

LEASEBACK AGREEMENT
(AGENCY to BURRSTONE ENERGY CENTER LLC)

THIS LEASEBACK AGREEMENT dated as of the 1st day of January, 2008 by and between the **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 153 Brooks Road, Rome, New York 13441-4105 (the "AGENCY") and **BURRSTONE ENERGY CENTER LLC**, with offices at 22 Century Hill Drive, Suite 201, Latham, New York 12110 (the "Company")

WITNESSETH:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the "Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such AGENCY to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, pursuant to and in connection with the provisions of the Act, Chapter 372 of the Laws of 1972 of the State (collectively, the "Act") created the AGENCY which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, the Company has sought the financial assistance of the AGENCY in connection with the certain Project to be undertaken by Company consisting of: (a) the acquisition of a leasehold interest in an approximately two (2) acre vacant parcel of land on the St. Luke's Hospital Campus located at 1656 Champlin Avenue, Utica, New York and various distribution easements; (b) the construction on the Land of a certain approximately 5,400 square foot building (the "Facility"); (c) the installation within the Facility of a certain 3.6 mw combined heat and power equipment and all other related equipment (the "Equipment"); (d) the construction of various distribution pipes and conduits on private lands and the easements for the

benefit of the St. Luke's Hospital, Inc., St. Luke's Nursing Home and Utica College and (e) financing costs of the foregoing (collectively, the "Project" or "Facility").

WHEREAS, the AGENCY has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the AGENCY, on behalf of the AGENCY and as the AGENCY's agent, to acquire the Land, and to construct or cause to be constructed the Project and place or cause to be placed the Equipment thereon; and

WHEREAS, by a certain Ground Lease dated November 15, 2007, recorded as Instrument No. ____ in the Oneida County Clerk's Office, COMPANY has acquired the certain leasehold interest in and to the Land; and

WHEREAS, pursuant to a lease between COMPANY as Lessor and the AGENCY as Lessee, the COMPANY has leased the Project to the AGENCY for a period of 25 years (the Prime Lease); and

WHEREAS, the COMPANY intends to finance the Project with borrowed money (the "Loan") from a lender and other entities providing financial accommodations to the COMPANY with respect to the Project (collectively, the "Lender"), and the COMPANY intends to seek an exemption from mortgage recording taxes with respect to certain documents evidencing the Loan; and

WHEREAS, pursuant to this agreement (the "Leaseback Agreement") the AGENCY is leasing the Facility back to COMPANY;

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I **REPRESENTATIONS AND COVENANTS**

Section 1.1 Representations and Covenants of the AGENCY.

The AGENCY makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The AGENCY is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of the COMPANY to the proposed utilization of the Facility, the Facility is of a character included in the definition of a "Project" in the Act.

(b) The AGENCY has been duly authorized to execute and deliver this Leaseback Agreement.

(c) The AGENCY will acquire a leasehold interest in the Project from the COMPANY pursuant to the Prime Lease and leaseback the Project to the COMPANY pursuant to this Leaseback Agreement and cause or have caused the Project to be constructed and equipped by the COMPANY and the Equipment to be acquired and installed in the Facility or elsewhere on the Land, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Oneida and improving their standard of living.

(d) Neither the execution and delivery of the Prime Lease or this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the AGENCY is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any of the Property of the AGENCY under the terms of any such instrument or agreement.

(e) The AGENCY has been induced to enter into this Leaseback Agreement by the undertaking of COMPANY to locate and maintain the Facility and jobs in Oneida County, New York.

(f) The AGENCY has determined that the Facility will not have a "significant effect" on the environment within the meaning of the State Environmental Quality Review Act and the regulations of the Department of Environmental Conservation promulgated thereunder.

Section 1.2 Representations and Covenants of COMPANY.

COMPANY makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The COMPANY has power to enter into and to execute and deliver this Leaseback Agreement.

(b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of the Prime Lease or this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the COMPANY is a party or by which either is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any of the Property of COMPANY under the terms of any such instrument or agreement.

(c) The providing of the Facility by the AGENCY and the leasing thereof by the AGENCY to the COMPANY will not result in the removal of a plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.

