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CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

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CORTLAND CROWN HOMES, LLC

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LEASE AGREEMENT

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DATED AS OF APRIL 2, 2007

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RELATING TO THE PREMISES LOCATED AT 148, 152, 154,  
156, 162 AND 164 SOUTH MAIN STREET, 5 UNION STREET  
AND 2 ARGYLE PLACE IN THE CITY OF CORTLAND,  
CORTLAND COUNTY, NEW YORK.

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THIS LEASE AGREEMENT CONSTITUTES A SECURITY  
AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE  
OF THE STATE OF NEW YORK.

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## LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of April 2, 2007 (the "Lease 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 37 Church Street, Cortland, New York (the "Agency"), and CORTLAND CROWN HOMES, LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 1201 East Fayette Street, Syracuse, New York 13210 (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, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; 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 by the members of the Agency on January 12, 2006 (the "Preliminary Inducement Resolution") the Agency agreed to accept an application (the "Application") from the Company and further agreed, subject to numerous conditions, to consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition, in phases with the last acquisition to occur on or about March 31, 2007, of an interest in the following real estate: (i) an approximate 55.45 feet x 167.73 feet parcel of land located at and commonly referred to as 148 South Main Street in the City of Cortland, Cortland County, New York; (ii) an approximately 17,328 square foot parcel of land located at and commonly

known as 162 and 164 South Main Street in the City of Cortland, Cortland County, New York; (iii) an approximately 16,020 square feet parcel of land located at and commonly known as 152, 154 and 156 South Main Street in the City of Cortland, Cortland County, New York; (iv) an approximate 60.43 feet x 143 feet parcel of land located at and commonly known as 5 Union Street in the City of Cortland, Cortland County, New York; and (v) an approximately 9,095 square feet parcel of land located at and commonly known as 2 Argyle Place in the City of Cortland, Cortland County, New York (the "Land"), which Land is currently improved with nine buildings of mixed uses (commercial and residential housing); (2) the demolition and/or rehabilitation of the nine buildings as follows: (i) four of the said nine buildings being completely demolished, (ii) five of the nine buildings being rehabilitated and expanded into six buildings, and (iii) two buildings being newly constructed, which demolition, rehabilitation and construction will ultimately result in thirty (30) units of low income residential housing (the "Facilities"), and (3) the acquisition and installation therein and thereon of certain materials, furnishings, appliances, machinery and equipment (the "Equipment"), all of the foregoing to constitute an affordable housing project for low income families to be operated by the Company and occupied by approved tenants (the Land, the Facilities 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 exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of the Lease Agreement; and

WHEREAS, pursuant to the Preliminary Inducement Resolution adopted by the members of the Agency on January 12, 2006, 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 mailed on January 13, 2006 to the chief executive officer of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on January 17, 2006 in the Cortland Standard, a newspaper of general circulation available to residents of the County of Cortland, (C) conducted the Public Hearing on February 16, 2006 at 3:00 o'clock p.m., local time at the Cortland County Industrial Development Agency located at 37 Church Street, in the City of Cortland, Cortland County, New York, and (D) 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 members of the Agency adopted a resolution on February 16, 2006 (the "SEQR Resolution") in which the Agency determined (A) that the Project constitutes an "Unlisted action", (B) therefore that the coordinated review procedures outlined in the Regulations are strictly optional, (C) that the Project will not have a "significant effect on the environment" pursuant to SEQRA and, therefore that no environmental impact statement need be prepared with respect to the Project, and (D) that a negative declaration would be prepared with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on February 16, 2006 (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 February 16, 2006 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of April 2, 2007 (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) April 1, 2024 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 dated as of April 2, 2007 (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) April 1, 2024, or (b) the date on which the Lease Agreement is terminated pursuant to the termination provisions thereof, and (2) a bill of sale dated as of April 2, 2007 (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 dated as of April 2, 2007 (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, the providing of the Project Facility and the lease of the Project Facility to the Company pursuant to this Lease Agreement is for a proper purpose, to wit, to advance the job

opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, all things necessary to constitute this Lease 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 Lease Agreement have in all respects been duly authorized by the Agency and the Company.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

## **ARTICLE I DEFINITIONS**

**SECTION 1.1. DEFINITIONS.** The following words and terms used in this Lease Agreement shall have the respective meanings set forth below, unless the context or use indicates another or different meaning or intent:

"Act" means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 77 of the 1974 Laws of the State, constituting Section 902 of the General Municipal Law of the State, as amended from time to time.

"Agency" means (A) Cortland County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which Cortland County Industrial Development Agency or its successors or assigns may be a party.

"Applicable Laws" means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

"Approving Resolution" means the resolution duly adopted by the Agency on February 16, 2006 authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

"Authorized Representative" means the person or persons at the time designated to act in behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (A) the Agency by its First Chairman or Vice Chairman or such other person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by its President or any Vice President or its Secretary or such other person as may be authorized in writing by the President or any Vice President or the board of directors of the Company to act on behalf of the Company.

