



**VIRGINIA G. CURTIS, PARALEGAL**  
(315) 565-4705  
[vcurtis@hancocklaw.com](mailto:vcurtis@hancocklaw.com)

December 7, 2023

Brian M. Fitts  
Town of Virgil Assessor  
Homer Town Hall  
31 North Main Street  
Homer, New York 13077

**Re: Cortland County Industrial Development Agency  
AK Community LLC Project**

Dear Mr. Fitts:

Enclosed please find New York State Board of Real Property Services Form RP-412-a (Industrial Development Agencies Application for Real Property Tax Exemption) regarding the above-referenced project.

Thank you and if you should have any questions, please let me know.

Very truly yours,

HANCOCK ESTABROOK LLP

A handwritten signature in blue ink that reads "Virginia G. Curtis". The signature is fluid and cursive, with "Virginia" on the top line and "G. Curtis" on the bottom line.

Virginia G. Curtis

/vc

Enclosures

cc: John Kaminski, Supervisor (w/encs.)  
Robert J. Edwards, Superintendent (w/encs.)  
Kevin Fitch, Chairman (w/encs.)  
Cortland County Real Property Tax Services (w/encs.)



**NYS DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES**

RP-412-a (1/95)

**INDUSTRIAL DEVELOPMENT AGENCIES  
APPLICATION FOR REAL PROPERTY TAX EXEMPTION  
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)**

**1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)**

Name Cortland County Industrial Development Agency  
Street 40 Main Street, Suite A  
City Cortland, NY 13045  
Telephone no. Day (607) 756-5005  
Evening ( )  
Contact Brendan O'Bryan  
Title Executive Director

**2. OCCUPANT (IF OTHER THAN IDA)**

(If more than one occupant attach separate listing)  
Name AK Community LLC  
Street 4287 N. Homer Avenue  
City Home, NY 13045  
Telephone no. Day ( ) 607-423-8711  
Evening ( )  
Contact Stephen Terwilliger  
Title Manager

**3. DESCRIPTION OF PARCEL**

a. Assessment roll description (tax map no./roll year)  
126.14-02-20.110 & 126.14-02-21.000  
b. Street address Owego Hill Rd & 1208 Church Street  
c. City, Town or Village Virgil  
d. School District Cortland City  
e. County Cortland  
f. Current assessment 1,390,900  
g. Deed to IDA (date recorded; liber and page)  
Leasehold Interest

**4. GENERAL DESCRIPTION OF PROPERTY**

(if necessary, attach plans or specifications)

a. Brief description (include property use) Former school and vacant land  
b. Type of construction Renovation of existing structure into residential units and community space  
c. Square footage 26,158  
d. Total cost \$2,398,150.00  
e. Date construction commenced Winter 2023/24  
f. Projected expiration of exemption (i.e.  
date when property is no longer  
possessed, controlled, supervised or  
under the jurisdiction of IDA)  
January 31, 2034

**5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE  
MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION**

(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment Please see attached Payment In Lieu of Tax Agreement  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
b. Projected expiration date of agreement January 31, 2034

County Cortland Yes ✓ No \_\_\_\_\_  
Town/City Virgil Yes ✓ No \_\_\_\_\_  
Village Virgil Yes \_\_\_\_\_ No \_\_\_\_\_  
School District Cortland City Yes ✓ No \_\_\_\_\_

d. Person or entity responsible for payment

Name AK COMMUNITY LLC  
Title Owner

Address 4287 N. Homer Avenue  
Cortland, New York 13045

e. Is the IDA the owner of the property? Yes  No (check one)  
If "No" identify owner and explain IDA rights or interest Telephone 607-423-8711  
in an attached statement. AK Community LLC is the owner, IDA has a leasehold interest.