(d) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the COMPANY shall defend, indemnify and hold the AGENCY harmless from any liability or expenses resulting from any failure by the COMPANY to comply with the provisions of this subsection (d).

(e) Pursuant to the Prime Lease the COMPANY has transferred to the AGENCY insurable title to the leasehold interest and assets contemplated by this Leaseback Agreement and all documents related hereto.

(f) There is no litigation pending or, to the respective knowledge of COMPANY, threatened, in any court, either state or federal, to which COMPANY is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of COMPANY to fulfill its obligations under this Leaseback Agreement.

(g) COMPANY represents and covenants (i) the Project complies and will comply in all respects with all environmental laws and regulations, (ii) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances have been in the past or will be discharged, released, stored, treated, generated, disposed of, or allowed to escape or exist on the Facility except in compliance with all applicable environmental laws, (iii) that no asbestos has been or will be incorporated into or disposed of on the Facility except in compliance with all applicable environmental laws, (iv) that no underground storage tanks are or will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand, or settlement with respect to any of the above is threatened, anticipated, in existence, or will be in existence. COMPANY upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the AGENCY in writing with full details regarding the same. COMPANY hereby releases the AGENCY from liability with respect to, and agrees to defend, indemnify, and hold harmless the AGENCY, its directors, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the AGENCY in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, COMPANY agrees to pay the expenses of same to the AGENCY upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

ARTICLE II

FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

Section 2.1 Agreement to Lease to AGENCY.

COMPANY has subleased, or has caused to be subleased, or will convey, or will cause to be subleased, to the AGENCY a subleasehold interest in the Facility, including the Building or any other structures or improvements on the Land, described in Exhibit A attached hereto and the Equipment and personal property described in Exhibit B attached hereto. COMPANY agrees that the AGENCY's interest in such Facility will be sufficient for the purposes intended by this

Leaseback Agreement and agrees that it will defend, indemnify and hold the AGENCY harmless from any expense or liability arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the AGENCY in defending any action respecting title to or a lien affecting the Facility.

Section 2.2 Construction and Equipping of the Facility.

COMPANY and the AGENCY agree and acknowledge that COMPANY will lease the Facility from the AGENCY pursuant to this Leaseback Agreement. COMPANY, as agent for the AGENCY, will construct and equip the Project.

Section 2.3 Demise of Facility.

The AGENCY hereby demises and leases the Facility to COMPANY and COMPANY hereby rents and leases the Facility from the AGENCY upon the terms and conditions of this Leaseback Agreement.

In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, COMPANY at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the AGENCY, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. COMPANY, in its own name or in the name of the AGENCY, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which COMPANY deems reasonably necessary, and in such event, the AGENCY, at COMPANY'S expense, hereby agrees to cooperate fully with COMPANY and to take all action necessary to effect the substitution of COMPANY for the AGENCY in any such action or proceeding.

Section 2.4 Duration of Lease Term; Quiet Enjoyment.

(a) The AGENCY shall deliver to COMPANY sole and exclusive possession of the Facility (subject to the provisions of Section 5.3 hereof) and the leasehold estate created hereby shall commence as of the date hereof.

(b) The leasehold estate created hereby shall terminate at 11:59 P.M. on February 28, 2033, or on such earlier date as may be permitted by Section 8.1 hereof.

Section 2.5 Rents.

(a) COMPANY shall pay to the AGENCY an annual administrative fee of \$500.00 payable on January 1 of each year commencing on January 1, 2008.

(b) In addition to the payments pursuant to Section 2.5 (a) hereof, throughout the term of this Leaseback Agreement, the COMPANY shall pay to the AGENCY as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses exceeding \$500 per annum of the AGENCY and the members thereof incurred (i) for

the reason of the AGENCY's leasing of the Facility and (ii) in connection with the carrying out of the AGENCY's duties and obligations under this Leaseback Agreement.

(c) COMPANY agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event COMPANY shall fail to timely make any payment required in this Section 2.6, COMPANY shall pay the same together with interest from the date said payment is due at the rate of six percent (6%) per annum.

Section 2.6 Obligations of COMPANY Hereunder Unconditional.