"Basic Documents" means the Underlying Lease, the Bill of Sale to Agency, the Lease Agreement and the Payment in Lieu of Tax Agreement, and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

"Bill of Sale to Agency" means the bill of sale delivered on the Closing Date from the Company to the Agency conveying all of the Company's interest in the Equipment to the Agency.

"Bill of Sale to Company" means the bill of sale from the Agency to the Company conveying all of the Agency's interest in the Equipment to the Company, substantially in the form attached as Exhibit "C" to the Lease Agreement.

"Business Day" means a day on which banks located in the City of Cortland, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the closing at which the Basic Documents are executed and delivered by the Company and the Agency.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

"Company" means Cortland Crown Homes, LLC, a limited liability company duly organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

"Completion Date" means the earlier to occur of (A) April 1, 2024, or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by

written communication from the Company to the Agency as the date of completion of the Project.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

"Default Interest Rate" means a per annum rate of interest equal to twelve percent (12%) per annum, or the maximum rate of interest permitted by law, whichever is less.

"Equipment" means all equipment, furnishings, fixtures, appliances, machinery, building materials and items of personal property and all appurtenances acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, installation and completion of the Project prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to the Lease Agreement, including without limitation, all the Property described in Exhibit "B" attached to the Lease Agreement.

"Event of Default" means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

"Facilities" means the demolition and/or rehabilitation of the current nine buildings as follows: (i) four of the said nine buildings being completely demolished, (ii) five of the nine buildings being rehabilitated and expanded into six buildings, and (iii) two buildings being newly constructed, which demolition, rehabilitation and construction will ultimately result in thirty (30) units of low income residential housing on the Facility Parcel as part of the Project and any other improvements on the Land.

"Facility Parcel" means the portion of the Land as the site for the Facilities, as more particularly described on Exhibit "A" attached to the Lease Agreement.

"Facility Premises" means the Facilities and the Facility Parcel.

"Facility Term" shall have the meaning assigned to such term in Section 3.2 of the Underlying Lease.

"Final Inducement Resolution" means the resolution of the Agency adopted by the members of the Agency on February 16, 2006 finalizing the Preliminary Inducement Resolution and approving the Project.

"Financial Assistance" shall have the meaning assigned to such term in the fifth recital clause to the Lease Agreement.

"Governmental Authority" means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

"Gross Proceeds" means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

"Hazardous Materials" shall mean all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated byphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

"Indebtedness" means (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under the Lease Agreement and the other Basic Documents, and (2) all interest accrued on any of the foregoing.

"Independent Counsel" means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Company or the Agency.

"Land" means the land located at 148, 152, 154, 156, 162 & 164 South Main Street, 5 Union Street and 2 Argyle Street in the City of Cortland, Cortland County, New York, as more particularly described on Exhibit "A" attached to the Lease Agreement.

"Lease Agreement" means the lease agreement dated as of April 2, 2007 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

"Lien" means any interest in Property securing an obligation Owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Net Proceeds" means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys' fees) incurred in obtaining such Gross Proceeds.

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of April 2, 2007 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Facility and the Facility Parcel, as such agreement may be amended or supplemented from time to time.

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens, to the extent permitted by Section 8.8 of the Lease Agreement, (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.2(B) of the Lease Agreement, (D) any Lien on the Project Facility obtained through any Basic Document, and (E) any Lien requested by the Company in writing and consented to by the Agency, which consent shall not be unreasonably withheld or delayed.

"Person" means an individual, partnership, corporation, trust, unincorporated organization or Governmental Authority.

"Plans and Specifications" means the description of the Project appearing in the fifth recital clause to the Lease Agreement.

"Preliminary Agreement" means the preliminary agreement dated as of January 12, 2006 between the Agency and the Company with respect to the Project.

"Preliminary Inducement Resolution" means the resolution adopted by the members of the Agency on January 12, 2006 offering to consider undertaking the Project, authorizing a public hearing pursuant to Section 859-a of the Act, and authorizing the Agency to execute and deliver the Preliminary Agreement.

"Prime Rate" means a per annum rate of interest equal to the highest "prime rate" of interest quoted, from time to time, in the Money Rates column of the Wall Street Journal as the "base rate on corporate loans at large U.S. money center commercial banks", provided, however, that in the event that the Wall Street Journal does not publish the National Prime Rate, the Prime Rate shall be the per annum rate of interest quoted as the "Bank Prime Loan Rate" for "this week" in Statistical Release H.15(519) published from time to time by the Board of Governors of the Federal Reserve System calculated on actual days elapsed in a year of 360 days, such rate to be adjusted each Business Day based on the Prime Rate as reported for the previous Business Day. Any provisions to the contrary notwithstanding, in no event shall the Prime Rate be established beyond the maximum rate allowed by law.

