

**ROCHESTER DISTRICT HEATING COOPERATIVE, INC.**

**AMENDED AND RESTATED LONG TERM MEMBERSHIP AND USE AGREEMENT**

**The City of Rochester - Crossroads Garage**

Prepared by: BOYLAN CODE, LLP  
Culver Road Armory  
145 Culver Road, Suite 100  
Rochester, New York 14620  
(585) 232-5300

Approved:

Printed:

2. **PREMISES TO BE SERVED.**

- 2.1. Member is the owner of a building generally known as

Crossroads Garage  
67 Andrews Street  
Rochester, NY 14614

Rochester, New York (the "Building"). This Agreement is intended to be applicable only to the service to be provided to the Building as it presently exists, including future heating of presently unheated areas within the Building, and will not be applicable to (a) any other buildings or facilities owned or occupied by Member, or (b) any substantial extensions or additions to the Building which would result in an Annual Peak Demand for steam exceeding 115% of the Member's Initial Peak Demand for steam specified in paragraph 5.2 below, without the consent of RDH and the modification of this Agreement. Nothing herein shall prevent a Member from changing its interest in the Building from owner to lessee, or vice versa, provided that Member remains primarily responsible for furnishing the thermal energy to the Building.

- 2.2. Member covenants that it has the legal authority, by fee ownership, lease or contract, to enter into this Agreement and to commit to RDH as the primary source of thermal energy to the Building for the term of this Agreement.
- 2.3. Member shall not provide heating service from the Building heating system to any other building without the prior written consent of RDH.

3. **SERVICE TO BE PROVIDED.**

- 3.1. Commencing on the Commencement Date of this Agreement, RDH will deliver steam ("Steam") to the Building in the quantity required by the Member. RDH shall provide all the Steam needed to meet Member's total Steam requirement. Member agrees to acquire Steam from RDH, in accordance with this Agreement, as its primary source of thermal energy for its Building. Nothing in this Agreement shall, however, prohibit Member from installing energy conservation devices of its choice, which may result in a reduction of Steam usage.
- 3.2. Steam shall be provided to the Building at the point or points of interconnection currently existing between Member and RDH (or, if Member is not a current member of RDH, at the point and in the manner described in Exhibit B attached hereto and made a part hereof). Steam will be delivered at pressures and temperatures determined by RDH as appropriate, safe and economical for the System as a whole. Such

pressures and temperatures shall, however, be adequate to meet the reasonable thermal energy needs of the Building, based on the Building's historical use of steam over the two (2) years preceding the Commencement Date.

- 3.3. RDH will endeavor at all times to provide a regular and uninterrupted supply of Steam, but in case the supply of Steam shall be interrupted or irregular or defective or shall fail from causes beyond RDH's control (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by State or Federal officers, commissions, boards or bodies having jurisdiction) or because of the ordinary negligence of RDH, its employees, servants or agents, RDH will not be liable to Member or any other party for property damage, personal injury or any other damages, including consequential, direct or indirect damages, resulting from such interrupted, irregular or defective service.

4. **TERM.** The term of this Agreement shall commence as of December 20, 2015 and, unless earlier terminated as provided in paragraphs 11 and 12 hereof, shall terminate December 20, 2030 (15) years thereafter.

5. **COST OF SERVICE.**

- 5.1. Member's "Cost of Service" will be based on a formula having two components:

5.1.1. A DEMAND COST representing the Member's prorata share of all fixed operating costs, including debt service (which may be tied to variable interest rates), labor, plant construction, operating and maintenance costs, capital reserves for replacements, System improvements and emergency needs, taxes (unless Member is exempt), insurance, and other administrative costs. A Member's prorata share will be derived from the relationship of its peak demand to the System peak demand. A Member's peak demand will be initially fixed at the amount shown at paragraph 5.2 below, and shall be reviewed annually and readjusted if necessary, based on actual use; provided that the Member's Demand Cost shall be adjusted by the Board of Directors whenever a new member is admitted to RDH, if, by the admission of the new member or members, the Member's prorata share would decrease by 25% or more. Member's "peak demand" as used herein is understood to be the maximum number of M lbs. of Steam per hour delivered by the System to Member at any time during the year.

5.1.2. An ENERGY COST, based on actual consumption of Steam. The Member's Energy Cost shall be determined by multiplying the Member's actual consumption of Steam times the Energy

5.3 Annually prior to September 1st of each calendar year, RDH shall provide Member with sufficient information to enable Member to prepare a budget for the heating system for the Building.

6. **METERING - ACCESS.** RDH will at its option either continue to utilize the existing meter (if one presently exists in the Building) or provide a new meter which Member shall install or cause to be installed according to the standards promulgated by RDH. The meter shall remain the sole property of RDH. Member will assure RDH of reasonable access to the Building and to the meter when necessary for inspection, repairs, replacement or calibration of the meter, and Member will make no installations or connections to the meter which would impede its proper and efficient operation.

