.S. City Average All Items; base year 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index").

Notwithstanding any annual adjustment under subsections 4(c)(i)-(iii), if at any time an increase or decrease in either the Electricity Charge or Water Charge of greater than ten percent (10%) shall have occurred during the period subsequent to the last applicable adjustment measurement month used in calculating the last preceding adjustment, then either party may give written notice detailing such cost increase or decrease and thereafter an additional adjustment to the Electricity Charge and/or Water Charge, as applicable, shall take effect on the first day of the next succeeding month, provided that if the notice detailing such cost increase or decrease is sent or delivered after the 15th day of a month such adjustment shall take effect on the first day of the second succeeding month.

(d) (i) The Other Charges shall include, but not be limited to, (A) any and all other amounts billable to Purchaser under this Agreement such as costs due to Purchaser's failure to maintain water quality standards as provided in Section 7(b), late charges described in Section

19(b), indemnity payments under Section 17, and additional services as provided in Section 3; (B) an amount equal to the Deficit Consumption Amount (as hereinafter defined), if any, and (C) on a pro rata basis, as appropriate (based upon Purchaser's pro rata share of service provided or reserved by Seller), of all costs and expenses incurred by Seller due to a change in any local, state or federal Law or interpretation thereof by judicial decision or regulatory or governmental agency or the enactment or promulgation of any new local, state or federal Law after the date of this Agreement, which requires Seller to incur additional costs and expenses in the performance under this Agreement (other than Seller's income taxes), but expressly excluding any penalties assessed against Seller for the failure to comply with any Law. Notwithstanding the foregoing, in the event that the Other Charges in this subsection (d)(i)(C) increase by a one-time charge of (A) more than \$5,000 (but less than \$100,000), then Purchaser shall have the option to pay such increase in equal monthly installments over a 12-month period, commencing with the month immediately following Purchaser's receipt of written notice thereof; or (B) \$100,000 or more, then Purchaser shall have the option to pay such increase, in equal monthly installments of principal and interest, over the balance of the then current term, which amount shall bear interest at the lower of (1) the prime rate plus 400 basis points per annum, compounded monthly, or (2) the highest rate then permitted by law, from the date of such charge until paid in full. Purchaser may prepay these charges at any time, which prepayments shall be applied first to accrued and unpaid interest, if any, and thereafter to the balance. For purposes hereof, (x) Laws shall mean all federal, state, local or municipal law, statute, ordinance, rule, regulation, restriction (including, without limitation, zoning), order, judgment, administrative order, decree, administrative and judicial decision; and (y) "prime rate" shall mean the "prime rate" as published in the *Wall Street Journal (Eastern Edition)* on the date of such charge; provided, however, that if on such date the *Wall Street Journal (Eastern Edition)* does not publish the "prime rate" or the *Wall Street Journal (Eastern Edition)* is not published, then the "prime rate" shall be determined as aforesaid by taking the average of the "prime rates" or "base rates" of three (3) "money center" banks selected by Seller and quoted by such banks on the business day for which the determination of the prime rate as aforesaid shall be made by Seller. Interest shall be calculated as aforesaid and shall remain fixed over the balance of the then current term. Seller's calculation of the Other Charges, absent manifest error, shall be binding and conclusive.

(ii) In the event that, during any calendar year beginning on or after the third anniversary date of the Service Commencement Date, the annual ton-hour consumption of Purchaser is less than twenty five percent (25%) of the Estimated Annual Ton-Hours (Purchaser's actual annual consumption being herein referred to as the "Deficit Consumption Number"), then Purchaser shall pay an amount equal to the Consumption Charge applicable for that year multiplied by the difference between the Deficit Consumption Number and an amount equal to twenty-five percent (25%) of the Estimated Annual Ton-Hours (the "Deficit Consumption Charge"), which amount shall be due and payable one month after the end of such period. With respect to any partial year occurring at the end of the Term, the Estimated Annual Ton-Hours shall be pro rated in determining any Deficit Consumption Charge.

(e) Franchise Fee shall mean the then current franchise fee percentage payable by Seller to the City of Miami pursuant to that certain Franchise Agreement between Seller and the

City of Miami with respect to the operations of Seller at the Premises and the applicable gross revenues payable to Seller by Purchaser.

(f) Purchaser shall have the right to audit the books and records of Seller with respect to the Other Charges, Franchise Fee percentage and Transfer Costs (as defined in Section 3(e)) not more frequently than annually at its sole cost and expense, provided that, if any final audit shows an overall discrepancy of more than five percent (5%) in favor of Seller, then Seller shall reimburse Purchaser for the costs and expenses of such audit, as well as making any required reimbursement. If Seller disputes such audit results, then each party shall select an auditor (which shall be unrelated to such party and shall not have done business with such party or its affiliates within the last five years), and the two auditors shall select a third auditor (which shall be unrelated to both parties and shall not have done business with either party or their respective affiliates within the last five years). The decision of such third auditor shall be final and binding upon the parties absent manifest error. The fees and expenses of such third auditor shall be borne by the parties in proportion to the amount by which the determination of such accounting firm differs from the respective determinations of the parties.

5. Supply Standards and Water Temperature.

Seller represents, warrants and covenants to Purchaser as follows, provided that Purchaser acknowledges and agrees that the exclusive remedies for breach or default of this Section 5 are the remedies provided in Sections 15, 23 and 24, as applicable:

(a) Seller agrees to construct, operate, and maintain the facility and its equipment, piping and fixtures providing district cooling service under this Agreement in accordance with prevailing industry standards and generally accepted engineering practices.

(b) Seller shall provide chilled water on Seller side of the heat exchanger, if any, or at the interconnection point to the Premises if there is no heat exchanger, at or below the Peak Water Temperature, however, for maintenance purposes or unplanned outages, the temperature shall not exceed 41 degrees F.

(c) The following equation will be used to predict changing chilled water supply conditions:

$$\text{Chilled water load (tons)} = 500 \times \text{Gallons per minute} \times \text{Temperature difference } \Delta \div 12,000 \text{ BTUs per ton.}$$

6. Delivered Ton-Hours.

The ton-hours delivered to Purchaser by Seller shall be based on the greater of (a) the actual ton-hours delivered, or (b) the ton-hours delivered calculated with a return water temperature difference equal to the Return Differential subject to a cap of no more than twenty percent (20%) over (a) of this Section 6. The water temperature difference between supply and return shall be measured on Seller's side of the heat exchanger, if any, or at the interconnection point to the

Premises if there is no heat exchanger. Seller will use commercially reasonable efforts to provide a cooling supply control system designed to respond to Purchaser's changing cooling demand conditions.

7. Interconnection Responsibilities.

(a) Seller shall provide and maintain all necessary piping up to the connection point agreed to and described in Exhibit B. The Purchaser shall design, purchase, install, own and maintain the heat exchanger, if any, and maintain associated piping on Purchaser's side of the interconnection point referenced on Exhibit B, which are (or upon completion of installation, shall become) the responsibility of Purchaser. Purchaser is solely responsible for all of its own equipment and related maintenance and repairs, and Seller is solely responsible for all of Seller's equipment and the maintenance and repair thereof. Seller shall also be responsible for the maintenance and repair of all Owner's equipment in accordance with the District Cooling Access and Easement Agreement between Seller and Owner as amended from time to time ("Access and Easement Agreement").

Purchaser agrees that Seller has the right, but not the duty, to inspect the interconnection and related equipment and piping for the purpose of determining that Seller's and Owner's equipment and piping will not be damaged or otherwise rendered ineffective because of the operation of Purchaser's equipment. Purchaser agrees that Seller's inspection right does not in any way impose a duty or a liability on Seller in conjunction with the lawful, safe, or proper operation of Purchaser's equipment and piping. Without imposing any duty, obligation, or liability upon Seller, if an inspection by Seller does indicate a condition that has caused, or is anticipated by Seller to cause, damage to Seller's equipment, Owner's equipment or personal injury, Seller shall notify Purchaser of such condition.

(b) If there is no heat exchanger at the interconnection point to the Premises, Seller shall be responsible for maintaining chilled water quality standards in accordance with Exhibit C with respect to water entering the Premises at the interconnection point, and Purchaser shall be responsible for ensuring that there is no deterioration in the quality of the water exiting the Premises from the quality of the water entering the Premises. If there is a heat exchanger at the interconnection point to the Premises, Purchaser shall be responsible for maintaining chilled water quality standards in accordance with Exhibit C with respect to water in the secondary loop on Purchaser's side of the interconnection point, and Seller shall be responsible for maintaining chilled water quality standards in accordance with Exhibit C with respect to water in the primary loop on Seller's side of the interconnection point. In the event that either party determines that the other party is not meeting such chilled water quality standards, then it shall give written notice thereof in reasonable detail to the other party and said other party shall have 30 days after such notice to cause such water quality standards to be met. Each party will be responsible for damage to any heat exchanger at the interconnection point (including, without limitation, replacement thereof if reasonably necessary) resulting from such party's failure to meet the chilled water standards. Seller shall be liable to for any damage to Purchaser's chilled water handling equipment (including, without limitation, replacement thereof if reasonably necessary) resulting from Seller's failure to meet the chilled water standards. Purchaser shall be liable to for any damage to Seller's chilled water handling equipment and any third party's chilled water handling equipment within

the Property (including, without limitation, replacement thereof if reasonably necessary) resulting from Purchaser's failure to meet the chilled water standards.