"Project" means the project undertaken by the Agency consisting of (A) (1) the acquisition of a leasehold interest in the Facility Parcel, (2) the construction of the Facility on the

Facility Parcel, and (3) the acquisition and installation therein and thereon of the Equipment, all of the foregoing to constitute an office building to be operated by the Company and occupied in part by the Company and in part by tenants providing related services; (B) the granting of certain Financial Assistance with respect to the foregoing, and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement.

"Project Facility" means the Facility Parcel, the Facility and the Equipment.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Real Property Tax Exemption Form" means a New York State Board of Real Property Services Form RP-412-a.

"Sales Tax Exemption Letter" shall have the meaning assigned to such term in Section 8.12 of the Lease Agreement.

"SEQRA" means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

"State" means the State of New York.

"Termination of Lease Agreement" means a termination of lease agreement by and between the Company, as tenant, and the Agency, as landlord, intended to evidence the termination of the lease agreement, substantially in the form attached as Exhibit D to the Lease Agreement.

"Termination of Underlying Lease" means the termination of the underlying lease by and between the Agency and the Company, substantially in the form attached as Exhibit E to the Lease Agreement.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E)(2), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 8.13, 9.1, 9.3, 11.4, 11.8 and 11.10 of the Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officer, agents and employees of the Agency for their own account pursuant to Sections 2.2(F), 3.3, 4.1, 5.3, 6.4(B), 8.2, 10.2 and 10.4 of the Lease Agreement, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of the Lease Agreement and the Payment in Lieu of Tax Agreement, and (D) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

"Underlying Lease" means the lease to agency dated as of April 2, 2007 by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has leased the Facility Premises to the Agency, as said lease to agency may be amended or supplemented from time to time.

SECTION 1.2. INTERPRETATION. In this Lease Agreement, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Lease Agreement, refer to this Lease Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Lease Agreement;

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) Words importing the singular number shall mean and include the plural number, and vice versa; and

(D) Any certificates, letters or opinions required to be given pursuant to this Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease Agreement.

## **ARTICLE II** **REPRESENTATIONS, WARRANTIES** **AND COVENANTS**

SECTION 2.1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY. The Agency makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Lease Agreement and the other Basic Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the By-Laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

(C) Pursuant to the Basic Documents, the Agency will acquire a leasehold interest in the Facility Premises, the Agency will cause the Project Facility to be acquired, constructed and

installed and will lease the Project Facility to the Company pursuant to this Lease Agreement, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided in Article IX and Article X hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances, except as contemplated or allowed by the terms of this Lease Agreement and the other Basic Documents.

**SECTION 2.2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.** The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is qualified and authorized to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Lease Agreement and the other Basic Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its members, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Company is a party.

(B) Except as has been heretofore disclosed to the Agency, neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any other corporate restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent (which has not been heretofore received) under any corporate restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (3) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project Facility will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State of New York to another area of the State of New York or in the abandonment of a plant or facility of any proposed occupant of the Project Facility (other than the Company) located in the State of New York and, although the completion of the Project Facility may result in the abandonment of one or more plants or facilities of the Company located in the State of New

York, such abandonment is reasonably necessary to preserve the competitive position of the Company in its industry.

(D) The Project Facility does not and will not constitute a project where facilities or property that are primarily used in making sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total cost of the project.

(E) The Basic Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(F) The Project Facility is, and so long as this Lease Agreement shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Basic Documents or which the Agency advises the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the Financial Assistance to be applied in a manner contrary to that provided in the Basic Documents.

(G) The Project Facility and the operation thereof will comply in all material respects with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(H) The Project will not have a "significant effect on the environment" (within the meaning of such term as used in SEQRA), and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution issued by the Agency on February 16, 2006 under SEQRA applicable to the acquisition, construction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(I) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(J) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the

service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the Project Facility is located. The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(K) The Company acknowledges receipt of notice of Section 874(9) of the Act, which requires the Company, as agent of the Agency, to file within thirty (30) days of the date the Company is appointed the agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

### **ARTICLE III CONVEYANCE TO AGENCY AND USE OF PROJECT FACILITY**

**SECTION 3.1. CONVEYANCE TO THE AGENCY.** (A) Pursuant to the Underlying Lease, the Company has or will convey, or will cause to be conveyed, to the Agency a leasehold interest in the Facility Parcel. Pursuant to the Bill of Sale to the Agency, the Company has or will convey, or will cause to be conveyed, to the Agency title to the Equipment.

(B) The Company hereby represents and warrants that it has good and marketable title to the Land and the Equipment.

(C) The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons. The Company also agrees to pay all reasonable expenses incurred by the Agency in defending any action with respect to title to or a Lien affecting the Project Facility, except for Permitted Encumbrances.

**SECTION 3.2. USE OF PROJECT FACILITY.** Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Basic Documents or the Act, provided such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project Facility into disrepute as a public project; provided, further, however, that at no time shall any such use be other than as an office building and uses related thereto without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

**SECTION 3.3. HAZARDOUS MATERIALS.** (A) To the best of its knowledge, the Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates in any material respect any

Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(B) The Company shall keep or cause the Project Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all material Applicable Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, or any tenant or subtenant of the Company, an unlawful release of Hazardous Materials onto the Project Facility or onto any other property.