(a) The obligations of COMPANY to make the payments required in Section 2.5 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of COMPANY and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim they may otherwise have against the AGENCY. COMPANY will not (i) suspend, discontinue or abate any payment required by Section 2.5 hereof or (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for COMPANY's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by Condemnation of title to or the use of all or any part the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the AGENCY to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Leaseback Agreement, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.6 shall be construed to release the AGENCY from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of the COMPANY to seek reimbursement, and in the event the AGENCY should fail to perform any such agreement, COMPANY may institute such separate action against the AGENCY as either may deem necessary to compel performance or recover damages for nonperformance, and the AGENCY covenants that it will not, subject to the provisions of Section 6.1, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the right or estate of the COMPANY hereunder, except upon written consent of COMPANY. None of the foregoing shall relieve COMPANY of its obligations under Section 5.2 hereof.

Section 2.7 Easements.

COMPANY shall have the sole and exclusive right and obligation to execute any and all easements in connection with the Project and Facility.

ARTICLE III MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 3.1 Maintenance and Modifications of Facility By COMPANY.

(a) COMPANY agrees that during the term of this Leaseback Agreement and the Sublease it will (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; and (iv) indemnify and hold the AGENCY harmless from any liability or expenses from the failure by COMPANY to comply with (i), (ii) or (iii) above.

(b) COMPANY at its own expense, from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses that do not adversely affect the structural integrity or impair the operating efficiency of the Facility or substantially change the nature of the Facility. All such structural additions, modifications or improvements so made by COMPANY shall become a part of the Facility. COMPANY agrees to deliver to the AGENCY all documents which may be necessary or appropriate to convey to the AGENCY title to or other satisfactory interest in such property.

Section 3.2 Installation of Additional Equipment.

COMPANY from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. COMPANY from time to time may remove or permit the removal of such machinery, equipment or other personal property; provided that any such removal of such machinery, equipment or other personal property shall not adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended and provided further that if any damage is occasioned to the Facility by such removal, COMPANY agrees to promptly repair such damage at its own expense.

Section 3.3 Taxes, Assessments and Utility Charges.

(a) COMPANY agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought by COMPANY therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the AGENCY from the Facility, (ii) all payments under the PILOT executed by the parties simultaneously herewith, (iii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, COMPANY shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the term of this Leaseback Agreement.

(b) COMPANY, at its own expense, and in its own name and on behalf or in the name and on behalf of the AGENCY, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, COMPANY may not permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom.

Section 3.4 Insurance Required.

At all times throughout the term of this Leaseback Agreement, including without limitation during any period of construction of the Facility, COMPANY shall maintain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the replacement cost of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by COMPANY. As an alternative to the requirements in this subsection (a), including the requirement of periodic appraisal, COMPANY may insure such property under a blanket insurance policy or policies covering not only the Facility, but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the AGENCY or COMPANY is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of COMPANY who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by COMPANY under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon either COMPANY by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than \$2,000,000.00, protecting AGENCY against any loss or liability or damage for personal injury or property damage.

Section 3.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by COMPANY and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which COMPANY is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of COMPANY and the AGENCY as their respective interest may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to COMPANY and the AGENCY.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect showing the AGENCY as an "added insured" as its interest may appear shall be deposited with the AGENCY on or before the Closing Date. COMPANY shall deliver to the AGENCY on or before the first business day of each calendar year thereafter a certificate dated not earlier than the immediately preceding December 1st reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 3.4 and 3.5 hereof. Prior to expiration of any such policy, COMPANY shall furnish the AGENCY evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

Section 3.6 Application of Net Proceeds of Insurance.

The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

- (i) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and
- (ii) the net proceeds of the insurance required by Sections 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 3.7 Right of AGENCY to Pay Taxes, Insurance Premiums and Other Charges.

If COMPANY fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the AGENCY may pay such tax, assessment or other governmental charge or the premium for such insurance. COMPANY shall reimburse the AGENCY for any amount so paid together with interest thereon from the date of payment at nine percent (9%) per annum.