7. **BILLING AND PAYMENT.**

7.1. RDH shall bill Member monthly for Member's Cost of Service ("Service Bill"), including Member's actual Energy Cost and one-twelfth (1/12th) of Member's estimated annual Demand Cost.

7.2. A Service Bill shall be due and payable immediately upon receipt by Member without set-off, counterclaim, abatement, or reduction by Member. Member's prompt payment of Service Bills shall not diminish or constitute a waiver of, Member's claims or remedies, including challenging the billed amount itself, in arbitration, in subsequent legal proceedings, or in any other way. The foregoing provisions shall be subject to any legal restrictions or requirements of any governmental Member.

8. **LIABILITY.**

8.1. In addition to the limitation of RDH's liability resulting from interruption of service, irregular or defective service, as provided in paragraph 3.3 hereof, RDH shall not be liable to Member or such Member's officers, agents, employees, lessees, licensees, invitees or trespassers, and, to the extent permitted by law, Member shall hold harmless and indemnify RDH from and against liabilities, losses, damages, costs, expenses (including attorneys' fees), claims, actions, judgments, and settlements of any nature whatsoever for any personal injury, death, property or economic damage arising out of or incidental in any manner whatsoever to the Member's Building heating system, the construction, operation, maintenance, inspection and design of which are and shall be the sole responsibility of Member.

8.2. Member shall not be liable to RDH or RDH's officers, agents, employees, lessees, licensees, invitees or trespassers, and RDH shall hold harmless and indemnify Member from liabilities, losses, damages, costs, expenses

(including attorneys' fees), claims, actions, judgments, and settlements of any nature whatsoever for any personal injury, death, property or economic damage, except for the damages caused by the interruption of service, irregular or defective service, all of which are limited in paragraph 3.3 hereof, arising out of or incidental in any manner whatsoever to the System or Metering Equipment, the construction, operation, maintenance, inspection and design of which are and shall be the sole responsibility of RDH.

8.3. Notwithstanding the foregoing, to the extent permitted by law, Member shall be responsible to RDH and RDH shall be responsible to Member for any grossly negligent or intentional misconduct of their respective officers, employees, agents, lessees, contractors, or other representatives concerning damage to the other party.

9. **ADDITIONAL RDH COVENANTS AND OBLIGATIONS.**

9.1. RDH shall maintain the System in good repair and operating condition and cause it to be operated in a safe and efficient manner and shall comply with all applicable laws, rules, codes and regulations.

9.2. RDH shall secure and maintain in good standing all permits, easements, licenses, franchises and rights necessary to make and continue the delivery of Steam to all RDH Members.

10. **INTERRUPTION OF SERVICE.**

10.1. In the event that RDH is unable to supply sufficient Steam to meet the needs of all Members in accordance with their respective Agreements, RDH shall reasonably attempt to allocate delivery of the available Steam, first to Members operating hospitals, infirmaries, correctional facilities, or other facilities critical to human health and welfare, and then to each Member in such amounts as necessary to maintain adequate warmth for all Members, and thereafter in proportion to the demand of each Member, subject only to such exceptions as are necessary to protect human life, health, and safety, as determined in the discretion of the RDH Board of Director or its designee.

10.2. In the event that RDH fails to fulfill its obligation to supply Steam under this Agreement to a Member operating a hospital, infirmary, correctional facility, or other facility critical to human health and welfare, such Member may, after notifying RDH, remedy such interruption of Steam service by means of a mobile or temporary boiler solely as agent for RDH. The reasonable additional cost, if any, of effecting such remedy during an interruption of service, shall be paid by RDH and charged to all RDH Members as a Demand Cost in accordance with paragraph 5.1. For

maximum undiscounted debt service on any new borrowing of RDH after the date of this Agreement and prior to the Early Termination Date, provided that the incurrence of such debt is approved by the RDH members, and further provided that the additional steam charge of all the RDH members is similarly revised. The RDH Board of Directors reserves the right to revise Exhibit A to reflect the change in the additional steam charge due to such additional borrowing, if any. The additional steam charge shall be due in cash or certified check on the Early Termination Date. With respect to any governmental member only, this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Agreement. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Agreement.

- 12.5. Member shall also pay the full unpaid remaining balance of its Connection Fee Cost, if any.

13. **ARBITRATION.** Any dispute or controversy between RDH and any Member arising out of or related to the execution, performance, interpretation or breach of this Agreement, or any of its terms or conditions including the correctness of the computational or measurement process related to calculation of Member's Energy Costs or Demand Costs may, upon the agreement of both parties, be submitted for resolution by an arbitrator selected and acting in accordance with the arbitration rules promulgated by the American Arbitration Association as outstanding from time to time. Any decision by such an arbitrator shall be final, subject to any rights of appeal, modification, vacation, or confirmation before a court of competent jurisdiction. Member shall not have the right to elect arbitration in any dispute or controversy between Member and/or RDH and any lending institution to which this Agreement is pledged or collaterally assigned pursuant to paragraph 22 hereof. If the Member and RDH do not agree to arbitration, disputes shall be settled by recourse to judicial proceedings.