(C) The Company shall comply with, and ensure compliance by all tenants and subtenants of the Company with, all Applicable Laws regarding Hazardous Materials whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants of the Company obtain and comply with, any and all approvals, registrations or permits required thereunder.

(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility (a) in accordance with all Applicable Laws, and (b) in accordance with the orders and directives of all federal, state and local governmental authorities and (2) defend, indemnify, and hold harmless the Agency and its employees, agents, officers and members from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials used, transported, stored, manufactured, refined, handled, produced or disposed of on or in the Project Facility which are on, from or affecting soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Applicable Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (D) will be repaid immediately with interest at the Default Interest Rate or the maximum permitted by law, whichever is less.

(E) In the event the Project Facility is foreclosed by the Agency, or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Project Facility to the purchaser free of any and all Hazardous Materials (except Hazardous Materials the presence of

which do not violate any Federal, State or local laws, ordinances, rules and regulations governing the use and storage of such materials), so that the condition of the Project Facility shall conform with all Applicable Laws affecting the Project Facility.

(F) The Company agrees that the Agency and its officers, agents or representatives, may at any reasonable time and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Applicable Laws.

(G) In the event that insurance shall become available at a reasonable cost to cover the Company's obligations under this Section 3.3, then, at the option of the Agency, the Company shall obtain adequate coverage.

**SECTION 3.4. NON-MERGER.** During the term of this Lease Agreement, there shall be no merger of this Lease Agreement nor of the leasehold estate created by this Lease Agreement with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease Agreement or the leasehold estate created by this Lease Agreement or any interest in this Lease Agreement or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Lease Agreement or the leasehold estate created by this Lease Agreement and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

**SECTION 3.5. COMPLIANCE WITH THE UNDERLYING LEASE.** (A) Notwithstanding the granting of the leasehold interest created by the Underlying Lease in the Facility Parcel to the Agency pursuant to the Underlying Lease, the Company agrees, in consideration of the undertakings of the Agency set forth herein, that the Company will be and remain solely liable under the Underlying Lease for the performance of all covenants, agreements, obligations and duties of the Agency under the Underlying Lease, including but not limited to the making of all payments thereunder, and the Company will perform all of the covenants, agreements and obligations of the Agency under the Underlying Lease, at no expense to the Agency, in consideration of the execution and delivery by the Agency of the Basic Documents.

(B) The Company shall, on behalf of the Agency, (1) pay all sums required to be paid by the Agency as tenant under and pursuant to the provisions of the Underlying Lease and (2) diligently perform and observe all of the terms, covenants and conditions of the Underlying Lease on the part of the Agency, as tenant thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the landlord under the Underlying Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Agency, as tenant, under the Underlying Lease.

## ARTICLE IV UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1. ACQUISITION, CONSTRUCTION, AND INSTALLATION OF THE PROJECT FACILITY. (A) The Company shall, on behalf of the Agency, promptly acquire, construct and install the Project Facility, or cause the acquisition, construction and installation of the Project Facility, all in accordance with the Plans and Specifications.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent of the Agency shall not be unreasonably withheld or delayed).

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor and advanced by the Company for such purpose pursuant to Section 4.1(H) hereof.

(E) The Agency hereby appoints the Company as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Basic Documents, and the Company hereby accepts such appointment: (1) to acquire, construct and install the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the acquisition, construction and installation of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefor by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement, (3) to pay all fees, costs and expenses incurred in the acquisition, construction and installation of the Project Facility from funds made available therefor in accordance with this Lease Agreement, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the acquisition, construction and installation of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same, said appointment as agent to be retroactive to \_\_\_\_\_, \_\_\_\_\_ and to last until the Completion Date.

(F) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend, indemnify and save the Agency and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(G) To the extent required by Applicable Law, the Company, as agent of the Agency, will cause (1) compliance with the requirements of Article 8 of the New York Labor Law, and (2) any contractor, subcontractor and other person involved in the acquisition, construction and installation of the Project Facility to comply with Article 8 of the New York Labor Law. The covenant in this subsection is not intended as a representation that Article 8 of the New York Labor Law applies to the Project.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. Title to portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction or installation vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

(I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Lease Agreement.

**SECTION 4.2. COMPLETION OF THE PROJECT FACILITY.** The Company will proceed with due diligence to commence and complete the acquisition, construction and installation of the Project Facility. Completion of the same shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, construction and installation of the Project Facility has been completed, with the exception of ordinary punchlist items and work awaiting seasonal opportunity, (D) that the Company or the Agency has good and valid title to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (1) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (2) that it is given only for the purposes of this Section 4.2, and (3) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by a certificate of occupancy, or a letter from the local Governmental Authority stating that no certificate of occupancy is required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes.

**SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.** In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, construction and installation of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility, and thereafter be paid to the Company for its own use. The Company shall advise the Agency of any actions or proceedings taken hereunder.

## **ARTICLE V** **DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND** **OTHER AMOUNTS PAYABLE**

**SECTION 5.1. LEASE OF THE PROJECT FACILITY.** In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to demise and lease to the Company, and the Company hereby agrees to rent and lease from the Agency, the Agency's interest in the Project Facility, subject only to Permitted Encumbrances. The obligation of the Agency under this Section 5.1 to lease the Project Facility to the Company shall be subject to there being no Event of Default existing hereunder, or any other event which would, but for the passage of time, be such an Event of Default.

**SECTION 5.2. DURATION OF THE LEASE TERM; QUIET ENJOYMENT.** (A) The Agency shall deliver to the Company possession of the Project Facility, and the leasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

(B) Except as otherwise provided in Article X hereof, the leasehold estate created hereby shall terminate on the earlier to occur of (1) April 1, 2024, or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

(C) The Agency shall take no action, other than pursuant to Article X of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease Agreement and will, at the request of the

Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project Facility.

**SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.** (A) The Company shall pay basic rental payments for the Project Facility as follows: On the date of execution and delivery of this Lease Agreement, the Company shall pay, (1) as the basic lease payments due hereunder, a single lump sum basic rental payment equal to the Agency's administrative fee relating to the Project and (2) Agency Counsel's fees and expenses relating to the Project.

(B) Within seven (7) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the expenses of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency's ownership, leasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement or any of the other Basic Documents, and any other fee or expense of the Agency with respect to the Project Facility, the leasing or sale of the Project Facility to the Company, or any of the other Basic Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(C) The Company agrees to make the above-mentioned payments, without any further notice, by check or wire transfer, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the Company shall pay the same, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

**SECTION 5.4. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.** (A) The obligations of the Company to make the payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.10 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy of or purchase of or title to the Project Facility, or any other liability of the Agency to the Company.

**SECTION 5.5. GRANT OF SECURITY INTEREST.** The Company hereby grants the Agency a security interest in all of the right, title and interest of the Company in the Project Facility and in all additions and accessions thereto, all replacements and substitutions therefor and all proceeds thereof, and all books, records and accounts of the Company pertaining to the Project Facility, and all proceeds thereof, as security for payment of the rental payments and all other payments and obligations of the Company hereunder. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute and deliver and file any instruments necessary or convenient to perfect and continue the security interest granted herein.

## **ARTICLE VI** **MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

**SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.**  
(A) During the term of this Lease Agreement, the Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), and (3) operate the Project Facility in a sound and economic manner.

(B) The Company shall not make any structural additions, modifications or improvements to the Project Facility or any part thereof unless:

(1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such addition, modification or improvement to the Project Facility, or a part thereof, (b) defend and save the Agency and its officers, members, agents (other than the Company) and employees harmless from all fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) make all payments in lieu of taxes required by Section 6.6 hereof and the Payment in Lieu of Tax Agreement, including those required by Section 2.03(D) thereof;

(2) the addition, modification or improvement to the Project Facility shall not constitute a default under any of the Basic Documents; and

(3) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such addition, modification or improvement to the Project Facility detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for additions, modifications or improvements to the Project Facility which do not exceed, at any one time, \$250,000 in value.

**SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES.** (A) The Company shall pay or cause to be paid, as the same respectively become due, (1) 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 Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority for public improvements, and (4) all payments required under Section 6.6 hereof; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Lease Agreement.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company (1) first shall have notified the Agency in writing of such contest and (2) is not in default under any of the Basic Documents. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 6.3. INSURANCE REQUIRED.** During the term of this Lease Agreement, the Company shall maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) Insurance protecting the interests of the Company and the Agency as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, construction or installation of the Project Facility.

(C) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$500,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law.

(D) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTEREST.

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and having a Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company and the Agency as insureds, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

SECTION 6.5. APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.3(A) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Section 6.3(B) and 6.3(C) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.6. PAYMENTS IN LIEU OF TAXES. (A) It is recognized that under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation. Accordingly, the parties hereto acknowledge that the Payment in Lieu of Tax Agreement is expected to be executed with respect to the Facility and the Facility Parcel (the Facility and the Facility Parcel being sometimes collectively referred to as the "Facility Premises"), and a Real Property Tax Exemption Form will be filed by the Agency with respect to the Facility Premises once the Payment in Lieu of Tax Agreement is executed by the Agency and the Company. Until the expiration date of the Payment in Lieu of Tax Agreement, the Agency and the Company hereby agree that the Company (or any subsequent user of the Project Facility pursuant to this Lease Agreement) shall be required to make or cause to be made payments in lieu of real estate taxes in the amounts and in the manner set forth in the Payment in Lieu of Tax Agreement.