6. Is the property receiving or has the property ever received any other exemption from real property taxation?  
(check one)  Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:  
**exemption Former school exempt from tax assessment roll year**

7. A copy of this application, including all attachments, has been mailed or delivered on 12/04/2023 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

## **CERTIFICATION**

I, Brendan O'Bryan, Executive Director of  
Name Cortland County Industrial Development Agency Title  
hereby certify that the information  
Organization  
on this application and accompanying papers constitutes a true statement of facts.

November 29, 2023

Date \_\_\_\_\_

John D.

---

**Signature**

## Clear Form

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special as valorem levies for which the parcel is liable \_\_\_\_\_

Date \_\_\_\_\_

Assessor's signature

---

CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

---

AK COMMUNITY LLC

---

PAYMENT IN LIEU OF TAX AGREEMENT

---

DATED DECEMBER 1, 2023

---

RELATING TO THE PREMISES LOCATED AT 1208  
CHURCH STREET AND OWEGO HILL ROAD IN THE  
TOWN OF VIRGIL, CORTLAND COUNTY, NEW YORK

---

## TABLE OF CONTENTS

(This Table of Contents is not part of the Payment in Lieu of Tax Agreement and is for convenience of reference only.)

	<u>PAGE</u>
PARTIES .....	1
RECITALS .....	1

### ARTICLE I REPRESENTATIONS AND WARRANTIES

Section 1.01. Representations of and Warranties by the Company .....	4
Section 1.02. Representations of and Warranties by the Agency .....	5

### ARTICLE II COVENANTS AND AGREEMENTS

Section 2.01. Tax-Exempt Status of the Facility Premises .....	6
Section 2.02. Payments in Lieu of Taxes .....	7
Section 2.03. Credit for Taxes Paid .....	10
Section 2.04. Late Payments .....	11

### ARTICLE III LIMITED OBLIGATION

Section 3.01. No Recourse; Limited Obligation of the Agency .....	12
---	----

### ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default .....	13
Section 4.02. Remedies on Default .....	14
Section 4.03. Payment of Attorneys' Fees and Expenses .....	14
Section 4.04. Remedies; Waiver and Notice .....	14

### ARTICLE V MISCELLANEOUS

Section 5.01. Term .....	15
Section 5.02. Form of Payments .....	15
Section 5.03. Company Acts .....	16

Section 5.04. Amendments .....	16
Section 5.05. Notices .....	16
Section 5.06. Binding Effect .....	17
Section 5.07. Severability .....	17
Section 5.08. Counterparts .....	17
Section 5.09. Applicable Law .....	17
TESTIMONIUM .....	18
SIGNATURES .....	18

**EXHIBIT A – Description of the Facility Parcel**

## **PAYMENT IN LIEU OF TAX AGREEMENT**

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated December 1, 2023 (the "Payment in Lieu of Tax Agreement") by and between CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 40 Main Street, Suite A, Cortland, New York (the "Agency") and AK COMMUNITY LLC, a limited liability company organized and existing under the laws of the State of Florida having an office for the transaction of business located at 4287 N. Homer Avenue, Cortland, New York 13045 (the "Company");

### **WITNESSETH**

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of 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 purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its projects, to charge and collect rent or the purchase price therefore; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 77 of the Laws of 1974 of the State (collectively with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, by resolution adopted on September 11, 2023 (the "Preliminary Inducement Resolution") pursuant to which the Agency agreed to accept an application (the "Application") from Kajen, LLC, or an entity owned by the same principals now being AK Community LLC (the "Company") and further agreed, subject to numerous conditions, to consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 7.9 acre parcel of land (the "Land") located at 1208 Church Street and Owego Hill Road in the Town of Virgil, Cortland County, New