(d) Seller shall have the right to immediately suspend service to Purchaser at such times as in Seller's sole judgment water quality or deterioration on the Premises shall pose a significant risk to the cooling system generally or any part thereof.

(c) Purchaser shall maintain, repair and replace its chilled water piping, chilled water distribution equipment and all other Purchaser owned or operated equipment in accordance with prudent engineering practice and applicable maintenance standards so that its equipment is in a condition suitable to receive and utilize chilled water and complies with all applicable codes and prevailing industry standards.

8. Meters and Payment of Bills.

(a) Seller shall, at its cost, install meters to measure the amount of chilled water used by Purchaser. Purchaser shall provide Seller adequate space for such meters. Seller at its sole expense shall provide calibration testing of the meters prior to their installation. After installation of the meters, Seller shall check meter calibration in accordance with manufacturers' specifications at Seller's sole expense.

(b) Purchaser may require Seller to perform calibration testing on the meters at any time (not more than quarterly) with prior written notice, or Purchaser may (not more than annually), at its own cost and expense, retain a licensed, certified third party to perform calibration testing. In either such event, if the meters are found to be properly calibrated within 5%, then the cost of such calibration testing shall be paid by Purchaser.

(c) Meters shall be read monthly by and at the expense of Seller, unless otherwise agreed to in writing by the parties, and Seller shall render bills based on the meter readings. The invoiced amount shall be due and payable by Purchaser thirty (30) days after the date of invoice.

(d) In the event a meter is found to be malfunctioning by either party, such malfunction shall immediately be reported to the other party, and Seller shall replace or repair the meter forthwith. Based upon the previous month's daily usage or extrapolated from best available reliable data, as reasonably determined by Seller, Seller will compute the bill for district cooling service during the period of meter malfunction and, absent manifest error, such computation shall be relied upon during any period when the meter is found to be malfunctioning.

9. Easements and Access.

Purchaser, for areas in which Purchaser has occupancy, control or authority, shall execute and in a timely manner all documents necessary to grant to Seller at no additional cost all necessary access rights or permission to construct as may be required by Seller to connect the district cooling system to the points of entry and exit at the Premises and to otherwise operate and maintain the

system in accordance with this Agreement, free and clear of all liens, rights of third parties, judgments, security interests and encumbrances whatsoever paramount to, or inconsistent with, the rights of Seller contemplated in this Agreement. Purchaser also agrees to execute in a timely manner such instruments giving further effect to the provisions of this Section 9 as may be reasonably required by Seller. Purchaser shall provide Seller access to Purchaser's facilities on a twenty-four (24) hour basis, upon notice by Seller to Purchaser's premises manager, to permit Seller to access its equipment, to read and test meters, and to perform any other functions as may be necessary for Seller to fulfill its obligations under this Agreement.

10. Licenses and Easements.

The performance of Seller's obligations under this Agreement requires and is subject to the condition that Seller shall receive and retain or be satisfied that it will be able to obtain all applicable federal, state, local and Owner approvals, permits, licenses, easements, rights-of-way and authorizations necessary for the operation, production, transportation, and delivery of this district cooling service and for the construction of all necessary facilities for such district cooling service. Purchaser shall have primary responsibility for obtaining such items relating to the Owner or the Premises and Seller shall have primary responsibility for obtaining all other such items, including, without limitation, those relating to the operation, production, transportation, and delivery of district cooling services under federal, state or local law.

11. Representations, Warranties, and Covenants of Seller.

Seller expressly represents, warrants, and covenants, on an ongoing basis, that:

(a) Seller shall use its commercially reasonable efforts to obtain and thereafter maintain all of the permits and rights referred to in Section 10.

(b) Except as otherwise contemplated by this Agreement, Seller shall not cause or voluntarily permit any modification or alteration to any part of Purchaser's equipment located at the Premises, including without limitation any and all metering equipment, valves, conduits and piping, except in an emergency where life, property or service to Purchaser is threatened.

(c) The execution and delivery by Seller of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of Seller's organizational documents or to the best of its knowledge any applicable law, rule or regulation; and to the best of its knowledge do not and will not conflict with or cause any breach or default under any agreement or instrument to which Seller is a party or by which it or any of its properties is bound.

(d) This Agreement has been duly executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

(e) Seller has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable law, ordinance, regulation, rule, judgment, writ, decree, award, permit or order which would have a material adverse effect on its ability to perform hereunder.

(f) Seller has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which would have a material adverse effect on its ability to perform hereunder.

(g) Seller shall not transfer or assign its obligations to deliver district cooling service to Purchaser except as otherwise provided by Section 26(c) hereof or as otherwise expressly permitted in this Agreement.

(h) To the extent necessary for Purchaser to perform its connection obligations to Seller's heat exchanger, if any, under this Agreement, Seller will provide Purchaser with its blueprints, plans, surveys, drawings or other information of a technical nature which Purchaser may reasonably request which are relevant to the chilled water delivery interconnection, provided that, no warranties are given as to any such documentation by Seller or for the particular use to which such documentation may be made by Purchaser. Purchaser may rely upon the accuracy of any such documents provided by Seller without the need for separate investigation, and Purchaser shall not be responsible for damage or loss caused by such reliance.

(i) Seller shall maintain, repair and replace its chilled water facility, piping, equipment, and the interconnection of Owner's pipes to Purchaser's facilities (as well as the Owner's other equipment in accordance with the Access and Easement Agreement), all as necessary in accordance with prudent engineering practice so that same is in a condition suitable to provide and distribute chilled water and complies with all applicable laws and industry standards.

12. Representations, Warranties, and Covenants of Purchaser.

Purchaser expressly represents, warrants, and covenants, on an ongoing basis, that:

(a) Purchaser shall use its commercially reasonable efforts to assist Owner and Seller to obtain and thereafter maintain all of the permits and rights referred to in Section 10. Purchaser shall use and exercise its commercially reasonable efforts to obtain and maintain in effect all necessary permits, licenses and approvals required by it in order to perform its obligations under this Agreement.

(b) Purchaser shall not cause or voluntarily permit any modification or alteration to any part of Seller's equipment located on the Premises, including without limitation any and all metering equipment, valves, conduits and piping, except in an emergency where life or property is threatened.

(c) The execution and delivery by Purchaser (or its duly authorized representative) of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of Purchaser's organizational documents or to the best of its knowledge any applicable law, rule or regulation; and to the best of its knowledge do not and will not conflict with or cause any breach or default under any agreement or instrument to which Purchaser is a party or by which it or any of its properties is bound.

(d) This Agreement has been duly executed and delivered by Purchaser (or its duly authorized representative) and constitutes the valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

(e) Purchaser has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable law, ordinance, regulation, rule, judgment, writ, decree, award, permit or order which would have a material adverse effect on its ability to perform hereunder.

(f) Purchaser has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which would have a material adverse effect on its ability to perform hereunder.

(g) Purchaser is, subject to the transfer provisions of Section 26(b), and shall continue to be the lessee, occupant and operator of the Premises and the improvements on the Premises where the chilled water is delivered and utilized under this Agreement. Purchaser shall not, in whole or part, assign, sell, subcontract to or for other buildings or structures, or transfer its rights to receive district cooling service for the Premises or resell or otherwise assign or transfer any district cooling service to any third party under this Agreement, or transfer or assign its obligations or rights under this Agreement, except in accordance with the provisions of Section 26(b) or as otherwise expressly permitted in this Agreement.

(h) To the extent necessary for Seller to perform its obligations under this Agreement, Purchaser shall provide or utilize its good faith efforts to cause the Owner to provide Seller at no cost to Seller with any blueprints, plans, surveys, drawings or other information of a technical nature which Seller may reasonably request which are relevant to the chilled water delivery and Seller's obligations hereunder. Seller may rely upon the accuracy of any such documents provided by Purchaser or Owner without the need for separate investigation, and Seller shall not be responsible for damage or loss caused by such reliance.

(i) During the Term of this Agreement, all district cooling equipment shall be owned by Seller and shall not be subject to liens for improvements made by, for or on behalf of Purchaser, its lessor, sub-tenants, contractors or others on the Premises, and it is specifically understood and agreed that in no event shall Seller or the interest of Seller in such district cooling equipment be

liable for or subjected to any mechanic's, materialmen's or laborer's liens for improvements or work made by, for or on behalf of Purchaser, its tenants, contractors or others on, or with any interest in, the Premises. In the event that any district cooling equipment shall become subject to any mechanic's, materialmen's or laborer's liens for improvements or work made by, for or on behalf of Purchaser, its lessor, sub-tenants, contractors or others, then Purchaser shall immediately take all action, at its cost and expense, necessary to remove such lien promptly. Purchaser shall advise its lessor, sub-tenants, contractors, subcontractors, creditors, materialmen and any other actual or potential lienors of this provision. In the event that Purchaser fails to promptly remove or cause to be removed any such lien within thirty (30) days, then Seller shall be entitled, at its option, to cause the removal of such lien and all amounts incurred by Seller in so doing (including, without limitation, attorneys' fees and disbursements) shall be billed to Purchaser and payable pursuant to Section 19 hereof.