14. **ENTIRE AGREEMENT - AMENDMENT AND WAIVER.**

- 14.1. This Agreement, the Certificate of Incorporation, the Bylaws, the Rules and Regulations, and the Voting Agreement encompass the full understanding of the parties hereto with respect to the transaction contemplated hereby.
- 14.2. Neither this Agreement, nor any terms herein, may be terminated, amended, altered, or modified except by an instrument in writing executed by Member and RDH or except as may be approved by the affirmative vote of Members in accordance with the Bylaws, on the effective date of the amendment, provided no such amendment shall be made which shall conflict with, or cause a default, penalty or acceleration of performance, under any existing mortgage, indenture, or financing arrangement of RDH.

- 14.3. Any waiver at any time by either RDH or Member of its rights concerning a default or any matter arising from or incidental to this Agreement shall not constitute a waiver concerning any subsequent default or other matter.

- 14.4. Failure of RDH or Member to enforce at any time any provision of this Agreement or to require at any time performance by the other party of any provision herein shall not constitute or be deemed a waiver of such provision nor affect in any manner the validity of this Agreement or the right of such party thereafter to enforce any provisions herein unless such waiver be in writing and specifically referring to such matters.

15. **ASSIGNMENT - SUCCESSORS.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Member, provided that such successor or assign has enforceably and in writing assumed all of the obligations and liabilities of the Member under this Agreement, including, but not limited to, the remaining term of this Agreement, and provided that the assignment shall not require RDH to provide Steam to any facility other than the Building. Notwithstanding any such purported assignment and assumption by Member and its successor or assignee, Member shall not be relieved of its liability hereunder unless it satisfies RDH and any Secured Lender holding an interest in this Agreement, as security, that (a) such assignment or succession and assumption is valid and binding, and (b) that the successor or assign is substantially as creditworthy as Member, or that the creditworthiness of such successor or assign is otherwise reasonably acceptable to RDH and its Secured Lender, as defined in paragraph 22 hereof.

16. **EXPANSION.** RDH shall have the right, at the option of its Members, as provided in the Bylaws, to expand the System to service additional Members.

17. **SYSTEM IMPROVEMENTS.** RDH reserves the right, at the option of its Board of Directors, to effect improvements to the System by adopting and incorporating new technologies and/or systems, including, without limitation, meters, condensate return lines, and hot and/or chilled water systems, provided that such improvements are determined by the Board of Directors of RDH to be in the best interest of the System and the then Members of RDH.

18. **SEVERABILITY.** If any of the terms, covenants or conditions of this Agreement shall be held invalid by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall remain valid, enforceable, and not affected thereby.

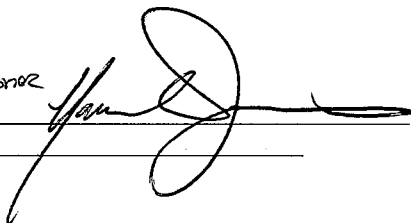
19. **APPLICABLE LAW.** The validity, performance, construction, interpretation and enforcement of this Agreement and all terms, covenants, and conditions herein, shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of laws rules.

20. **NOTICES.** Wherever in this Agreement it shall be required or permitted that notice or demand be given or served on either party to this Agreement, to or on the other, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by registered or certified mail,

IN WITNESS WHEREOF, Member and RDH have executed and delivered this Agreement as of the 30<sup>th</sup> day of Dec., 2015.

MEMBER: The City of Rochester

By: Norman H. Jones, Commissioner

A handwritten signature in black ink, appearing to be "Norman H. Jones", written over two horizontal lines.

ROCHESTER DISTRICT HEATING COOPERATIVE, INC.

By: Daniel E. DiLoreto, President

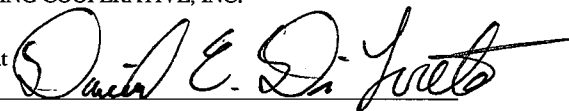
A handwritten signature in black ink, appearing to be "Daniel E. DiLoreto", written over a horizontal line.

EXHIBIT "A"  
 ADDITIONAL STEAM CHARGE

BUILDING..... Crossroads Garage  
 RDH ID NUMBER..... 19  
 BUILDING PEAK..... 1.9

Year	Additional Steam Charge
1	\$67,500
2	\$67,500
3	\$67,500
4	\$67,500
5	\$67,500
6	\$67,500
7	\$67,500
8	\$67,500
9	\$67,500
10	\$67,500
11	\$67,500
12	\$67,500
13	\$67,500
14	\$67,500
15	\$67,500