

**FIRST AMENDMENT  
TO  
LEASEBACK AGREEMENT  
(AGENCY to BURRSTONE ENERGY CENTER LLC)**

THIS FIRST AMENDMENT TO LEASEBACK AGREEMENT dated as of the 1st day of July, 2011 (the "First Amendment") 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 584 Phoenix Drive, 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**, the Company has granted to the Agency a certain subleasehold interest in and to the certain the real property, including any buildings, structures or improvements to be constructed thereon, described in Exhibit A attached hereto (the "Leased Premises") pursuant to the terms contained in a certain Sublease Agreement dated as of January 1, 2008, as amended by the certain First Amendment dated July 1, 2011 (collectively, the "Sublease Agreement").

**WHEREAS**, the Company and the Agency executed and delivered a certain Leaseback Agreement dated as of January 1, 2008 pursuant to which the Agency did leaseback to the Company the certain Project described therein (the "Leaseback Agreement"), a memorandum of which was recorded in the Office of the Oneida County Clerk on March 4, 2008 at Instrument R2008-000306.

**WHEREAS**, the Company and the Agency have executed and delivered a certain Amended and Restated Payment in Lieu of Tax Agreement dated as of July 1, 2011 which supercedes and replaces in full the certain payment in lieu of tax agreement dated January 1, 2008 (the "PILOT Agreement").

**WHEREAS**, the Agency and the Company desire to amend the Leaseback Agreement as set forth in this First Amendment (collectively, the Leaseback Agreement as amended by this First Amendment is hereinafter called the "Leaseback Agreement").

**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:

1. **Section 2.4(b)** of the Leaseback Agreement is deleted and replaced as follows:

(b) The leasehold estate created hereby shall terminate at 11:59 P.M. on December 31, 2025, or on such earlier date as may be permitted by Section 8.1 hereof.

**Record and Return to:**

**Bond, Schoeneck & King, PLLC**

**501 Main Street**

**Utica NY 13501**

2011417457

Clerk: LG

**R2011-000970**

09/22/2011 09:32:38 AM

LEASE (ANY)

8 Pages

Sandra J. DePerno, Oneida County Clerk

1885358.1 8/18/2011

2. **Section 3.3(a)** of the Leaseback Agreement is deleted and replaced as follows:

(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 due under the PILOT Agreement, (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.

3. **Section 13.2** of the Leaseback Agreement is deleted and replaced as follow:

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  
584 Phoenix Drive  
Rome, New York 13441  
Attention: David Grow

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

With a Copy to: 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

4 All of the terms, covenants and conditions set forth in the Leaseback Agreement shall remain in full force and effect unless expressly modified by this First Amendment.

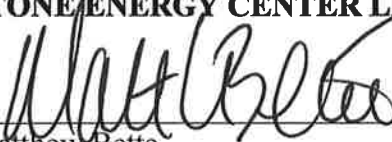
*(remainder of page intentionally left blank)*

**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**

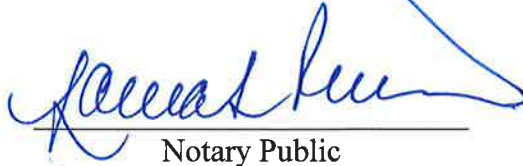
By:   
Name: David C. Grow  
Title: Chairman

**BURRSTONE ENERGY CENTER LLC**

By:   
Name: Matthew Bette  
Title: Member

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


On the 21st day of July 2011 before me, the undersigned a notary public in and for said state, 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  
LAURA S. RUBERTO  
Notary Public, State of New York  
Appointed in Oneida County  
Commission Expires Aug. 1, 2014

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

On the 21<sup>st</sup> day of July in the year 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.

  
\_\_\_\_\_  
Paul J. Goldman  
Notary Public, State of New York  
No. 4864023  
Qualified in Albany County  
Commission Expires: June 9, 2014

**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:

**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.