13. Force Majeure.

Subject to Section 4(a)(ii) hereof, neither Seller nor Purchaser shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by acts of God, hurricanes, tornadoes, storms, acts of sabotage, terrorism, civil unrest, aircraft disasters, electric power interruptions, fires, explosions, restrictions or restraints imposed by law, rules or regulations of a public authority, acts of military, governmental, or public authorities, war, riots, civil disturbances and strikes or other labor disruptions or other causes of similar effect beyond the reasonable control of the affected party (an "Event of Force Majeure"). If a party is prevented or delayed in the performance of any such obligation by an Event of Force Majeure, such party shall immediately provide notice to the other party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The party so affected by an Event of Force Majeure shall use commercially reasonable efforts to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Nothing in this Section shall excuse any failure or delay in Purchaser's payment obligations during any Event of Force Majeure or otherwise.

14. Consequential Damages and Limitation of Liability.

NEITHER PARTY SHALL BE LIABLE, EVEN IF GIVEN PRIOR NOTICE, TO THE OTHER PARTY OR ANY THIRD PERSON FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER DUE OR CLAIMED TO BE DUE TO NEGLIGENCE, TORT, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO DAMAGES IN THE NATURE OF LOST PROFITS OR REVENUES, LOSS OF USE OF FACILITIES OR EQUIPMENT, AND CLAIMS OF THIRD PARTIES OR OF INABILITY TO PERFORM CONTRACTS WITH THIRD PARTIES.

15. Termination by Purchaser.

This Agreement cannot be terminated or canceled by Purchaser except as expressly provided below.

(a) In the event of any failure of Seller to provide Contract Demand (regardless of the reason), Purchaser shall utilize good faith effort to immediately provide oral notice to an authorized officer of Seller so that Seller is able to respond to such failure promptly, and, in the event that the failure exceeds 12 hours, Purchaser shall also give written notice thereof, specifying the date and the time when such failure commenced and, if applicable at the time of the notice, the time upon which service was reinstated. In the event of Seller's failure for a period of at least ten (10) consecutive days after such notice, or at least twenty (20) days in the aggregate in any calendar year, to provide the Contract Demand to Purchaser in accordance with Sections 3(a) and (b) of this Agreement (the "Default Event") (but expressly excluding from such days any days involving an Event of Force Majeure, a failure caused by the acts or omissions of Purchaser Persons, or any other event described in Section 23 (each a "Non-Default Event"), which days shall not apply to or constitute any such failure to provide the Contract Demand), then, provided Purchaser has complied with the notice provisions set forth above, Purchaser shall have the right to terminate this Agreement by written notice to Seller, which notice shall be delivered no later than thirty (30) days after the Default Event and shall include a proposed date of termination, which shall not be later than 365 days after receipt of such notice by Seller (the "Termination Date"). If Seller disputes such notice on the basis that such failure was due to a Non-Default Event, then Seller shall so advise Purchaser in writing within ten (10) business days of receipt of Purchaser's termination notice, describing in reasonable detail the basis of the Non-Default Event. If Seller does not send such notice, then this Agreement will terminate on the Termination Date. A termination by Purchaser pursuant to this subsection shall be without liability for any additional payment or termination fee, but all amounts and liabilities accrued through the effective date of termination shall remain due and payable.

(b) With not less than thirty (30) days advance written notice to Seller, Purchaser may terminate this Agreement for any reason and for its convenience provided that such notice shall set forth the date of termination and further provided that Purchaser (i) pays Seller along with the notice of termination, a termination fee equal to the present value of the Contract Demand (using a discount rate of six percent (6%) per annum) determined by multiplying one-twelfth (1/12) of the Contract Demand Charge by the remaining months in the Term of this Agreement; or (ii) provides its written agreement to continue to pay on a monthly basis the Monthly Billing Charge until the earlier of the expiration of the balance of the Term or a Resale Event (as hereinafter defined), provided that the option of Purchaser under this Section 15(b)(ii) shall not be available if an Act of Insolvency (as defined in Section 16.1(c)) has occurred.

(c) With not less than ninety (90) days advance written notice to Seller, Purchaser may terminate this Agreement provided that Purchaser identifies and brings to Seller substitute customer(s) who: (i) agree to collectively purchase the entirety of all of the applicable Contract Demand under this Agreement on a permanent basis on terms and conditions (including, but not limited to, price and duration) at least as favorable to Seller as those terms and conditions set forth

in this Agreement, as determined by Seller in its good faith sole discretion; and (ii) are of acceptable business standing and credit-worthiness as solely determined by Seller and any financing providers in accordance with Section 26(d) hereof. Pursuant to any termination under this provision, Purchaser shall also pay, as invoiced by Seller from time to time: (1) any and all direct and indirect interconnection and transition fees associated with establishing delivery to the substitute customer(s) and concluding delivery to Purchaser; (2) any costs imposed upon Seller by any financing providers associated with such transition from Purchaser to the substitute customer(s); (3) all reasonable costs incurred by Seller in connection with the review, negotiation, documentation, and consummation of contracts with the substitute customer(s), including but not limited to internal and external financial and legal advisor fees and disbursements; and (4) all other amounts reasonably incurred by Seller in connection with the termination by Purchaser hereunder.

In lieu of Purchaser identifying and bringing such substitute customer(s) to Seller as provided hereunder, Purchaser may elect to hire Seller to attempt to locate possible substitute customer(s), which shall be done at Purchaser's sole cost and expense, and for which Purchaser shall pay, as invoiced by Seller from time to time, any and all direct and indirect fees and costs associated therewith (including, but not limited to, the fully burdened costs, salaries, benefits, and all other actual costs incurred by Seller, whether or not Seller is successful in identifying and selling to any substitute customer(s)). Notwithstanding any provision to the contrary, in no event shall Purchaser be deemed to be released or discharged, in whole or in part, from any of its obligations under this Agreement unless and until Seller has issued a written notice to Purchaser which indicates that all of the conditions precedent set forth above have been fulfilled, including, without limitation, the execution and delivery of contracts with substitute customer(s) for the entire Contract Demand, and Purchaser has paid Seller all amounts due under this Agreement.

(d) If Purchaser terminates this Agreement, Seller may remove all of its equipment installed at the Premises. Any damage caused by such removal (and not ordinary wear and tear) shall be repaired by Seller.

16. Termination and/or Suspension by Seller.

16.1 Seller may terminate this Agreement without liability to Purchaser, and discontinue the delivery of district cooling service to Purchaser, and remove or abandon all of Seller's equipment located upon or at the Premises, including without limitation, all meters installed thereon, upon the occurrence of any one of the following events:

(a) In the event of the failure of Purchaser to pay in full the Monthly Billing Charge or any other amounts due under this Agreement within thirty (30) days of the date of any invoice, Seller may provide Purchaser with a late payment notice, and if Purchaser makes payment in full of the overdue amounts and interest thereon within ten (10) days of issuance of the late payment notice from Seller, then Seller's rights hereunder to terminate this Agreement shall lapse. However, if Purchaser does not make payment within such period, then Seller may suspend service to Purchaser, provided further, that if payment is not made within fifteen (15) days of such suspension, then Seller shall have the right to terminate this Agreement without further notice.

(b) Breach or default by Purchaser of any material non-monetary provision of this Agreement which is not cured within thirty (30) days after receipt of notice thereof from Seller or, if such breach or default cannot reasonably be cured within such 30-day period, such longer period (but in no event more than sixty (60) days), provided that Purchaser commences to cure promptly and thereafter diligently prosecutes such cure to completion.

(c) Purchaser shall voluntarily file or have filed against it a bankruptcy petition, or enter into an assignment of its assets for the benefit of creditors, or otherwise become insolvent, unless with respect to any involuntary proceeding, such involuntary proceeding is dismissed within a period of sixty (60) days from the date instituted; or Purchaser shall admit in writing its inability to pay its debts as they become due and payable; or Purchaser causes, suffers, permits or consents to the appointment of a receiver, custodian, trustee, administrator, conservator, sequestrator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets and such appointment is not revoked or terminated and such official is not discharged of his duties within sixty (60) days of his appointment; or the attachment, execution or other judicial seizure of all or any substantial part of Purchaser's assets or any significant part thereof, remaining undismitted or undischarged for a period of thirty (30) days after the levy thereof; or the liquidation or dissolution of Purchaser (any of the foregoing events hereinafter referred to as an "Act of Insolvency").

(d) The assignment or transfer of its interest in the Premises by Purchaser or the assignment of this Agreement, except when expressly authorized in accordance with the provisions of Section 26 of this Agreement.

(e) Destruction, or a taking by eminent domain proceedings (including but not limited to any Event of Force Majeure) of the facilities or equipment by or from which Seller produces or distributes district cooling service, or taking by eminent domain proceedings of, such a part of such buildings or equipment, that district cooling service cannot reasonably be furnished by Seller substantially as required under the provisions of this Agreement.

(f) The withdrawal, cancellation or non-renewal by a governmental authority, the Owner or any other person of, or any failure to provide, rights-of-way, easements, permits, licenses or other authorizations necessary for performance under this Agreement including without limitation any governmental authorization essential for the furnishing of district cooling service by Seller as substantially required under the provisions of this Agreement (other than due to the bad faith or gross negligence of Seller) or the enforcement by any governmental authority of any rule or regulation which prevents Seller from furnishing district cooling service as substantially required under the provisions of this Agreement. Seller shall give prompt notice upon becoming aware of any thereof.