York (2) the renovation of a vacant former school building on the Land containing approximately 26,158 square feet of space (the "Facility") and (3) the acquisition and installation therein and thereon of certain furnishings, fixtures and equipment (the "Equipment"), all of the foregoing to constitute a residential building consisting of approximately 19 residential units and a community center to be operated by the Company and occupied by residential tenants in excess of 55 years of age (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the Preliminary Inducement Resolution the Executive Director of the Agency (A) caused notice of a public hearing of the Agency to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project (the "Public Hearing") to be published on September 15, 2023 in the Cortland Standard, a newspaper of general circulation available to residents of the County of Cortland, (B) conducted the Public Hearing on October 4, 2023 at 11:00 o'clock a.m. local time in the Virgil Town Hall located at 1176 Church Street in the Town of Virgil, Cortland County, (C) prepared a report of the Public Hearing which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency adopted a Resolution on September 11, 2023 determining that the Project will not have a significant adverse environmental impact and issued a "Negative Declaration" with respect to the Project ("SEQRA Resolution"); and

WHEREAS, by resolution adopted by the members of the Agency on October 10, 2023 (the "Final Inducement Resolution"), the Agency determined, following review of the Report, to finalize the preliminary determination made by the Agency in the Preliminary Inducement Resolution to proceed with the Project; and

WHEREAS, by resolution adopted by the members of the Agency on October 10, 2023 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a Uniform Project and Lease Agreement (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) January 31, 2034 or (2) the date on which the Lease Agreement is terminated pursuant to the termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, pursuant to the provisions of the Lease Agreement, (A) the Company will, as agent of the Agency, undertake and complete the Project and (B) the Agency will lease (with an obligation to purchase) the Project Facility to the Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency (the "Underlying Lease"), pursuant to which the Company leases to the Agency the portion of the Land under the Facility (the "Facility Parcel") for a lease term ending on the earlier to occur of (a) January 31, 2034 or (b) the date on which the Lease Agreement is terminated pursuant to the termination provisions thereof, and (2) a bill of sale dated (the "Bill of Sale to Agency"), from the Company to the Agency, pursuant to which the Company will convey to the Agency its interest in the portion of the Project Facility constituting the Equipment, fixtures and other personal property, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Facility Parcel and the Facility, and (C) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Facility Parcel and the Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Facility Parcel and the Facility and the Payment in Lieu of Tax Agreement will be mailed by the Agency to the assessor and the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act); and

WHEREAS, pursuant to the terms set forth in the Lease Agreement, the Agency will obtain a leasehold interest in the Facility Parcel, which Facility Parcel is more fully described on Exhibit "A" attached hereto; and

WHEREAS, pursuant to the Lease Agreement, the Agency proposes to construct the Facility on the Facility Parcel (the Facility Parcel and the Facility being sometimes collectively referred to as the "Facility Premises"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes (A) with respect to the Facility Premises in an amount equivalent to normal taxes and (B) with respect to the balance of the Project Facility in an amount equivalent to normal taxes; provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes with respect to the Facility Premises in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to the Facility Premises; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company.

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of Florida, is duly authorized to do business in the State of New York, and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its managers (and members, if necessary) has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement

by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other corporate restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which the Company or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) 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 Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consents. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of

this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

## ARTICLE II COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE FACILITY PREMISES. (A) Assessment of the Facility Premises. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Facility Premises by the Agency and the filing by the Agency of a New York State Department of Taxation and Finance Office of Real Property Services Form RP-412-a with respect to the Facility Premises, and for so long thereafter as the Agency shall have an interest in the Facility Premises, the Facility Premises shall be assessed by the various taxing entities having jurisdiction over the Facility Premises, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Facility Premises is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest in the Facility Premises created by the Underlying Lease and the filing of the Real Property Tax Exemption Form. The Company shall, promptly, following acquisition by the Agency of the leasehold interest in the Facility Premises created by the Underlying Lease, take such action as may be necessary to ensure that the Facility Premises shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Facility Premises, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Facility Premises shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Facility Premises and the Real Property Tax Exemption Form is filed. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Facility Premises, including taxes and assessments levied for the current tax year and all

subsequent tax years until the Facility Premises shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Facility Premises.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does **not** entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility Premises.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to same pursuant to the provisions hereof.

