

BURRSTONE ENERGY CENTER LLC ("Burrstone")

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency")

AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2008 Lease/Leaseback Transaction

Tax Parcel Number #317-2-2.61
1656 Champlin Avenue

**AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT, dated as of July 1, 2011 is by and among **BURRSTONE ENERGY CENTER LLC**, a New York limited liability company having an address at 22 Century Hill Drive, Suite 202, Latham, New York 12110("Burrstone") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company has undertaken a project 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, Town of New Hartford, Oneida County, New York (the "Land") 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").

WHEREAS, in order to induce Burrstone to develop the Facility, the Agency has obtained a leasehold interest in the Facility pursuant to a prime lease between Burrstone as Lessor and the Agency as Lessee dated as of January 1, 2008 (the "Prime Lease") and leaseback said Facility to Burrstone pursuant to the terms and

conditions of a leaseback agreement dated as of January 1, 2008 (the "Leaseback Agreement"); and

WHEREAS, Burrstone has executed the Leaseback Agreement and this Agreement; and

WHEREAS, pursuant to General Municipal Law §874 and Real Property Tax Law §412-a, the Facility is and/or will be exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of Burrstone or the occupancy thereof by Burrstone commencing March 1, 2009 (the "Exempt Taxes"), because the Facility is, or will be, under the jurisdiction, supervision and/or control of the Agency and used for a purpose pursuant to the Prime Lease and the Leaseback Agreement within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption will not extend to special assessments or ad valorem levies; and

WHEREAS, Burrstone understands that it, as lessee of the Facility leased to it by the Agency, will, in fact, have no Exempt Taxes to pay under the provisions of the Leaseback Agreement from March 1, 2009, the next taxable status date, through the term of the Leaseback Agreement (the "Exemption Term") (each year measured by the twelve month period commencing with the first day of March, herein referred to as an "Exemption Year"); and

WHEREAS, each Exemption Year is set forth on Schedule C attached hereto and made a part hereof; and

WHEREAS, the Agency and Burrstone deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by Burrstone to any existing incorporated municipality or any which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, the Town of New Hartford, the New York Mills Union Free School District (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which the Facility is located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Burrstone agrees to pay to each Taxing Authority:

(a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and

(b) all special assessments and ad valorem taxes coming due and payable during the term of the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. Burrstone agrees to make payments in lieu of taxes to each Taxing Authority in accordance with the formula set forth on Schedule A attached hereto and made a part hereof (the "PILOT Payments"). The Taxing Authorities are listed on Schedule B attached hereto.

Notwithstanding anything herein to the contrary, this Agreement shall terminate on December 31, 2025 which is the date that the Leaseback Agreement shall terminate and the Agency shall then terminate its leasehold interest in the Facility to Burrstone pursuant to the Prime Lease.

Anything herein to the contrary, notwithstanding, upon the default by Burrstone in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, Burrstone shall henceforth pay as PILOT Payments one hundred (100%) percent of the amount of Exempt Taxes together with interest at the rate of nine (9%) percent per annum on any delinquent PILOT Payments together with actual and verifiable expenses of enforcement of this Agreement, including but not limited to, reasonable attorneys' fees; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or otherwise.

3. Burrstone will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Facility were not exempt from Taxes, currently as follows: New York Mills Union Free School District: September 30th and Town of New Hartford and Oneida County: January 31.

4. The PILOT Payments to be made by Burrstone pursuant to this Agreement are intended to be in lieu of all Exempt Taxes to be imposed on the Facility that would have to be paid on the Facility if the Agency did not hold a leasehold interest pursuant to the Prime Lease.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, Burrstone is required to pay any tax which the payments specified herein are intended to be in lieu of, Burrstone may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by Burrstone are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a non-exempt private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that Burrstone will have all the rights and remedies of a taxpayer under Real Property Tax Law to initiate and maintain tax assessment grievances and tax assessment review proceedings with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, Burrstone is obligated to make a payment hereunder, as if and to the same extent as if Burrstone were the owner of the Facility. It is the further intent of the parties that Burrstone will have all of the rights and remedies of a taxpayer as if and to the same extent as if Burrstone were the owner of the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's ownership of a leasehold interest in the Facility, Burrstone does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then Burrstone shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with Burrstone in all respects in any such proceeding at the sole cost and expense of Burrstone. For purposes of this Agreement, the Agency acknowledges and agrees that Burrstone is an "aggrieved person" within the meaning of such term under RPTL Article 7.