16.2 In the event Seller terminates this Agreement by reason of Sections 16.1(a), (b), (c) and/or (d), Purchaser shall pay all amounts and liabilities arising or accrued in connection with this Agreement through the date of the termination, plus a termination fee as liquidated damages for such termination in an amount equal to the present value of the Contract Demand (using a discount

rate of six percent (6%) per annum) determined by multiplying one-twelfth (1/12) of the Contract Demand Charge by the remaining months in the Term of this Agreement. Seller shall use its reasonable efforts to resell the Contract Demand of Purchaser to other customers within twelve months (12) from the date of termination. If Seller resells the entire Contract Demand within such twelve month period, Seller shall reimburse Purchaser for fifty percent (50%) of such damages paid by Purchaser to Seller by reason of a termination by Seller pursuant to this Section 16.2 within thirty (30) days of the date of the completed resale.

17. Indemnification.

(a) **General Indemnity.** To the fullest extent permitted by law but subject to the limitation in Section 14, each party hereto (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party and the directors, officers, shareholders, partners, members, agents and employees of such other party and the Affiliates thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, assessment, penalty, claim, charge, proceeding, investigation, suit, action and liability (including court costs and reasonable attorney's fees and disbursements), whether raised by the parties hereto or any third party (collectively, the "Liabilities"), resulting from injury to or death of persons, and/or damage to or loss of property or other action or claim, to the extent caused by or arising out of the negligent acts or omissions of the Indemnifying Party, its employees, agents, customers, lessees and contractors, in connection with the performance of this Agreement or any breach of its representations, warranties or covenants contained herein, provided that, as to Seller's indemnity obligations for an interruption of service or other breach of the covenants to provide chilled water under this Agreement, the remedies of Purchaser shall be limited to those contained in Sections 15, 23 and 24. For purposes of this Agreement, an "Affiliate" of any person or entity means any person, entity or group (currently existing or hereafter created or acquired) controlling, controlled by or under common control with, the specified person or entity, and "control" of a person or entity (including, with correlative meaning, the terms "control by" and "under common control with") means the power to direct or cause the direction of the management, policies or affairs of the controlled person, whether through ownership of securities or partnership or other ownership interests, by contract or otherwise.

(b) **Comparative Negligence.** It is the intent of the parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that party's negligence.

(c) **Defense of Claims.** In the event any person or entity not a party to this Agreement shall make any demand or claim or file or threaten to file or continue any lawsuit, which demand, claim or lawsuit may result in Liabilities hereunder or an Indemnified Party intends to seek indemnity under this Section 17, such Indemnified Party shall promptly notify the Indemnifying Party in writing of such claims setting forth the basis for and the amount of such claims in reasonable detail. An Indemnifying Party shall have the right to defend an Indemnified party by counsel (including insurance counsel) of the Indemnifying Party's selection reasonably satisfactory

to the Indemnified Party, with respect to any Liabilities within the indemnification obligations hereof, by giving promptly notice to the Indemnified Party. Thereafter, the Indemnified party shall be permitted to participate in such defense at its own expense (but not control or otherwise interfere in such action). In the event that the Indemnifying Party shall fail to elect to control such action, or shall have a conflict of interest making it inappropriate for it to do so, the Indemnified Party may retain counsel and conduct the defense of such demand, claim or lawsuit, as it may in its reasonable discretion deem proper, at the sole cost and expense of the Indemnifying Party. The parties shall give each other prompt notice of any asserted claims or actions indemnified against hereunder (provided, however, that the failure to give such Notice shall not relieve the indemnifying party of its obligations hereunder except (and only) to the extent that such failure caused the damages for which the Indemnifying party is obligated to be greater than they would otherwise have been had the Indemnified party given prompt notice hereunder) and, with respect to third party claims, shall reasonably cooperate (at the cost and expense of the Indemnifying Party) with each other in the defense of any such claims or actions.

18. No Waiver.

The failure of a party to enforce any term of this Agreement or a party's waiver of the nonperformance of a term by the other party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. Any waiver to be effective shall be in writing and signed by a duly authorized officer of the waiving party.

19. Payment.

(a) Except as otherwise expressly provided in this Agreement, any amounts payable by Purchaser under this Agreement shall be absolute and unconditional obligations and shall not be affected by any circumstance whatsoever, including, without limitation: (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defease or other right that Purchaser may have against Seller, or any other person or entity for any reason whatsoever under this Agreement or otherwise; or (ii) any insolvency, bankruptcy, reorganization or similar proceeding by or against Seller or any other person or party. Each payment made by Purchaser hereunder shall be final as to any assignee or assignees of Seller for any reason whatsoever. Notwithstanding the foregoing, nothing contained herein shall be construed to affect any obligation of Seller to Purchaser or to waive any rights Purchaser may have to pursue any claim directly against Seller, or any reimbursement directly from Seller of any overpayment by Purchaser, as permitted or provided in this Agreement.

(b) Any amount payable by Purchaser or Seller under this Agreement shall be due and payable thirty (30) days after the date of invoice. Any amount which is not paid in full and received by the payee by such payment due date shall be subject to a late charge equal to the lesser of (i) the maximum interest rate permitted by applicable law, or (ii) 1.5% per month (18% per annum).

20. Damage.

(a) Seller shall be responsible for any damage caused, or repairs required, to Purchaser's side of the interconnection and Purchaser's equipment resulting from the acts or omissions of Seller, its employees, agents, contractors, tenants, licensees, partners, invitees, guests or other persons acting by or on behalf of Seller. With the exception of damage caused, or repairs required, resulting from the acts or omissions of Purchaser, its employees, agents, contractors, lessees, partners, guests, invitees, or other persons acting by or on behalf of Purchaser, Seller is solely responsible for its side of the interconnection and is solely responsible for all equipment, maintenance, and repairs associated with Seller's side of the interconnection, and any damage or casualty incurred by Purchaser's equipment located on Seller's side of the interconnection.

(b) Purchaser shall be responsible for any damage caused, or repairs required, to Seller's side of the interconnection and Seller's equipment resulting from the acts or omissions of Purchaser, its employees, agents, contractors, tenants, licensees, concessionaires, partners, invitees, or other persons acting by or on behalf of Purchaser. With the exception of damage caused, or repairs required, resulting from the acts or omissions of Seller, its employees, agents, contractors, tenants, licensees, partners, invitees, guests or other persons acting by or on behalf of Seller: (i) Purchaser is solely responsible for its side of the interconnection and is solely responsible for all equipment, maintenance, and repairs associated with Purchaser's side of the interconnection, and any damage or casualty incurred by Purchaser equipment located on Purchaser's side of the interconnection; and (ii) Purchaser is solely responsible for any damage or casualty incurred by Seller's equipment located on Purchaser's side of the interconnection (such as meters, controls, data lines, etc.).

21. No Additional Warranties.

Except as expressly stated herein, SELLER MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE DISTRICT COOLING SERVICE OR ANY SERVICES HEREUNDER, AND DISCLAIMS ANY WARRANTY IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EVEN IF ADVISED THEREOF. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND, EXCEPT AS PROVIDED ABOVE, A NEGATION OF ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY SELLER IN ANY CAPACITY, WITH RESPECT TO ANY SERVICE UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENT TO SUCH SERVICE, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

22. Insurance.

(a) During and throughout the Term of this Agreement, Purchaser agrees to maintain comprehensive property insurance, including all risk physical damage insurance, on the Premises

(including all chilled water receiving and usage equipment therein) with replacement cost (new) coverage. Purchaser shall carry public liability insurance for bodily injury, death, and property damage of not less than \$2 Million per occurrence. Seller and its assignees shall be named as additional insureds under all of Purchaser's public liability insurance policies for liabilities arising out of the operations, acts, or omissions of the named insured and such insurance shall be primary to any insurance maintained by Seller or its Affiliates or assignees.

(b) During and throughout the Term of this Agreement, Seller agrees to maintain comprehensive property insurance, including all risk physical damage insurance on the facilities or equipment by or from which Seller produces or distributes district cooling service to the interconnection point at Owner's facilities. Seller shall carry public liability insurance for bodily injury, death, or property damage of not less than \$2 Million per occurrence. Purchaser and its assignees shall be named as additional insured for liabilities arising out of the operations, acts, or omissions of the named insured. Seller shall have the right to use the proceeds paid to Purchaser in respect of Seller's equipment under any property insurance policy to pay for the restoration, repair or replacement of Seller's equipment and Purchaser shall execute such documents and endorse to Seller any checks issued by the insurer in order to permit Seller to so use such proceeds.

(c) Such insurance coverage shall be with recognized insurers authorized to conduct business in the State of Florida, from insurance companies with a current rating by A.M. Best Company, Inc. of "A" or higher and with a financial size rating of "VII" or greater. Each party shall direct its insurer or insurance agent to issue an insurance certificate verifying the existence of insurance coverage in accordance with these requirements, including evidence of additional insured coverage. Each party's insurance carrier or agent must agree to notify the other party in writing of any cancellation or material modification of the insurance required hereunder at least thirty (30) days prior to the effective date of any such cancellation or material modification, except for non-payment of premium which shall require ten (10) days prior notice. Each party agrees to release and waive and require that their respective insurers release and waive any right of subrogation their insurers may have against the other party for any claim arising out of or relating to any injury, loss, or damage arising out of any claim covered by such insurance.

(d) At the conclusion of each five-year period during the Term of this Agreement, the amount of the general liability insurance required by subsections (a) and (b) above shall be increased automatically by \$200,000 per occurrence and in the aggregate, or such lesser amount as Seller may consent in writing to (which consent shall not be unreasonably withheld).

(e) If either party at any time fails to obtain and maintain the insurance coverage required hereunder, the other party shall be entitled to purchase such coverage and include as additional charges on any invoice thereafter delivered to the non-performing party pursuant to the terms of this Agreement, and the non-performing party shall pay the costs of such coverage and all other costs incurred in connection with obtaining such insurance.