(B) Valuation of the Facility Premises. (1) The value of the Facility Premises for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") **shall be fixed in the amount of \$380,000.00 for tax years 1 - 5 of the Term of this Payment in Lieu of Tax Agreement.** Nothing herein shall be construed to prevent the appropriate Assessors from determining a different assessed value for any other purpose. **The Assessed Value for purposes of determining payments in lieu of taxes due hereunder in tax years 6 - 10 of the Term of this Payment in Lieu of Tax Agreement shall be the actual assessed value for real property tax purposes of the Facility Premises as determined by the appropriate Assessors.** The Company shall be entitled to written notice of the determination of any assessed value from the appropriate Assessors and of any change thereof in accordance with law.

(2) If the Company is dissatisfied with the amount of any other assessed value of the Facility Premises as initially established or as thereafter changed, the Company shall have all rights and remedies under the laws of the State of New York to challenge such other assessed value.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be computed separately for each Taxing Entity as follows (the "PILOT Payment"):

(1) (i) In tax years 1 - 5 of the Term of this Payment in Lieu of Tax Agreement, by multiplying (a) the Assessed Value of the Facility Premises determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Facility Premises if the Facility Premises was owned by the Company and not the Agency; and

(ii) In tax years 6 - 10 of the Term of this Payment in Lieu of Tax Agreement, by multiplying (a) the Assessed Value of the Facility Premises determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Facility Premises if the Facility Premises was owned by the Company and not the Agency, and then further multiplying the result thereof by:

50% in Tax Year 6  
60% in Tax Year 7  
70% in Tax Year 8  
80% in Tax Year 9  
90% in Tax Year 10

(2) Except as provided in paragraph (3) below, in each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Facility Premises shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to the applicable PILOT Payment as calculated pursuant to Subsection (C) (1) i. and ii. of this Section 2.02.

(3) The parties recognize that the purpose of the Project is to provide needed senior housing in the County. Accordingly, the parties have agreed that the payments in lieu of taxes payable with respect to the Project Facility shall bear a direct relationship to the success or lack of success of the Project in achieving this goal. Therefore, on or before November 1 of each calendar year during the term of this Payment in Lieu of Tax Agreement, the Company shall file with the Agency an affidavit indicating the number of residential units within the Project Facility occupied by tenants in excess of 55 years of age. In each year that all 19 residential units within the Project Facility are occupied by tenants in excess of 55 years of age then the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to the applicable PILOT Payment as calculated pursuant to Subsection (C) (1) i. and ii. of this Section 2.02. In each year that not all 19 residential units within the Project Facility are occupied by tenants in excess of 55 years of age then the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to the lesser of (1) the PILOT Payment as calculated pursuant to Subsection (C) (1) i. and ii. of this Section 2.02 plus an additional 5.3% of the PILOT Payment for each residential unit not occupied by a tenant in excess of 55 years of age for such prior year

or (2) an amount equal to the real property taxes which would otherwise be due if the Project Facility were owned by the Company and not leased to the Agency for that year.

If the Company fails to file such an affidavit with the Agency on or before November 1 of a calendar year then, notwithstanding anything contained herein to the contrary, the Company shall pay an amount equal to the real property taxes which would otherwise be due if the Project Facility were owned by the Company and not leased to the Agency for that year.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Facility Premises or any portion thereof or any additional building or other structure shall be constructed on the Facility Parcel (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner

as other similar properties in the general area of the Facility Premises, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall have all rights and remedies under the laws of the State of New York to challenge such other assessed value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company pending determination of the Additional Assessed Value.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility Premises or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of

utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the

greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

### ARTICLE III LIMITED OBLIGATION

SECTION 3.01. NO RE COURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Cortland County, New York, and neither the State of New York nor Cortland County, New York shall be liable thereon and, further, such obligations, covenants 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 lease, sale or other disposition of the Facility Premises (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do

so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

#### **ARTICLE IV EVENTS OF DEFAULT**

**SECTION 4.01. EVENTS OF DEFAULT.** Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such correctness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEYS' FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or Power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) January 31, 2034 or (2) the date on which the Facility Premises is reconveyed by the Agency to the Company pursuant to the Lease Agreement.