(B) In the event that (1) the Facility Premises would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, and (2) the Payment in Lieu of Tax Agreement shall not have been entered into by the Agency and the Company, or if entered into the Payment in Lieu of Tax Agreement shall for any reason no longer be in effect, the Agency and the Company hereby agree that the Company, or any subsequent user of the Project Facility under this Lease Agreement, shall in such event be required to make or cause to be made payments in lieu of taxes to the school district or school districts, city, town, county, village and other political units wherein the Facility Premises or the Project Facility, as the case may be, is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities") in such amounts as would result from taxes being levied on the Facility Premises or the Project Facility, as the case may be, by the Taxing Entities if the Facility Premises or the Project Facility, as the case may be, were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, but with appropriate reductions similar to the tax exemptions and credits, if any, which would be afforded to the Company if it were the owner of the Facility Premises or the Project Facility, as the case may be. It is agreed that the Agency, in cooperation with the Company, (1) shall cause the Facility Premises or the Project Facility, as the case may be, to be valued for purposes of determining the amounts due hereunder as if owned by the Company as aforesaid by the appropriate officer or officers of any of the Taxing Entities as may from time to time be charged with responsibility for making such valuations, (2) shall cause to be appropriately applied to the valuation or valuations so determined the respective tax rate or rates of the Taxing Entities that would be applicable to the Facility Premises or the Project Facility, as the case may be, if so privately owned, (3) shall cause the appropriate officer or officers of the Taxing Entities charged with the duty of levying and collecting such taxes to submit to the Company, when the respective levies are made for purposes of such taxes upon Property privately owned as aforesaid, statements specifying the amounts and due dates of such taxes which the Taxing Entities would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, and (4) shall file with the appropriate officer or officers

any accounts or tax returns furnished to the Agency by the Company for the purpose of such filing.

(C) The Company shall pay or cause to be paid to the Taxing Entities when due all such payments in lieu of taxes with respect to the Project Facility required by Section 6.6(B) of this Lease Agreement to be paid to the Taxing Entities, subject in each case to the Company's right to (1) obtain exemptions and credits, if any, which would be afforded to a private owner of the Project Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Project Facility, (2) contest valuations of the Project Facility made for the purpose of determining such payments therefrom, and (3) seek to obtain a refund of any such payments made.

(D) Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Section 6.6 or the Payment in Lieu of Tax Agreement when due, the Company shall continue to be obligated to pay the same and shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company shall fail to make any payment required by the 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) the Default Interest Rate, or (b) the same rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

## **ARTICLE VII** **DAMAGE, DESTRUCTION AND CONDEMNATION**

**SECTION 7.1. DAMAGE OR DESTRUCTION.** (A) If the Project Facility shall be damaged or destroyed, in whole or in part:

(1) the Agency shall have no obligation to replace, repair, rebuild or restore the Project Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Project Facility is replaced, repaired, rebuilt or restored);

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications

do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall so notify the Agency. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) the amount necessary to prepay the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to prepay the Indebtedness in full.

(C) If all Indebtedness has been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(D) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3(A) hereof.

**SECTION 7.2. CONDEMNATION.** (A) To the knowledge of the Company, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:

(1) the Agency shall have no obligation to restore the Project Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Project Facility is restored);

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (C) of this Section 7.2, (a) the Company shall promptly restore the Project Facility (excluding any part of the Land or the Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any Condemnation award relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award, if any, remaining on deposit with the Agency after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) of this Section 7.2, if the Company shall so notify the Agency. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to prepay all of the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be prepaid in full.

(D) If all of the Indebtedness has been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(E) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(F) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall

the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company.

**SECTION 7.3. ADDITIONS TO THE PROJECT FACILITY.** All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Company's own money, shall automatically become part of the Project Facility as if the same were specifically described herein.

## **ARTICLE VIII SPECIAL COVENANTS**

**SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY AGENCY; ACCEPTANCE "AS IS".** THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE PROJECT FACILITY "AS IS", WITHOUT RE COURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

**SECTION 8.2. HOLD HARMLESS PROVISIONS.** (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any of the Basic Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers,

agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Lease Agreement, its liabilities assumed pursuant to this Section 8.2.

(D) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

**SECTION 8.3. RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Project Facility. The Company further agrees that the Agency shall have such rights of access to the Project Facility as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder.

**SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS ARE PERMITTED.** The Company agrees that, during the term of this Lease Agreement, it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another corporation, without notice to the Agency and the prior written consent of the Agency; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided that (A) the Agency has received notice of such action, (B) the Agency gives its written consent to the proposed transaction, which consent shall not be unreasonably withheld or delayed, (C) the surviving, resulting or transferee corporation assumes

in writing all of the obligations of and restrictions on the Company under this Lease Agreement and the other Basic Documents, and (D) as of the date of such transaction, the Agency shall be furnished with (1) an opinion of counsel to the Company as to compliance with item (A) of this Section 8.4 and (2) a certificate, dated the effective date of such transaction, signed by an Authorized Representative of the Company and an authorized officer of the surviving, resulting or transferee corporation, as the case may be, or the transferee of its assets, as the case may be, to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under this Lease Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default.

**SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION.** The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such public information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

**SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.** (A) The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

(B) As soon as possible after the end of each fiscal year of the Company, but in any event within thirty (30) days after such date, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

**SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS.** (A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease Agreement, promptly comply with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents, servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES.** The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency (other than the Project Facility) or on any funds of the Agency applicable to the Project Facility.

**SECTION 8.9. PERFORMANCE OF THE COMPANY'S OBLIGATIONS.** Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith, and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

**SECTION 8.10. DEPRECIATION DEDUCTIONS AND TAX CREDITS.** The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

**SECTION 8.11. EMPLOYMENT OPPORTUNITIES.** (A) The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Company agrees (1) to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division ("NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97-300) ("JTPA") in which the Project is located and (2), where practicable, to first consider for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Lease Agreement, an employment plan, in substantially the form attached hereto as Exhibit "D".

(D) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, the

initial said annual employment report to be in substantially the form annexed hereto as Exhibit "E".

**SECTION 8.12. SALES AND USE TAX EXEMPTION.** (A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax. It is the intention of the parties hereto that the Company will receive a sales tax exemption with respect to the Project, said sales tax exemption letter to be issued on the date of the execution of this Lease Agreement and in a form similar to the form attached hereto as Exhibit "F".

(B) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of this Lease Agreement. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (B), the Company shall immediately cease to be the agent of the Agency in connection with the Project. A current sample form of such Annual Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit "G". For future filings of the Annual Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Annual Report.

(D) The Company agrees to furnish to the Agency a copy of each such Annual Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

(E) Pursuant to Section 874(9) of the Act, the Company agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services

to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit "H". For future filings of the Thirty-Day Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Thirty-Day Sales Tax Report.

**SECTION 8.13. IDENTIFICATION OF THE EQUIPMENT.** All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## **ARTICLE IX** **ASSIGNMENTS; MERGER OF THE AGENCY**

**SECTION 9.1. ASSIGNMENT OF THE LEASE AGREEMENT.** Except as otherwise provided in Section 8.4 hereof, this Lease Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

**SECTION 9.2. MERGER OF THE AGENCY.** (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease Agreement shall be assigned.

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

**SECTION 9.3. SALE OR LEASE OF THE PROJECT FACILITY.** (A) The Company may not sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

(B) Notwithstanding anything to the contrary contained in this Lease Agreement, in any instance after the Completion Date where the Company determines that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Project Facility and may sell, trade

in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with similar items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Basic Documents. The Company shall pay all costs and expenses (including counsel fees) incurred in transferring title to and releasing from the Liens of the Basic Documents any item of Property removed pursuant to this Section 9.3.

## **ARTICLE X** **EVENTS OF DEFAULT AND REMEDIES**

**SECTION 10.1. EVENTS OF DEFAULT DEFINED.** (A) The following shall be "Events of Default" under this Lease Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3 or Section 6.6 hereof, and the continuance thereof for a period of ten (10) days after written notice thereof is given by the Agency to the Company.

(2) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(3) The occurrence of an "Event of Default" under any other Basic Document.

(4) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(5) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(6) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (b) the failure by the Company within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) the commencement of a case under Title 11 of the United States Code against the Company as the

debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days, (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment.

(7) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance.

(8) The removal of the Project Facility, or any portion thereof, outside Cortland County, New York, without the prior written consent of the Agency, other than in connection with a removal under Section 9.3(B) hereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 4.1(H), 5.3, 6.2 and 6.6 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 3.3 and 8.2 hereof and to comply with the provisions of Sections 2.2(G), 6.6, 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

**SECTION 10.2. REMEDIES ON DEFAULT.** (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease Agreement or any of the other Basic Documents; or

(2) terminate this Lease Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the recording by the Agency of the Termination of Lease Agreement and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title.); or

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

(B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by this Lease Agreement and the other Basic Documents.

**SECTION 10.3. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

**SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI OPTIONS AND OBLIGATION TO PURCHASE

**SECTION 11.1. EARLY TERMINATION OF THE LEASE AGREEMENT.** The Company shall have the option to terminate this Lease Agreement prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1.

**SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE PROJECT FACILITY.** (A) Contemporaneously with the termination of this Lease Agreement in accordance with Section 5.2 or Section 11.1 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to the Project Facility for the purchase price of One Dollar (\$1.00) plus payment of all sums due and payable to the Agency or any other Person pursuant to this Lease Agreement and the other Basic Documents. The obligation of the Agency under this Section 11.2 to convey the Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under the Payment in Lieu of Tax Agreement or under any other Basic Document, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

(B) The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit "C" and by this reference made a part hereof). The termination of this Lease Agreement shall be effected by the execution and delivery by the Company and the Agency of the termination of Lease Agreement (an unexecuted copy of which is attached hereto as Exhibit "I" and by this reference made a part hereof). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfers of title.