**ARTICLE IV
DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 4.1 Damage or Destruction.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Leaseback Agreement:

- (i) the AGENCY shall have no obligation to replace, repair, rebuild or restore the Facility;
- (ii) there shall be no abatement or reduction in the amounts payable by COMPANY under this Leaseback Agreement; and
- (iii) except as otherwise provided in subsection (b) of this Section 4.1, COMPANY shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as

existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by COMPANY .

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of COMPANY's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) The COMPANY shall be obligated to replace, repair, rebuild or restore the Facility, and the net proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 4.1, if COMPANY shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) COMPANY may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

Section 4.2 Condemnation.

(a) If at any time during the term of this Leaseback Agreement the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the AGENCY shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by COMPANY under this Leaseback Agreement. The AGENCY shall not have any interest whatsoever in any condemnation award, and COMPANY shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, COMPANY shall promptly:

- (i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or
- (ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility.

The Facility, as so restored, or the substitute facilities, whether or not requiring the expenditure of COMPANY's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) The COMPANY shall not be obligated to restore the Facility or acquire substitute facilities, nor shall the net proceeds of any condemnation award be applied as provided in Section 4.2(a), if COMPANY shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The AGENCY shall cooperate fully with COMPANY in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the AGENCY voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of COMPANY.

Section 4.3 Condemnation of COMPANY Owned Property.

COMPANY shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

**ARTICLE V
SPECIAL COVENANTS**

Section 5.1 No Warranty of Condition or Suitability by the AGENCY.

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR ANY LAND, BUILDING OR EQUIPMENT OR THAT IT OR THEY IS OR ARE OR WILL BE SUITABLE FOR COMPANY'S PURPOSES OR NEEDS.

Section 5.2 Hold Harmless Provisions.

COMPANY hereby releases the AGENCY from, agree that the AGENCY shall not be liable for and agrees to indemnify and hold the AGENCY harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the AGENCY's financing, construction, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the AGENCY, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability.

Section 5.3 Right to Inspect the Facility.

The AGENCY and its duly authorized agents shall have the right at all reasonable times, and upon reasonable notice, to inspect the Facility; any inspections shall be conducted so as not to interfere with COMPANY's business operations.

Section 5.4 COMPANY to Maintain Its Existence; Conditions Under Which Exceptions Permitted.

COMPANY agrees that during the term of this Leaseback Agreement they will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of their respective assets.

Section 5.5 Qualification in the State.

Throughout the term of this Leaseback Agreement, COMPANY shall continue to be duly authorized to do business in the State.

Section 5.6 Agreement to Provide Information.

COMPANY agrees, whenever requested by the AGENCY, to provide and certify or cause to be provided and certified such information concerning either COMPANY, the Facility and other topics necessary to enable the AGENCY to make any report required by law or governmental regulation.

Section 5.7 Books of Record and Account; Financial Statements.

COMPANY at all times agree to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs respectively of COMPANY.

Section 5.8 Compliance With Orders, Ordinances, Etc.

(a) COMPANY agrees that it will, throughout the term of this Leaseback Agreement, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.8, COMPANY may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, COMPANY, with the prior written consent of the AGENCY (which shall not be unreasonably withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the AGENCY shall notify COMPANY that it must comply with such requirement or requirements.

Section 5.9 Discharge of Liens and Encumbrances.

(a) COMPANY shall not permit or create or suffer to be permitted or created any lien, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof. Notwithstanding the foregoing, the COMPANY may grant the lien of the Mortgage and may assign this Lease Agreement to the Lender, without the consent of the AGENCY.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.9, COMPANY may in good faith contest any such lien. In such event, COMPANY may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 5.10 Sales Tax.

COMPANY shall file an Annual Statement with the New York State Department of Taxation and Finance regarding the value of sales tax exemptions. COMPANY, its agents, consultants or subcontractors have claimed pursuant to the benefits the AGENCY conferred in connection with the Project. COMPANY acknowledges that failure to file such statement is a default under the terms of this Leaseback Agreement.

Section 5.11 Depreciation Deductions and Investment Tax Credit.

The parties agree that COMPANY shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to section 167 of the United States Internal Revenue Code (the "Code") and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility.