23. Interruption of Service.

(a) If any of Purchaser, its officers, directors, employees, agents, lessors, lessees, licensees, concessionaires, customers, invitees, guests or contractors or others acting through or on behalf of Purchaser (collectively "Purchaser Persons") caused the interruption of service, Purchaser shall bear the costs required to restore normal service, including but not limited to the costs of repair or replacement of any damaged or destroyed equipment of Seller and Purchaser. If any of Seller, its officers, directors, employees, agents, lessors, lessees, licensees, concessionaires, customers, invitees, guests or contractors or others acting through or on behalf of Seller caused the interruption of service, Seller shall bear the costs required to restore normal service through the repair or replacement of Seller's district cooling equipment or Purchaser's damaged or destroyed piping or heat exchanger (if any) or other chilled water handling equipment of Purchaser.

(b) Notwithstanding anything to the contrary herein, Seller shall have the right to interrupt, reduce or discontinue the delivery of district cooling service (i) for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of district cooling service for a period not to exceed eight (8) business hours; or (ii) if the district cooling equipment has become dangerous in Seller's good faith judgment and, as a result thereof, Seller believes that an interruption or reduction is necessary to prevent injury to persons or damage to or destruction of property, provided that in the event of such occurrence under this clause (ii) Seller shall use its commercially reasonable efforts to restore full service as soon as possible (which reasonable efforts shall include overtime work by Seller staff). Seller shall use its commercially reasonable efforts to give notice to Purchaser of all expected interruption(s) of delivery of district cooling service at least ten (10) days prior to the date of such interruption and shall use its commercially reasonable efforts to inform Purchaser of the expected length of any interruption and to schedule such interruption to minimize overall disruption therefrom. Seller shall not be required to supply district cooling service to Purchaser at any time Seller reasonably believes Purchaser's cooling system to be unsafe, provided Seller shall have given notice of the basis for such belief at least thirty (30) days prior to suspension or termination of district cooling service for such reason unless Seller believes in good faith that such condition constitutes an emergency condition or Event of Force Majeure in which case Seller shall have the immediate right to interrupt service. In the event, during such 30-day period Purchaser cures, or demonstrates to the reasonable satisfaction of Seller that it has made progress toward cure of such unsafe condition and thereafter diligently pursues such cure to completion, then such suspension or termination shall be canceled or delayed by Seller.

(c) If Seller fails to deliver district cooling service for any reason after the Service Commencement Date, other than as provided in this Section 23(a) or (b), or during an Event of Force Majeure, then, subject only to Purchaser's right to terminate in Section 15(a) and Section 24(b), in each case to the extent applicable, as Purchaser's sole and exclusive remedy, the Contract Demand Charge then in effect under this Agreement shall be adjusted commencing 8 hours after Purchaser gives Seller notice of such failure to deliver based on the proportion of the period and the degree to which the delivery of such district cooling service is reduced.

24. Purchaser Remedies for Delayed or Canceled Connection of the District Cooling System.

(a) Excluding delay due to any Event of Force Majeure, any act or omission of Purchaser Persons which causes delay or any other permitted delay or extension under this Agreement, in the event that Seller has not completed its construction of the district cooling facility and is unable to provide Purchaser with cooling service as required on the Service Commencement Date, Seller shall arrange for, install, operate, and maintain a temporary source of district cooling service such as mobile chillers to meet the Contract Demand. Seller shall use commercially reasonable efforts to cause such mobile chillers when in use to maintain a Peak Water Temperature not to exceed 44 degrees F. Seller shall provide such temporary source of district cooling service until such time as Seller can provide district cooling service in accordance with the requirements of this Agreement. Such obligation is conditioned upon Owner and Purchaser permitting Seller, without charge, to place mobile chillers on Owner's and Purchaser's property near the interconnection point to the extent feasible. Purchaser shall pay the Monthly Billing Charge and all other amounts under this Agreement during and throughout such period, but Seller shall not charge Purchaser for any incremental additional premium or expense (in excess of what it would cost to provide service from the permanent district cooling facility) for delivery of the Contract Demand from the mobile chillers or other temporary source unless such delay was caused in whole or in part by an act or omission of Purchaser. This shall be Purchaser's sole and exclusive right and remedy in the event that Seller is unable to provide cooling service by the Service Commencement Date and such inability or date is not otherwise permitted or extended under this Agreement.

(b) Excluding Force Majeure or any act or omission of Purchaser Persons, if Seller elects not to provide the district cooling service and to abandon the delivery obligations under this Agreement, Seller shall provide written notice of termination to Purchaser, and the following shall be Purchaser's sole and exclusive remedy for such abandonment and termination. Seller shall reimburse Purchaser within thirty (30) days of demand for all direct, out-of-pocket documented third party costs and expenses reasonably incurred by Purchaser (the "Reimbursement Cost") to:

- (i) redesign Purchaser's Premises to accommodate the inclusion of a chilled water production facility;
- (ii) accelerate the design of the chilled water facility;
- (iii) accelerate the construction schedule for the chilled water facility;
- (iv) accelerate the delivery schedule of chillers and other equipment required for the chilled water facility to be constructed; and
- (v) renting temporary chillers or obtaining another temporary source of cooling.

Notwithstanding the foregoing, the Reimbursement Cost shall not exceed five hundred dollars per Contract Demand ton (\$500 per ton).

25. Notices.

(a) All notices, demands, offers or other such communications required or permitted to be given pursuant to this Agreement must be in a writing signed by the party giving such notice unless otherwise specified in this Agreement, and shall be mailed by U.S. Mail, sent by courier service, or faxed to the addresses or facsimile numbers set forth on the Service Schedule to this Agreement. Notices which do not comply with the foregoing requirement shall not be effective.

Each party shall have the right to change the place to which notices shall be sent or delivered or to specify two additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other party. Notices delivered by first class mail shall be deemed received three (3) business days after the date of the postmark, and notices delivered by overnight courier shall be deemed received on the date when left at the address of the recipient (unless such date is not a business day, in which event, it shall be deemed received on the next business day). Notices sent by fax shall be effective the date faxed, if a business day and received during normal business hours), or the following working day otherwise; provided that all faxes shall be confirmed by sending follow-up copies by mail or courier within three (3) business days.

(b) Notwithstanding the general notice provisions in clause (a) of this Section 25, the parties agree that in the event of any unscheduled disruption in service, equipment failure or occurrence of similar urgency relating to the district cooling service provided under this Agreement they will follow the emergency contact procedures set forth on Exhibit E hereto. The parties agree to meet from time to time, upon the request of either party, to review and update such emergency contact procedures.

26. Permitted Assignment.

(a) This Agreement entered into by the parties shall be binding upon, and shall inure to the benefit of, the parties and their successors and permitted assigns.

(b) Purchaser may not assign this Agreement, and may not convey any part of its interest in the Premises (other than pursuant to a sublease under which Purchaser remains the prime lessee and sub-lessor or pursuant to a co-location agreement under which Purchaser remains the prime lessee and licensor), in each case including, without limitation, by operation of law, except in accordance with the terms and conditions of this Section 26(b). Purchaser may assign this Agreement with the prior written consent of Seller, which consent shall not be unreasonably withheld and shall be given provided that (i) the assignee assumes all obligations of Purchaser hereunder in the form of the assignment and assumption agreement attached hereto as Exhibit D; (ii) all payment obligations of Purchaser are current at the time of assignment; and (iii) the assignee acquires the entirety of Purchaser's leasehold interest in the Premises (including, without limitation, the tenant improvements). Upon such assignment in accordance with the terms and conditions herein, Purchaser shall be released from all further obligations under this Agreement. In the event of any assignment not in accordance with the provisions of this Section 26(b), Purchaser shall not be released from its obligations under this Agreement and shall remain liable to Seller for full performance of this Agreement, and Seller shall have the right, at its option, to terminate this Agreement upon notice to Purchaser.

(c) Seller may, with the prior consent of Purchaser, assign this Agreement and any of Seller's rights hereunder, which consent shall not be unreasonably withheld and shall be given provided that (i) the assignee purchases or acquires the entirety of the district cooling facility serving Purchaser; and (ii) the assignee satisfies the warranties, representations, covenants, and other criteria of this Agreement. Notwithstanding the foregoing, with ninety (90) days advance

written notice to Purchaser, Seller may assign this Agreement to an Affiliate without obtaining such consent. In each case, such assignment must be by an assignment agreement reasonably acceptable to Purchaser wherein the assignee fully assumes all obligations and duties of Seller under this Agreement. Upon an assignment in accordance with the terms and conditions herein, Seller shall be released from all further obligations under this Agreement.