8. This Agreement is subject to the recapture provisions contained in Article XI or in any other provision of the Leaseback Agreement which are hereby incorporated

herein. In the event that the parties are unable to agree upon modification of the benefits pursuant to Article XI, the Agency shall have the option of terminating the Prime Lease, the Leaseback Agreement and this Agreement. Burrstone hereby appoints Agency as an attorney-in-fact with the power to sign all documents on behalf of Burrstone in order to effect such terminations.

9. All amounts payable by Burrstone hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

10. If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

11. This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

12. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or Burrstone, as the case may be, addressed as follows:

If to the Agency:

Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441
Attn: David Grow, Chairman

With a Copy to:

Bond Schoeneck & King
501 Main Street
Utica, New York 13501-1245
Attn.: Linda E. Romano, Esq.

If to Burrstone

22 Century Hill Drive, Suite 202
Latham, New York 12110
Attention: Matthew Bette, Member

With a Copy to:
Segel, Goldman, Mazzotta & Siegel, P.C.
9 Washington Square
Albany, New York 12205
Attention: Paul J. Goldman

If to Lender:

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

With a Copy to:
Hodgson Russ, LLP
677 Broadway
Albany, New York 12207

provided, that the Agency or Burrstone may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

13. This 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.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any litigation to enforce the terms of this Agreement shall be maintained exclusively in the Oneida County Supreme Court to the jurisdiction of which court the parties hereby submit.

15. By resolution made July 21, 2011 as ratified on August 12, 2011 the Agency approved the execution and delivery of this Amended and Restated PILOT Agreement. This Amended and Restated PILOT Agreement supercedes and replaces in full the certain Payment in Lieu of Tax Agreement by and between the Agency and Burrstone dated as of January 1, 2008. The Agency will execute, deliver and file with Assessor of the Town and an Amended and Restated RP-412-a with a copy of this Amended and Restated Payment in Lieu of Tax Agreement to the Taxing Authorities.

IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: David C. Grow

Name: David C. Grow

Title: Chairman

BURRSTONE ENERGY CENTER LLC

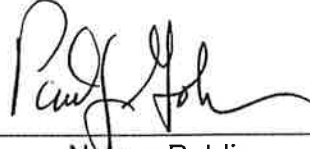
By: Matthew Bette

Name: Matthew Bette

Title: Member

STATE OF NEW YORK)
 : ss.:
COUNTY OF ALBANY)

On the 12 day of August 2011 before me the undersigned personally appeared, MATTHEW BETTE personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
PAUL GOLDMAN
Notary Public, State of New York
No. 4864023
Qualified in Albany County
Commission Expires 6/9/2014

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

On the 12 day of August 2011 before me the undersigned personally appeared **David C. Grow** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
LINDA E. ROMANO
Notary Public, State of New York
ONEIDA COUNTY
Commission Expires Jan. 27, 2015

SCHEDULE "A"

Payments in Lieu of Taxes

For the 2008 assessment rolls, the Project was not listed as being under the supervision, jurisdiction and control of the Agency since the Sublease Agreement by and between the Company and the Agency was not filed with the Office of the Oneida County Clerk until March 4, 2008 which is after the 2008 taxable status date (See Instrument No.: 2008-000305).

For the 2009 assessment rolls, the Project received a a reduction in the required payments due under the Payment in Lieu of Tax Agreement dated January 1, 2008 as follows: County of Oneida 2010 taxes and NY Mills Central School District 2009-2010 taxes were both calculated using an assessment of \$385,000 as compared to the 2009 assessment of \$785,000. For the 2010 payments in lieu of real property taxes payable to the Town of New Hartford that were generated from the 2009 assessment rolls, the Company made the payments in lieu of taxes in full based on the 2009 assessment for the Project in the amount of \$785,000, and the Company did not receive any abatement.

For the 2010 assessment rolls, the Company has made the required payments under Payment in Lieu of Tax Agreement dated January 1, 2008 for the Project. . The Company will stipulate and discontinue the existing Real Property Tax Law Article 7 proceedings captioned as Burrstone Energy Group LLC v. Town of New Hartford, et. al, and known as Oneida County Index Nos.: CA2010-001936 // RJI No. 32-10-0729 and CA2011-001647.

Starting with Exemption Year Three (In lieu of 2011 Assessment Rolls), the Company will make PILOT Payments in accordance with the following formula: The Company shall make PILOT Payments equal to the greater of: (A) the Percentage Amount (as hereinafter defined); or (B) the Fixed Assessment Amount (as hereinafter defined).