(B) Extended Term. In the event that (1) the Facility Premises shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Facility Premises, the Facility Premises shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining the Agency's interest in the Facility Premises shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company if the Facility Premises were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Facility Premises as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States

of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by United States registered or certified mail, postage prepaid, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

AK COMMUNITY LLC  
4287 N. Homer Avenue  
Cortland, New York 13045

IF TO THE AGENCY:

Cortland County Industrial Development Agency  
40 Main Street, Suite A  
Cortland, New York 13045  
Attention: Executive Director  
WITH A COPY TO:

Hancock Estabrook, LLP  
1800 AXA Tower I  
100 Madison Street

Syracuse, NY 13202  
Attn: John P. Sidd, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency, the Company or any Taxing Entity may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CORTLAND COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Brendan O'Bryan, Executive Director

AK COMMUNITY LLC

By:   
Stephen Terwilliger, Manager

**EXHIBIT "A"**  
(Attach a copy of the Description of Facility Parcel)

## SCHEDULE A

All that Tract Parcel of Land situate in the Town of Virgil, County of Cortland and State of New York, bounded: and described as follows: Beginning at a point in the west line of lands owned by the party of the first part lying west of the highway leading from the settlement or hamlet of Virgil to Hartford, where said west line is intersected by the north line of lands owned by Ora J. Bays, husband of the party of the first part, and the south line of the Methodist Church property and running through north 24° and 30' east along the boundary line between the lands of the party of the first part on the east and the lands of the Methodist Church on the west, 66 feet to an iron stake set in the ground; through south 83° and 15' east along the south line of lands owned by W. E. Ladd and the old Baptist Church property 231.4 feet to the center of the highway leading towards Hartford from the settlement pf Virgil; thence south 24° and 50' west along the center of the said highway 490 feet to the point; then north 65° and 10' west 219.9 feet to a point in the first mentioned line; then north 24° and 30' east 352 feet along said first mentioned line to the place of beginning, containing more or less of land.

Excepting therefrom so much of the same as is used for highway purposes on the east.

All that Tract or Parcel of Land-division line of the lands owned by the above named Ora J. Bays and lands owned by his wife, Mattie Bays, where ethe southeast corner of the lands owned by the Methodist Church intersect the west line of said lands so Owned by Mattie Bays; then running thence south 34 degrees and 30 minutes west 352 feet along the west line of the said Mattie Byas property to an iron stake set in the ground; thence north 65 degrees ten minutes west 157.6 feet to an iron stake set in the ground; thence north 4 degrees 30 minutes east 272.4 feet to an iron stake set in the ground on the division line between the lands known as the Mary Ingraham property and the lands owned by the above Ora J. Bays; thence north 77 degrees 30 minutes east along said division line 40 feet to an iron stake set in the ground; thence south 83 degrees 15 minutes east 231.4 feet along the south line of the Methodist Church property to the place of beginning, containing more or less of the land.

All That Tract or parcel of Land, situate in the Town of Virgil, Cortland County, new York, on lot No. 24, and bounded as follows: East by the center of the road that runs in a southerly direction from the four corners at the settlement or hamlet of Virgil; north by the center of a road that leads from the first mentioned road in a westerly direction and runs a little south of west; bounded on the west by lands owned by Earl Ladd and on the south by lands now owned (1930) by Mattie Bays which have been purchased by the party of the second part herein for school purposes, containing one and one-half acres of land,

be the same more or less, and being the same premises conveyed by Jos. Reynolds and William Snyder, to Virgil Village Baptist Church and Society by deed dated May 31, 1833, recorded in Cortland County Clerk's Office in Book T of Deeds at page 427 on the 12th, day of June, 1833 and by Earl Ladd and wife to Virgil Baptist Church and Society by deed dated July 5, 1927, recorded in Cortland County Clerk's Office in Book 148 of Deeds at Page 221.