ARTICLE VI

**RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING;
MORTGAGE AND PLEDGE OF INTERESTS**

Section 6.1 Restriction on Sale of Facility; Release of Certain Land.

Except as otherwise specifically provided in these Articles VI or VII, the AGENCY shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement, without the prior written consent of COMPANY.

Section 6.2 Removal of Equipment.

(a) The AGENCY shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where COMPANY determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, COMPANY may remove such item of Equipment from the Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The AGENCY shall execute and deliver to COMPANY all instruments necessary or appropriate to enable COMPANY to sell or otherwise dispose of any such item of Equipment. COMPANY shall pay any costs (including reasonable counsel fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle COMPANY to any abatement or diminution of the rents payable under Section 2.6 hereof.

Section 6.3 Assignment and Subleasing.

(a) This Leaseback Agreement may not be assigned, with the exception of corporate reorganization or transfers for estate planning purposes, without the consent of the AGENCY, in whole or in part and except for the Sublease the Facility may not be leased as a whole or in part

by COMPANY, without the consent of the AGENCY, which shall not be unreasonably withheld. Notwithstanding the foregoing, the COMPANY may assign this Lease Agreement to the Lender, without the consent of the AGENCY.

(b) Notwithstanding anything herein to the contrary, in the event that the COMPANY desires to convey the Project to an unaffiliated party to the COMPANY, the COMPANY shall provide fifteen (15) days written notice to the AGENCY of its intention to sell the Project to an unaffiliated party. The AGENCY hereby consents to the sale of the Project with the assumption by the unaffiliated purchaser of the COMPANY's obligations under this Lease Agreement and the other financing documents executed in connection with this Lease Agreement provided that the Project remains a Project under the Act (or is otherwise grandfathered as a Project under the Act). The AGENCY acknowledges that it does not have consent or termination rights upon the sale of the Project to an unaffiliated buyer.

(c) Notwithstanding anything herein to the contrary, in the event that the Company desires to convey the Project to an affiliate, the Company may convey the Project to such affiliate without the consent of the AGENCY.

ARTICLE VII **DEFAULT**

Section 7.1 Events of Default Defined.

(a) Each of the following shall be an "Event of Default" under this Leaseback Agreement:

(1) If COMPANY fails to pay the amounts required to be paid pursuant to Section 2.6 of this Leaseback Agreement and such failure shall have continued for a period of thirty (30) days after the AGENCY gives written notice of such failure to COMPANY and the Lender.

(2) If there is any failure by COMPANY to observe or perform any other covenant, condition or agreement required by this Leaseback Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the AGENCY gives written notice to COMPANY and the Lender, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such 30 day period, COMPANY's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence.

(3) If any representation or warranty of COMPANY contained in this Leaseback Agreement is incorrect in any material respect.

(4) If there is any default by COMPANY to observe or perform any covenant, condition or agreement required by this Leaseback Agreement, or any other agreement between COMPANY and the AGENCY, including, but not limited to, a certain Environmental Compliance and Indemnification Agreement (the "ECIA") of even date herewith the terms of which are incorporated herein by reference with the same force and effect as though set forth in full herein, to be observed or performed by COMPANY and such failure shall have continued for

a period of thirty (30) days after the AGENCY gives written notice to COMPANY and the Lender, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such 30 day period, COMPANY's or failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence.

(5) Notwithstanding anything herein to the contrary, the AGENCY acknowledges and agrees that it will not terminate this Agreement unless the AGENCY has provided the Lender not less than thirty (30) days written notice and an opportunity to cure the alleged default, or in the case of any alleged default which can be cured with due diligence but not within such 30 day period, such longer period as is required to cure any alleged default, so long as the Lender is proceeding promptly to cure such default and thereafter prosecutes the curing of such default with due diligence.

(b) Notwithstanding the provisions of Section 7.1 (a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under this Leaseback Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations to make the payments required by Section 2.6 and Section 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by Section 5.2 hereof or the ECIA and to comply with the terms of the ECIA and Sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10 and 7.1(a)(1) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 7.2 Remedies on Default.