(A) The Percentage Amount will be the product of the following factors: (i) the prevailing tax rates imposed by the Taxing Authorities for each tax roll based on an assessment roll, as such rates may be changed from time to time (the "Tax Rates"); (ii) the applicable State equalization rate for the Town of New Hartford for the assessment rolls upon which the Tax Rates were computed; (iii) the final annual assessed value for the Facility for each annual assessment roll; and (iv) the Percentage Factor, as follows: Exemption Years Three (In lieu of 2011 Assessment Rolls) through and including Six (In lieu of 2014 Assessment Rolls) 12.235%; Exemption Years Seven (In lieu of 2015 Assessment Rolls) through and including Eleven (In lieu of 2019 Assessment Rolls)

14.682% and Exemption Years Twelve (In lieu of 2020 Assessment Rolls) through and including Sixteen (In lieu of 2024 Assessment Rolls) 17.129%.

(B) The Fixed Assessment Amount will be the product of the following factors: (a) the prevailing tax rates imposed by the Taxing Authorities for each tax roll based on an assessment roll, as such rates may be changed from time to time (the "Tax Rates"); (b) the applicable State equalization rate for the Town of New Hartford for the assessment rolls upon which the Tax Rates were computed; and (c) the final full value as follows: Exemption Years Three through and including Six (In lieu of 2011 Assessment Rollsthrough the In lieu of 2014 Assessment Rolls) \$1,000,000; Exemption Years Seven through and including Eleven(In lieu of 2015 Assessment Rolls through In lieu of 2019 Assessment Rolls) \$1,200,000 and Exemption Years Twelve through and including Sixteen (In lieu of 2020 Assessment Rollsthrough In lieu of 2024 Assessment Rolls) \$1,400,000.

The Company will pay 100% of Exempt Taxes based on taxes levied from 2025 assessment rolls having a taxable status date of March 1, 2025.

EXHIBIT "B"

LISTING OF TAXING AUTHORITIES

School District

New York Mills Union Free School District
District Treasurer
1 Marauder Boulevard
New York Mills, NY 13417

County

Oneida County
Oneida County Finance Department
Fifth Floor
800 Park Avenue
Utica, New York 13501

Town

Town of New Hartford
Tax Receiver
Butler Hall
48 Genesee Street
New Hartford, New York 13413

SCHEDULE C

EXEMPTION YEARS

Exemption Year (Assessment Roll Year)	County/Town Taxes	School Taxes
Year One (03/01/2009)	01/01/2010 – 12/31/2010	07/01/2009 – 06/30/2010
Year Two (03/01/2010)	01/01/2011 – 12/31/2011	07/01/2010 – 06/30/2011
Year Three (03/01/2011)	01/01/2012 – 12/31/2012	07/01/2011 – 06/30/2012
Year Four (03/01/2012)	01/01/2013 – 12/31/2013	07/01/2012 – 06/30/2013
Year Five (03/01/2013)	01/01/2014 – 12/31/2014	07/01/2013 – 06/30/2014
Year Six (03/01/2014)	01/01/2015 – 12/31/2015	07/01/2014 – 06/30/2015
Year Seven (03/01/2015)	01/01/2016 – 12/31/2016	07/01/2015 – 06/30/2016
Year Eight (03/01/2016)	01/01/2017 – 12/31/2017	07/01/2016 – 06/30/2017
Year Nine (03/01/2017)	01/01/2018 – 12/31/2018	07/01/2017 – 06/30/2018
Year (03/01/2018)	01/01/2019 – 12/31/2019	07/01/2018 – 06/30/2019
Year Eleven (03/01/2019)	01/01/2020 – 12/31/2020	07/01/2019 – 06/30/2020
Year Twelve (03/01/2020)	01/01/2021 – 12/31/2021	07/01/2020 – 06/30/2021
Year Thirteen (03/01/2021)	01/01/2022 – 12/31/2022	07/01/2021 – 06/30/2022
Year Fourteen (03/01/2022)	01/01/2023 – 12/31/2023	07/01/2022 – 06/30/2023
Year Fifteen (03/01/2023)	01/01/2024 – 12/31/2024	07/01/2023 – 06/30/2024
Year Sixteen (03/01/2024)	01/01/2025 – 12/31/2025	07/01/2024 – 06/30/2025