Also, all that tract or parcel of land, situate in the Town of Virgil, County of Cortland and State of New York, bounded and described as follows: Beginning at a point in the center of the Virgil-Harford Road, said point being 88 feet distance northeasterly measured along the center of the said road from the northeast corner of the Virgil Cemetery lands; thence N 67°40' W 177 feet to a point; thence S 24° 50' W, 88 feet to a point on the north line of the said cemetery lands; thence N 67° 40' W 807 feet to the north west corner of the cemetery lands; thence N 6° 50' E 298 feet to the center of Church St.; thence N 76° 20' E along the center of Church Street 500 feet to a point; thence S 19° 40' E 142 feet to a point; thence N 61° 18 E 192.10 feet to an iron stake in a corner of the lands of the Virgil Central School; thence S 4° 30' W 272.4 feet to a post in the southwest corner of the said school lands; thence S 65° 10' E along the south line of the said school lands 376 feet to the center of the Virgil-Harford Road; thence S 24° 50' W along the center of the said road 262.4 feet to the point of beginning.

Excepting and reserving that portion of the above- described premises set forth in a deed from Cortland Enlarged City School District to the Town of Virgil by deed dated August 6, 1992 and recorded May 11, 1993 in the Cortland County Clerk's Office in Book 547 of Deeds at page 332.

THE ABOVE DESCRIBED PREMISES ARE MORE MODERNLY DESCRIBED AS FOLLOWS:

Parcel I – Tax Map No. 126.14-02-21.000

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Virgil, County of Cortland and State of New York, being bounded and described as follows:

Beginning at a point located at the intersection of the southerly street line of Church Street and the westerly street line of NYS Route 392 (Owego Hill Road); thence running the following courses and distances along said west street line of NYS Route 392 (Owego

Hill Road): (1) S 12°31' 09" W a distance of 287.79 feet; (2) S 14° 17' 47" W a distance of 198.52 and (3) S 15° 30' 47" W a distance of 361.83 feet to a point marked by a set iron rod; thence running N 73° 05' 13" W a distance of 359.87 feet to a point marked by a set iron rod; thence running N 03° 19' 01" W a distance of 56.27 feet to a point marked by a set iron rod; thence running N 03° 19' 01" W a distance of 216.13 feet to a point marked by a found survey marker; thence running N 72° 26' 27" E a distance of 40.81 feet to a point marked by a found survey marker; thence running N 86° 52' 44" E a distance of 158.61 feet to a point; thence running N 00° 49' 50" W a distance of 65.90 feet to a point marked by an iron pipe; thence running N 86° 49' 09" E a distance of 172.21 feet to a point; thence running N 03° 21' 55" W a distance of 240.93 feet to a point marked by a found survey marker located in the south street line of Church Street; thence running N 63° 08' 38" E along said south street line of Church Street a distance of 240.01 to the point and place of beginning and containing 4.83 acres of land, more or less.

Parcel II – Tax Map No. 126.14-02-20.110

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Virgil, County of Cortland and State of New York, being bounded and described as follows:

Beginning at a point located on the west street line of NYS Route 392 (Owego Hill Road) said point being located the following courses and distances as measured along said NYS Route 392 (Owego Hill Road) from the intersection of the west street line of NYS Route 392 with the south street line of Church Street: (1) S 12°31' 09" W a distance of 287.79 feet; (2) S 14° 17' 47" W a distance of 198.52 and (3) S 15° 30' 47" W a distance of 361.83 feet to a point marked by a set iron rod;

The above described premises are more particularly shown on a survey map made by James J. Denkenberger, PLS #50397, dated August 28, 2023, and filed in the Cortland County Clerk's Office on November 3, 2023 as Instrument No. 2023-06855.

Being the same premises conveyed by the Board of Education of Cortland Enlarged City School District to Kajen, LLC by deed dated November 3, 2023 and recorded November 3, 2023 in the Cortland County Clerk's Office as Instrument No. 2023-06858.