Subject to Section 7.1(a)(5), whenever any Event of Default shall have occurred and be continuing, the AGENCY may take, to the extent permitted by law, any one or more of the following remedial steps;

(1) Declare, by written notice to COMPANY to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid amount payable pursuant to Section 2.6 (a) hereof and (ii) all other payments due under this Leaseback Agreement.

(2) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

(3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of COMPANY under this Leaseback Agreement.

(4) Terminate this Leaseback Agreement, the Prime Lease and the PILOT Agreement and convey the AGENCY'S interests in the Facility to COMPANY or its designee.

Section 7.3 Remedies Cumulative.

No remedy herein conferred upon or reserved to the AGENCY is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses.

In the event the COMPANY should default under any of the provisions of this Leaseback Agreement and the AGENCY should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the COMPANY herein contained, COMPANY shall, on demand therefor, pay to the AGENCY, the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.5 No Additional Waiver Implied by One Waiver.

In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII

EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY

Section 8.1 Early Termination of Agreement.

(a) COMPANY shall have the option at any time to terminate this Leaseback Agreement upon filing with the AGENCY a certificate signed by an authorized representative of COMPANY stating COMPANY's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.

(b) Subject to Section 7.1(a)(5), the AGENCY shall have the option at any time to terminate this Leaseback Agreement upon any payment default of COMPANY of the Payment in Lieu Tax Agreement, after ten (10) days written notice to COMPANY and 10 days opportunity to cure.

(c) Subject to Section 7.1(a)(5), the AGENCY shall have the option at any time to terminate this Leaseback Agreement upon default by COMPANY in the performance of any other obligation under this Agreement or the PILOT Agreement or the ECIA to be signed and delivered concurrently herewith upon thirty (30) days written notice to COMPANY and opportunity to cure.

Section 8.2 Obligation to Terminate Lease.

Upon termination of the term of this Leaseback Agreement in accordance with Section 2.5 or Section 8.1 hereof, the AGENCY and COMPANY shall terminate the Leaseback Agreement and the Prime Lease for the consideration of One (\$1.00) Dollar.

Section 8.3 Termination.

At the closing of any Lease Termination of the Facility pursuant to Section 8.2 hereof, the AGENCY shall, upon receipt of the consideration, deliver to COMPANY all necessary documents,

(a) To terminate the Leaseback Agreement and the Prime Lease and surrender to COMPANY the Facility being leased, as such Facility exists, subject only to the following:

- (i) any liens to which title to such property was subject when leased to the AGENCY,
- (ii) any liens suffered by COMPANY created at the request of COMPANY or to the creation of which COMPANY consented or in the creation of which COMPANY acquiesced; and
- (iii) any liens resulting from the failure of COMPANY to perform or observe any of the agreements on its part contained in this Leaseback Agreement, the PILOT Agreement or the ECIA; and

(b) To release to COMPANY all of the AGENCY's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards with respect to the Facility.

ARTICLE IX

JOBS CREATION AND RETENTION OBLIGATION

The Company will use commercially reasonable efforts to enter into an agreement for maintenance with St. Luke's Hospital to utilize the current number of three (3) employees of the St. Luke's Hospital Inc. that work at the boiler operations for the Hospital

ARTICLE X

RECAPTURE

INTENTIONALLY DELETED

ARTICLE XI

INTENTIONALLY DELETED

ARTICLE XII

NO RECOURSE; SPECIAL OBLIGATION

Section 12.1 The obligations and agreements of the AGENCY contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the AGENCY, and not of any member, officer, agent (other than COMPANY) or employee of the AGENCY in his/her individual capacity, and the members, officers, agents (other than COMPANY) and employees of the AGENCY shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

Section 12.2 The obligations and agreements of the AGENCY contained hereby shall not constitute or give rise to an obligation of the State or of the County of Oneida, New York, and neither the State nor the County of Oneida, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the AGENCY, but rather shall constitute limited obligations of the AGENCY, payable solely from the revenues of the AGENCY derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the AGENCY with respect to the Unassigned Rights).