(d) Notwithstanding the foregoing, Seller shall have the right, without the consent of Purchaser, to assign: (i) all or any portion of its rights and interest (but not its obligations) under this Agreement, including without limitation Monthly Billing Charge amounts whether or not yet due, to any or all lenders, limited partnerships, corporations, or other financing entities (the "Financing Parties") from time to time providing debt and/or equity financing to Seller or an assignee or subcontractor of Seller for the construction, operation, or maintenance of its equipment as security for its obligations under the loan agreements, notes, indentures, security agreements, mortgages, leases and other documents from time to time in effect relating to any such financing (the "Financing Documents"). Purchaser acknowledges that as a result of any such assignment of Seller's rights and interest under this Agreement to the Financing Parties: (i) the Financing Parties may have the right upon the occurrence of a default under the Financing Documents to assume or cause a nominee or other third party to assume all of the rights and perform the obligations of Seller under this Agreement; (ii) the Financing Parties, their nominees and designated third parties may have the right to cure defaults by Seller under this Agreement on the same terms and during the same period available to Seller; (iii) the consent of the Financing Parties will be required for any material amendment, modifications or waiver of this Agreement; and (iv) none of the Financing Parties, their nominees or designated third parties or any bondholder or participant for whom they may act shall be obligated to perform any obligation or be deemed to incur any liability herein provided on the part of Seller unless and until such Financing Party, its nominee or designated third party shall have agreed to assume all of its rights and perform the obligations of Seller under this Agreement. No notice to or consent by Purchaser shall be required in connection with any such financing or assignment.

(e) Any assignment which does not comply with the provisions of this Section shall be null and void ab initio.

(f) Except as otherwise expressly provided herein, this Agreement shall not be construed as being for the benefit of any party not a signatory hereto.

27. Confidentiality.

Except as otherwise required by law, each party agrees that this Agreement, including but not limited to, the prices, terms, and costs of operation and service, and information which either party learns about the other party and the other party's business and operations are proprietary and confidential ("Confidential Information"), provided that Seller may refer to this Agreement and the services provided by Seller hereunder in connection with responding to requests for proposals, and further provided that Purchaser and Seller may disclose this Agreement to any financing

sources, and provided further that Seller or Purchaser may disclose this Agreement to a proposed assignee pursuant to Section 26 with whom Purchaser or Seller is negotiating, provided that such proposed assignee enters into a confidentiality agreement whereby it agrees to hold such information in confidence and not to use such information for any purpose other than in connection with the proposed assignment. Except as otherwise required by law, each party agrees that it shall not otherwise disclose the Confidential Information to any third parties (except the financial, legal, business and technical advisors of each party who need such Confidential Information for legitimate purposes and agree to maintain the confidentiality thereof and to further non-disclosure). Nothing in this Agreement shall restrict a party's use or disclosure of the other party's Confidential Information: (a) that is or becomes publicly available through no breach of this Agreement; (b) that is independently developed by it; (c) that was previously known to it without obligation of confidence; or (d) that was acquired by it from a third party which is not, to its best knowledge, under an obligation of confidence. In the event either party receives a subpoena or other valid process requesting disclosure of Confidential Information, the recipient shall promptly notify the other party of such and may, thereafter on the due date for disclosure under such subpoena or other valid process, comply with such subpoena or process to the extent permitted by law, unless the other party (at its own expense) has obtained a valid protective order and provided a copy of such order to the party being requested to disclose the Confidential Information.

28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties hereto regarding the subject matter of this Agreement, and this Agreement supersedes all prior agreements, understandings, representations, and statements, whether oral or written. The parties agree that parol or extrinsic evidence may not be used to vary or contradict the express terms of this Agreement and that recourse may not be had to alleged prior dealings or course of performance to explain or supplement the express terms of this Agreement. No course of dealing between the parties shall operate as a waiver of any rights hereunder.

29. Governing Law and Forum, Enforcement Costs.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to conflicts of law principles thereunder. The parties hereby irrevocably submit in any suit, action or proceeding arising out of or relating to this Agreement or any transactions contemplated hereby, to the exclusive jurisdiction of any court of competent jurisdiction located in Miami-Dade County, Florida, and waive any and all objections to such jurisdiction or venue that they may have under the laws of any state or country, including, without limitation, any argument that jurisdiction, situs and/or venue are inconvenient or otherwise improper. Each party further agrees that process may be served upon such party in any manner authorized under the laws of the United States or Florida, and waives any objections that such party may otherwise have to such process. EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON OR ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED TRANSACTION OR

INSTRUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), ACTIONS OR OMISSIONS OF ANY PARTY RELATED HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THE TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT.

(b) If either party commences any action or proceeding against the other party to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party the actual costs, expenses and reasonable attorney's fees (both at the trial and appellate levels), incurred by such prevailing party in connection with such action or proceeding and in connection with obtaining and enforcing any judgment or order thereby obtained.

30. Amendments.

No change, amendment or modification of this Agreement shall be valid or binding upon the parties unless such change, amendment or modification shall be in writing and duly executed by both parties.

31. Status of the Parties; No Third Party Rights.

Seller shall be an independent contractor with respect to the services performed hereunder, and neither party nor the employees of either, shall be deemed to be the partners, employees, joint venturers, representatives or agents of the other party. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship, or as creating or implying any partnership, joint venture, trust or other relationship between Seller and Purchaser. This Agreement is for the benefit of the parties to this Agreement, their successors and permitted assigns, and no third parties (including, without limitation, creditors of the parties, or the Owner or any sub-tenant of the Premises) shall be entitled to rely on any matter set forth in, or have any rights on account of the performance or non-performance by any party of its obligations under, this Agreement.

32. Drafting Interpretations and Costs; Time of the Essence.

Preparation and negotiation of this Agreement has been a joint effort of the parties and their respective counsel and the resulting document shall not be construed more severely or strictly against one of the parties than against the other. Each party shall be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Agreement. Time is of the essence in the performance of obligations under this Agreement.

33. Captions.

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of such document or the intent of any provision contained therein.

34. Severability; Survivability.

The unenforceability or invalidity of one or more phrases, sentences, clauses or Sections contained in this Agreement shall not affect the enforceability or validity of the remaining portions thereof so long as the material purposes of such document can be determined and effectuated. Any obligations which have accrued prior to the termination or expiration of this Agreement and which are not otherwise expressly discharged pursuant to the terms of this Agreement shall remain in full force and effect until performed, including, without limitation, Sections 11, 12, 14, 17, 19, 20, 21, 25, 26, 27 and 29 through 35.

35. Further Assurances.

Seller and Purchaser each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.

36. License.

Purchaser hereby grants to Seller, its successors and assigns, a license with the right and privilege to (i) inspect, operate, protect, relocate, install, maintain, repair and replace all necessary piping and related facilities and equipment of Seller relating to the delivery system for the District Cooling Services within and about the Premises, whether now existing or constructed by Seller hereafter, and (ii) ingress and egress in connection with Seller's exercise of the rights and privileges granted in sub-section 36(i) herein, and (iii) any and all rights-of-way, access rights, licenses, permission, or privileges, in each case within the Premises, (a) needed by Seller to provide the District Cooling Service to the Premises and (b) to otherwise operate and maintain the District Cooling System within the Premises in accordance with this Agreement. Purchaser hereby covenants and warrants that it has the right and lawful authority to grant the rights described herein and that Purchaser shall execute such further assurances thereof as may be required. The rights, licenses and privileges granted herein shall terminate upon the termination of the Lease or, if later, upon Seller's receipt of written notice of such termination.

« _____ »

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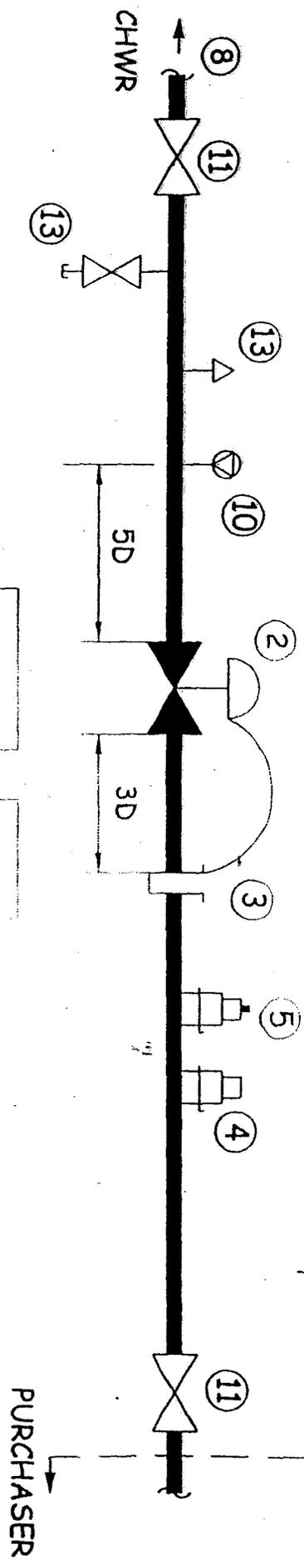
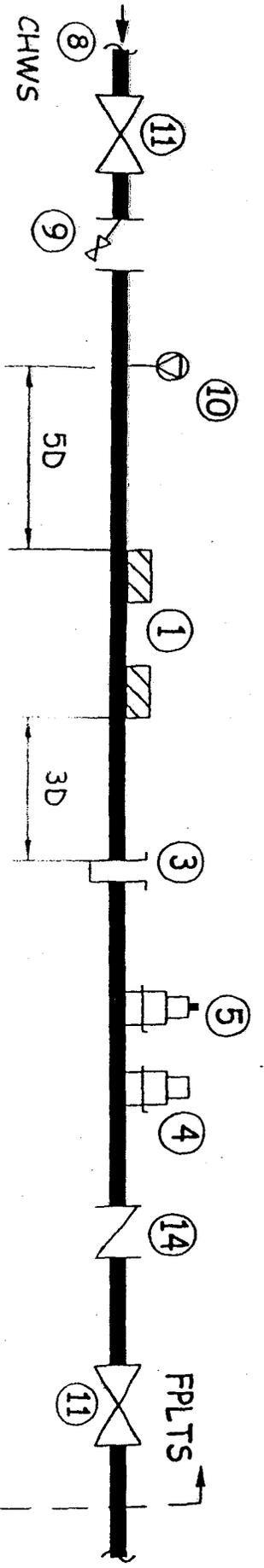
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EXHIBIT A
DESCRIPTION OF PREMISES

The 109,290 square foot are, constituting substantially all of the second story, leased by Purchaser and located within the building situated at 50 N.E. 9th Street, Miami, Florida 33132 upon all or portions of Lots 1 through 20, inclusive Block 38 North, in the City of Miami, according to the Plat thereof, as recorded in Plat Book "B" at Page 41 of the Public Records of Miami-Dade County, Florida.