Section 12.3 No order or decree of specific performance with respect to any of the obligations of the AGENCY hereunder shall be sought or enforced against the AGENCY unless (i) the party seeking such order or decree shall first have requested the AGENCY in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the AGENCY shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause

compliance with such request) or failed to respond within such notice period, (ii) if the AGENCY refuses to comply with such request and the AGENCY's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the AGENCY an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the AGENCY refuses to comply with such request and the AGENCY's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than COMPANY) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the AGENCY and its members, officers, agents (other than COMPANY) and employees against all liability expected to be incurred as a result of compliance with such request.

ARTICLE XIII
MISCELLANEOUS

Section 13.1 Surrender of Facility.

Except as otherwise expressly provided in this Leaseback Agreement, at the termination of this Leaseback Agreement, the Prime Lease shall terminate and the AGENCY, COMPANY in its "as is" condition without obligations, responsibility or liability for any damage, destruction or loss to the Facility or any portion thereof.

Section 13.2 Notices.

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the AGENCY:	ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY 153 Brooks Road Rome, New York 13441-4105 Attention: David Grow
With a Copy to:	Kernan and Kernan, PC 258 Genesee Street #10 Suite 600 Utica, New York 13502 Attention: Michael H. Stephens, Esq.
To COMPANY:	BURRSTONE ENERGY CENTER LLC 22 Century Hill Drive, Suite 201 Latham, New York 12110
With a Copy to:	Segel, Goldman, Mazzotta & Siegel, P.C. 9 Washington Square Albany, New York 12205

Attention: Paul J. Goldman, Esq.

So long as any Loan remains outstanding, a duplicate copy of each notice, certificate and other communication given hereunder shall be given to the Lender and counsel to the Lender at the address for the Lender and counsel to the Lender provided by the COMPANY in writing at the closing of the Loan. If Manufacturers and Traders Company is the Lender, the Lender's address shall be as follows:

Manufacturers and Traders Company
327 Great Oaks Boulevard
Albany, New York 12203

With a Copy to:

Manufacturers and Traders Trust Company
One M&T Plaza
Buffalo, New York 14203
Attention: Office of General Counsel.

Section 13.3 Binding Effect.

This Leaseback Agreement shall inure to the benefit of and shall be binding upon the AGENCY and, COMPANY and their respective successors and assigns.

Section 13.4 Severability.

In the event any provision of this Leaseback Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5 Amendments, Changes and Modifications.

This Leaseback Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 13.6 Execution of Counterparts.

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

Section 13.7 Applicable Law.

This Leaseback Agreement shall be governed exclusively by the applicable laws of the State.

Section 13.8 Recording and Filing.

This Leaseback Agreement or a memorandum thereof, may be recorded or filed, as the case may be, in the Office of the Clerk of Oneida County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 13.9 Survival of Obligations.

This Leaseback Agreement shall survive the performance of the obligations of COMPANY to make payments required by Section 2.6 and all indemnities shall survive any termination or expiration of this Leaseback Agreement.

Section 13.10 Unassigned Rights.

Notwithstanding any mortgage assignment or pledge by the AGENCY to any mortgagees, COMPANY's obligations as set forth hereinabove in Sections 2.6 and 3.3 will not be assigned to any such mortgagee but shall remain as rights of the AGENCY.

Section 13.11 Table of Contents and Section Headings Not Controlling.

The table of contents and the headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.

Section 13.12 Merger of the AGENCY. (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the AGENCY with, or merger of the AGENCY into, or assignment by the AGENCY of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the AGENCY hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the AGENCY shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the AGENCY's rights and interests hereunder shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the AGENCY shall give notice thereof in reasonable detail to COMPANY. The AGENCY shall promptly furnish to COMPANY such additional information with respect to any such consolidation, merger or assignment as COMPANY reasonably may request.

Section 13.13 Appointment of AGENCY as attorney-in-fact. The AGENCY is appointed as attorney-in-fact for each COMPANY for purposes of executing all documents on behalf of COMPANY required of COMPANY to effect a termination of this Leaseback Agreement pursuant to Section 8.1(b) and (c) and a conveyance of the AGENCY'S interests to the COMPANY and record a memorandum of such termination and documents required to effect such conveyance.

Section 13.14 Lender. (A) Simultaneously with or subsequent to the execution and delivery of this Lease Agreement (the "Closing"), the COMPANY and/or the AGENCY, as appropriate, will execute and deliver to the Lender the following additional documents


(collectively, the "Loan Documents"): (1) one or more mortgages and any other security documents and related documents (collectively, the "Mortgage") from the AGENCY and the COMPANY to the Lender, which Mortgage will grant in favor of the Lender liens on and security interests in the Project to secure the Loan; and (2) any building loan and other agreements reasonably requested by the Lender in connection with the Loans.

(B) This Lease Agreement and all rights of the COMPANY and the AGENCY hereunder (other than the unassigned rights described in Section 13.10 hereof) are and shall be subordinate to the lien of the Mortgage. The subordination of this Lease Agreement to the Mortgage shall be automatic, without the execution of any further subordination agreement by the COMPANY or the AGENCY. Nonetheless, if the Lender requires a further written subordination agreement, the COMPANY and the AGENCY hereby agree to execute, acknowledge and deliver the same.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the AGENCY and COMPANY have caused this Leaseback Agreement to be executed in their respective corporate names, all as of the date first above written.

**ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: David C. Grow
Title: Chairman

BURRSTONE ENERGY CENTER LLC

By: 
Name: Matthew Bette
Title: Member

Exhibit A

Being a leasehold interest in and to all that tract or parcel of Land, situated in the Town of Hartford and City of Utica, County of Oneida, and the State of New York, and described as follows:

First American Title Insurance Company of New York

Issued by

***SNEERINGER MONAHAN PROVOST REDGRAVE
TITLE AGENCY, INC.***

ALL THAT PIECE OR PARCEL OF LAND situate, lying and being in the Town of New Hartford, County of Oneida, State of New York, and being more particularly described, as follows:

1. Beginning at a point, said point being the southwesterly corner of the existing St. Lukes Energy Center, this point being also a distance of 449.39 feet on a bearing of S 54° 04' 25" W of the southeasterly property corner between the Catholic Diocese of Central New York, now or formerly, (Our Lady of Lourdes Catholic Church) to the west, Faxton-St. Luke's Healthcare, now or formerly, to the west and Burrstone Road (State Route 921B) to the south;
2. Thence S 11° 00' 56" W, a distance of 28.50 feet, more or less, to an angle point;
3. Thence N 78° 59' 04" W, a distance of 180.00 feet, more or less, to an angle point;
4. Thence N 11° 00' 56" E, a distance of 150.00 feet, more or less, to an angle point;
5. Thence S 78° 59' 04" E, a distance of 110.00 feet, more or less, to an angle point;
6. Thence N 11° 00' 56" E, a distance of 80.52 feet, more or less, to an angle point;
7. Thence S 71° 29' 29" E, along the edge of the loop roadway, a distance of 70.60 feet, more or less, to an angle point;
8. Thence S 11° 00' 56" W, along the westerly side of the existing Energy Building a distance of 192.82 feet, more or less, to the point or place of beginning.

Containing a total of 32,313.98 square feet, or 0.74 acres, more or less.

Description - Page 1 of 1
Order No. **A116968**
Title No. **852-OE-11097**
Date: **December 26, 2007**

Exhibit B

Description of the Equipment

All the right, title and interest of COMPANY in and to all machinery, apparatus, construction materials, equipment, fittings, fixtures and articles of personal property installed in, attached to or used or usable in connection with the present or future use of the real estate described in Schedule "A", or the present or future operation or maintenance of the buildings, structures or other improvements now or hereafter erected on the Premises (collectively, the "Improvements"), whether now owned or hereafter acquired by COMPANY, including but not limited to, all heating, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, exhaust and heater fans, air-cooling and air-conditioning apparatus, escalators, shades, awnings, screens, storm doors and windows, stoves, refrigerators, attached cabinets, partitions, ducts and compressors (which machinery, apparatus, equipment, fittings, fixtures and articles of personal property, all replacements thereof, substitutions therefor and additions thereto, together with the proceeds thereof, are hereafter collectively referred to as the "Equipment").