**EXHIBIT B
DESCRIPTION OF INTERCONNECTION**

[See attached diagram.]



- | | |
|--|--------------------------------|
| ① Transducers for Flow Monitoring, by FPLTS | ⑧ Connection to Building Riser |
| ② Automatic Two Way Control Valve, by FPLTS | ⑨ Strainer, by others |
| ③ Temperature Well for Sensor, by FPLTS | ⑩ Vacuum Breaker, by others |
| ④ Thread-O-Let with ball valve for Pressure Sensor, by FPLTS | ⑪ Isolation Valve, by others |
| ⑤ Thread-o-let with ball valve for pete's plug, by others | ⑫ 1/2" Drain, by others |
| ⑥ Control Panel (Wall Mounted), by FPLTS | ⑬ Manual Air Vent, by others |
| ⑦ BTU Monitoring Station (Wall Mounted), by FPLTS | ⑭ Check valve, by others |

ENERGY TRANSFER STATION (ETS)

NTS

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**EXHIBIT C
PURCHASER CHILLED WATER QUALITY STANDARDS**

All capitalized terms used and not defined in this Exhibit shall have the meanings attributed to them in the body of the District Cooling Service Agreement to which it is attached.

Purchaser owns plate heat exchanger, if any, and interconnect piping at the Premises specified in Exhibit B to the District Cooling Service Agreement. Efficient operation of the heat exchanger is critical to the supply of chilled water at projected cost and the ability to meet designed heat loads. The plate heat exchanger and the entire piping system must be protected from corrosion and fouling conditions that can negatively affect the operation of the system and the delivery of the District Cooling Services.

To ensure efficient and dependable operations Seller requires certain minimum standards for the control of water quality in the secondary systems, whether open or closed, servicing non-Seller-owned equipment on the Premises. Additionally, in the event of a heat exchanger leak or a bypass event the secondary system water treatment must be compatible with the primary system water treatment. Similarly, to ensure Purchaser's plate heat exchanger, if any, and piping are protected from corrosion and fouling conditions that can negatively affect their operation the Purchaser requires that Seller follow standards for the control of water quality in the primary system.

The following water treatment specification addresses procedures and standards in the secondary system for which Purchaser is responsible on its side of the interconnection. Seller shall be responsible for compliance with a identical water treatment specifications and standards with respect to the primary system on its side of the interconnection. Additionally, to permit Seller to appropriately monitor and protect its system, Purchaser shall give Seller at least five (5) days notice before making any equipment changes that may affect water quality in the primary or secondary systems.

Water treatment requirements begin when water is first introduced into a new piping system. The following water treatment specification addresses three phases of the water treatment program for which Purchaser is responsible on its side of the interconnection point and Seller is responsible on its side of the interconnection point:

**Hydrostatic Testing of New Piping
Chemical Cleaning of New or Existing Piping
Treatment and Monitoring**

I. Hydrostatic Testing of New Piping

A. The following hydrostatic testing of new piping will be required by Purchaser on its side of the interconnection and Seller on its side of the interconnection:

1. To prevent flash corrosion, at no time shall these systems be in contact with untreated water. Add a liquid corrosion inhibitor formulation consisting of sodium nitrite and borate to attain a pH range of 8.0 to 10.0 and a nitrite range of 1000 to 1500ppm as NO_2 . Corrosion inhibitor is to be added concurrently with clean city water used for hydrostatic testing. System water is to be analyzed for corrosion inhibitor level and pH by the chemical treatment company and results are to be reported in writing to Seller and Purchaser.
2. Test hydraulically at one and one half the maximum design operating pressure; maintain for not less than 24 hours. Piping shall remain completely watertight during this time. Fill piping with clean water and corrosion inhibitor sufficiently in advance of test to allow it to come to room temperature, so that any sweating may evaporate.
3. Drain test water from piping systems after testing and repair work is completed. The piping is to remain flooded with water containing corrosion inhibitor until the cleaning and flushing process is to begin. Ideally chemical cleaning should immediately follow hydrostatic testing.

II. Cleaning of New and Old Piping

- A. With respect to the cleaning of new and old piping, Purchaser will have responsibility therefor on its side of the interconnection and Seller will have responsibility therefor on its side of the interconnection:
 1. Use an alkaline phosphate cleaning agent containing anti-foam which will not in anyway interact with any of the materials of construction in the system to produce corrosion, form deposits, weaken, reduce the life or in any way have a detrimental effect on any system components. A sample of circulation water with cleaner added is to be analyzed for pH, phosphate and conductivity. The test results are to be reported in writing to Seller and Purchaser.
 2. Circulate for a minimum of 12 hours with all circulating pumps in service and all isolating valves open to allow contact with all piping and equipment within the systems.
 3. Drain the system rapidly from all low points such as mud legs, flush with clean water, clean strainers and screens and refill the system with clean water. Immediately test for pH and conductivity. If conductivity is above 300 uS continue flushing until the conductivity is below 300 and the pH is within $\frac{1}{2}$ unit of city water and there is no nitrite residual. Immediately

drain the system and add clean water and water treatment chemicals.

4. The heat exchanger (if any) will not go into active service until the condition of the water is verified by the party responsible for such heat exchanger (if any).

III. Treatment and Monitoring

A. Water Piping

1. Water treatment chemicals must be compatible with the products used for treatment of Seller's primary chill system.
2. Treatment chemicals will consist of the following basic formulation:

Sodium Hydroxide
Sodium Molybdate
Tolytriazole
Biocide (gluteraldehyde or compatible product)

3. The following parameters shall be maintained:

PH	9.0 – 10.3
Molybdenum as Mo	80 – 100ppm
Tolytriazole	min 10ppm
Total Bacteria	max 1000 cfu/ml
Corrosion Rates-Mild Steel	max 0.5mpy
-Copper	max 0.1 mpy
No pitting	

4. Seller will periodically test the secondary chill water and primary chill water. Variance from the specified parameters will be reported in writing to Purchaser which shall perform corrective measures on its side of the interconnection and report as to the same in writing and in reasonable detail to Seller within one week. Seller shall perform corrective measures on its side of the interconnection and report as to the same in writing and in reasonable detail to Purchaser within one week.

EXHIBIT D

ASSIGNMENT

This ASSIGNMENT (the "Assignment"), dated this ___ day of _____, 20___, but effective as of 11:59 p.m. on _____, 20___ (the "Effective Date"), from _____, a corporation/general partnership/limited partnership/limited liability company (the "Assignor"), to _____, a corporation/general partnership/limited partnership/limited liability company (the "Assignee").

WHEREAS, the Assignee is acquiring in its entirety the Assignor's leasehold interest in the Premises described on Exhibit 1 hereto, together with all improvements thereto owned by Assignor;

WHEREAS, the Premises is subject to that certain District Cooling Service Agreement dated _____ (the "Cooling Agreement"), by and between the Assignor and FPL Thermal Systems, Inc., a Florida corporation ("FPLTS"), which provides that FPLTS has the right to provide district cooling services at the Premises for the term of the Cooling Agreement and this right concerns the premises and constitutes a covenant running with the assigned interest in the premises, binding upon the successors and assigns of the Assignor;

WHEREAS, under the Cooling Agreement, a condition precedent to the assignment of the entire leasehold interest in the Premises by the Assignor to the Assignee is that the Assignor assign, and the Assignee assume, the Cooling Agreement and all of its terms and conditions in form and substance reasonably satisfactory to FPLTS; and

WHEREAS, FPLTS is an intended third party beneficiary of the provisions of this Assignment;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and all other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the Assignor and the Assignee hereby agree as follows.

1. The Recitals to this Assignment are true and correct and incorporated herein by reference and made a part hereof.

2. Assignor hereby sells, grants, conveys, assigns, transfers and delivers to Assignee all of Assignor's right, title and interest in and to, and obligations and duties under, the Cooling Agreement and the Assignee hereby purchases, assumes and accepts the Cooling Agreement and agrees to perform and discharge all obligations thereunder from and after the Effective Date. Assignee agrees to be bound by all of the covenants and agreements of the Assignor under the Cooling Agreement.

3. Assignor and Assignee each hereby expressly represents and warrants, for the benefit of the other and of the FPLTS and its affiliates and assigns, that:

- (a) it is duly organized and existing and it has full right power and authority to take, and has taken, all action necessary to execute, deliver and perform this Assignment and the Cooling Agreement and any other documents required or permitted to be executed or delivered by it in connection therewith, and to fulfill its obligations hereunder.
- (b) no notices, consents, authorizations, filings or approvals of or to any person are required (other than any already given or obtained) for its due and lawful execution, delivery and performance of this Assignment.
- (c) this Assignment has been duly executed and delivered by it and constitutes its valid and legally binding obligation of it, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.
- (d) it has not received any notice of, nor to the best of its knowledge is there pending or threatened, any violation of any applicable law, ordinance, regulation, rule, judgment, writ, decree, award, permit or order which would have a material adverse effect on its ability to perform hereunder.
- (e) it has not received any notice of, nor to the best of its knowledge is there pending or threatened, any litigation which would have a material adverse effect on its ability to perform hereunder.

4. The Assignor hereby represents and warrants to the Assignee that all payment and other obligations to be performed by it through the Effective Date under or pursuant to the Cooling Agreement have been fully performed and discharged.

5. Assignor shall indemnify and save Assignee harmless from and against any and all losses, damages, liabilities, costs or expenses, including attorneys' fees and costs (both prior to litigation and through all trial and appellate litigation) which are based upon or arise out of the Cooling Agreement prior to the Effective Date, including, without limitation, any breach by Assignor of any of the terms, covenants or conditions of the Cooling Agreement.

6. Assignee shall indemnify and save Assignor harmless from and against any and all losses, damages, liabilities, costs or expenses, including attorneys' fees and costs (both prior to litigation and through all trial and appellate litigation) which are based upon or arise out of the Cooling Agreement from and after the Effective Date, including, without limitation, any breach by Assignee of any of the terms, covenants or conditions of the Cooling Agreement.

7. Any individual, partnership, corporation or other entity may rely, without further inquiry, upon the powers and rights herein granted to the Assignee and upon any notarization, certification, verification or affidavit by any notary public of any state relating to the authorization, execution and delivery of this Assignment or to the authenticity of any copy, conformed or otherwise, hereof.

8. All of the terms and provisions of this Assignment will be binding upon Assignor and its successors and assigns and will inure to the benefit of Assignee and FPLTS and their respective successors and assigns.

9. This Assignment shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to conflicts of law principles thereunder.

10. This Assignment may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

STATE OF _____)
) ss:
COUNTY OF _____)

I hereby certify that on this ____ day of _____, 20____, personally appeared _____, [Title] of [Name of Assignor], a _____ under the laws of the State of _____, who is personally known to me or who produced the following identification (_____), and he acknowledged before me that he executed the foregoing document as his free act and deed as such officer, for the uses and purposes therein mentioned, and that said instrument is the act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and seal in the County and State aforesaid as of this ____ day of _____, 20____.

(Name of Notary)
Notary Public
State of _____
Commission or Serial No.: _____
My commission expires: _____

EXHIBIT 1
LEGAL DESCRIPTION OF PREMISES

Execution Document

SCHEDULE 1(a)

Real Property

Legal Description:

Lots 1 through 10, Block "C", J.A. DANN SUBDIVISION, according to the Plat, as recorded in Plat Book 1, Page 36, of the Public Records of Miami-Dade County, Florida.

Street Address:

1110 NE 1st Avenue
Miami, FL 33142

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Execution Document

SCHEDULE 1(b)

Personal Property

PLANT EQUIPMENT

Mech. Hoist System

Install Meter @AA Arena & Alarm Point

Install Tank & Pipe Brominator

Security System – New wire to the readers (Exit Reader for the Main Gate) OLD

Security System – Pegasys card access system installation.

Modular full-Feathered T1/FT1 Multiplexer designed to support aq wide range of en-user applications.

Security System – Update New wire to the readers (Exit Reader for the Main Gate)

Security System – Network Config. Attempts to link site with Tampa.

Equipment Phase I (see attached)

Equipment Phase II (see attached)

COMPUTER EQUIPMENT

2600 Series IOS, Cisco 8 to 16 MB, Serial Want Interface Card

Cisco 10/100 Ethernet Router W/2 WIC Slots 1 network MOD Slot

Adtran TSU Dual FXD Opt W/ID

Adtran TSU 100 Dual voice plus on, HS

Smartnet , Pro rate Malnt to start 12/15/01 –8/31/02

Ultragrade, CPU, Class II Transformer, Touchpad & Display, Output Module

4DNS

EBI UPGRADE

1470

Execution Document**SCHEDULE 1(c)****Assigned and Assumed Contracts****A. Client Contracts:**

1. District Cooling Service Agreement, dated and effective as of December 1, 2000, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and Technology Center of the Americas LLC.
2. District Cooling Service Agreement, dated and effective as of December 1, 2000, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and NAP of the Americas, Inc., as amended by Amendment No. 1 to the District Cooling Service Agreement by and between TECO Thermal Systems, Inc. (formerly, FPL Thermal Systems, Inc.) and NAP of the Americas, Inc., dated as of September 1, 2002.
3. District Cooling Service Agreement, dated and effective as of April 15, 1998, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and Basketball Properties, Ltd., as amended by that certain Amendment, dated May 11, 1998, between FPL Thermal Systems, Inc. and Basketball Properties, Ltd.

B. Vendor Agreements:

1. Service Agreement, dated December 31, 2003, by and between TECO Energy Services, Inc. (now known as BGA, Inc.) and TECO Thermal Systems, Inc.

C. Other Related Agreements:

1. District Cooling Access and Easement Agreement, dated and effective as of December 1, 2000, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and Technology Center of the Americas, LLC.

Execution Document

SCHEDULE 1(d)

Excluded Assets

Accounts receivable and cash of TECO Thermal Systems, Inc. are excluded from the assets being transferred.

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Execution Document

SCHEDULE 2(a)

Seller Bank Account/Wire Instructions

TECO Solutions
JP Morgan Chase, NY
ABA #021-000-021
Account #304282359

Execution Document**SCHEDULE 5****Permitted Exceptions**

1. Matters set forth at Schedule B of Title Insurance Commitment No. _____, dated _____ and issued by _____

Taxes and assessments for the year 2005 and subsequent years, which are not yet due and payable.
2. As to Lots 1, 2, 3, 8, 9 and 10 only:

Deed made by Harvey Rendelman and Rose Rendelmen to the State of Florida dated January 3, 1968 filed January 11, 1968 under Clerk's File No. 68R-6312, conveys "Limited Access Rights Only, all rights of ingress, egress, light, air and view along the North line of Lot 3, Block "C", J.A. DANN'S SUBDIVISION recorded in Plat Book 1, page 36, Dade".
3. As to Lots 1, 2, 3, 8, 9, and 10 only:

Order of Taking (in Eminent Domain Proceeding) "State Road Department of Florida vs. David Aderly, etal." Case No. 67-4570, recorded May 22, 1967 under Clerk's File No. 67R-78462, conveys "Limited Access Rights Only, all rights of ingress, egress, light, air and view along the North line of Lot 2, Block "C", J.A. DANN'S SUBDIVISION, Plat Book 1, page 36, Dade."
4. As to Lots 4 and South 10 feet of Lot 5, and all of Lots 6 and 7 only:

Restrictions and easements contained in the following instrument:
Deed to State of Florida dated February 7, 1968, filed February 7, 1968 under Clerk's File No. 68R-23858, Miami-Dade County, Florida. This instrument contains the following language: "Limited Access Rights Only - all rights of ingress and egress, light, air and view along the North line of Lot 4, Block "C", Plat Book 1, page 36".
5. Agreement for Water and Sanitary Sewage Facilities filed September 22, 1998 in Official Records Book 18284, Page 178.
6. Mesne Resolutions and Ordinances re: The Metromover Phase I Project, the last of which was filed September 15, 1997 in Official Book 17789, Page 637.

Execution Document

SCHEDULE 10(a)(iii)

Seller's Knowledge

Bruce Christmas
Gordon Gillette
William Cantrell

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Execution Document**SCHEDULE 10(a)(iv)****Known Claims**

Pursuant to an inspection of the Chiller Plant by or on behalf of Environmental Resources Management that took place on or about November 21, 2005, Seller received a Pollution Prevention Field Notice (the "Notice") requiring that the Seller apply for an IW-5 Permit with the DERM Industrial Facilities Station. The Seller is reviewing this Notice and is in the process of preparing suitable application materials for the permit referenced in the Notice.

Execution Document

SCHEDULE 10(a)(ix)

Seller's Brokers

1. International Management Consultants
2. BGA, Inc.

Execution Document

SCHEDULE 10(b)(vii)

Buyer's Brokers

None.

Execution Document**SCHEDULE 11(b)****Required Consents and Approvals**

1. District Cooling Service Agreement, dated and effective as of December 1, 2000, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and Technology Center of the Americas LLC.
2. District Cooling Service Agreement, dated and effective as of December 1, 2000, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and NAP of the Americas, Inc., as amended by Amendment No. 1 to the District Cooling Service Agreement by and between TECO Thermal Systems, Inc. (formerly, FPL Thermal Systems, Inc.) and NAP of the Americas, Inc., dated as of September 1, 2002.
3. District Cooling Service Agreement, dated and effective as of April 15, 1993, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and Basketball Properties, Ltd., as amended by that certain Amendment, dated May 11, 1998, between FPL Thermal Systems, Inc. and Basketball Properties, Ltd.
4. Service Agreement, dated December 31, 2003, by and between TECO Energy Services, Inc. (now know as BGA, Inc.) and TECO Thermal Systems, Inc.
5. Termination of the Franchise Agreement between the City of Miami and TECO Thermal Systems, Inc. dated June 8, 1998
6. District Cooling Access and Easement Agreement, dated and effective as of December 1, 2000, by and between FPL Thermal Systems, Inc. (now known as TECO Thermal Systems, Inc.) and Technology Center of the Americas, LLC.