(C) The Facility Parcel and the Facility shall not be conveyed by the Agency to the Company until the earlier to occur of (1) the date requested by the Company, (2) the date of termination of the Payment in Lieu of Tax Agreement, or (3) the date otherwise set forth in the Payment in Lieu of Tax Agreement as the date for said conveyance to the Company. The sale and conveyance of the Agency's right, title and interest in and to the Facility Parcel and the Facility shall be affected by delivery by the Agency to the Company of the Termination of Underlying Lease (in substantially the form attached hereto as Exhibit "J" and by this reference made a part hereof).

(D) The Company agrees to prepare the Bill of Sale to Company and/or the Termination of Lease Agreement and all schedules thereto, together with all tax affidavits, equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Project Facility or any portion thereof is to be conveyed to the Company.

(E) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 11.2.

(F) This Lease Agreement shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.2 and shall remain in full force and effect until all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.8 hereof.

(G) Upon the payment in full of all Indebtedness under or secured by this Lease Agreement, and notwithstanding the survival of certain obligations of the Company as described in Section 12.8 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

**SECTION 11.3. CONVEYANCE ON PURCHASE OF THE PROJECT FACILITY.** At the closing of any purchase of the Project Facility pursuant to Section 11.2 hereof, the Agency shall, upon the satisfaction of the conditions set forth in Section 11.1 and Section 11.2 hereof, as appropriate, deliver to the Company all necessary documents (A) to convey to the Company all the Agency's right, title and interest in and to the Property being purchased, as such property then exists, subject only to the following: (1) any Liens or title defects to which title to such Property was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default; and (B) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance settlements or Condemnation awards with respect to the Project Facility.

## **ARTICLE XII** **MISCELLANEOUS**

**SECTION 12.1. NOTICES.** (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered certified mail, return receipt requested, or by such other means as shall provide 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) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Cortland Crown Homes, LLC  
c/o Housing Visions Consultants, Inc.  
1201 East Fayette Street  
Syracuse, New York 13210  
Attention: Kenyon M. Craig, President

WITH A COPY TO:

Paul M. Predmore, Esq.  
Green & Seifter Attorneys, PLLC  
110 West Fayette Street  
Suite 900  
Syracuse, New York 13202

IF TO THE AGENCY:

Cortland County Industrial Development Agency  
37 Church Street  
Cortland, New York 13045  
Attention: Executive Director

WITH A COPY TO:

John P. Sidd, Esq.  
Riehlman, Shafer & Shafer  
397 Route 281  
P.O. Box 430  
Tully, New York 13159-0430

(C) The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

**SECTION 12.2. BINDING EFFECT.** This Lease Agreement shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Lease Agreement, their respective successors and assigns.

**SECTION 12.3. SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or

agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease Agreement.

**SECTION 12.4. AMENDMENT.** This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

**SECTION 12.5. EXECUTION OF COUNTERPARTS.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 12.6. APPLICABLE LAW.** This Lease Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**SECTION 12.7. RECORDING AND FILING.** The Underlying Lease (or a memorandum thereof) and this Lease Agreement (or a memorandum hereof) shall be recorded by the Agency in the office of the County Clerk of Cortland County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

**SECTION 12.8. SURVIVAL OF OBLIGATIONS.** (A) The obligations of the Company to make the payments required by Sections 5.3 and 6.6 hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Lease Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company with respect to the Unassigned Rights shall survive the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees, relating thereto.

**SECTION 12.9. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.** The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

**SECTION 12.10. NO RE COURSE; SPECIAL OBLIGATION.** (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

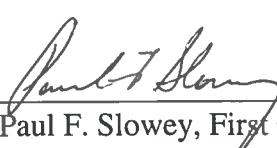
(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Cortland County, New York, and neither the State of New York nor Cortland County, New York shall be liable hereon or thereon and, further, such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

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

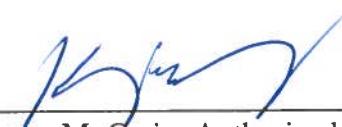
CORTLAND COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:

  
Paul F. Slowey, First Chairman

CORTLAND CROWN HOMES, LLC

By:

  
Kenyon M. Craig, Authorized Person

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

On the 29<sup>th</sup> day of March, 2007 before me, the undersigned, a notary public in and for said State, personally appeared **Paul F. Slowey**, 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 as First Chairman of Cortland County Industrial Development Agency, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



JOHN P. SIDD  
**Notary Public** Notary Public, State of New York  
Qualified in Onondaga Co. No. 4993688  
Commission Expires March 23, 20 10

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

On the 3<sup>rd</sup> day of April, 2007 before me, the undersigned, a notary public in and for said State, personally appeared **Kenyon M. Craig**, 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 as President of Housing Visions Consultants, Inc., Co-Managing Member of Cortland Crown Homes, LLC, 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**

JOHN P. SIDD  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 4993688  
Commission Expires March 23, 20 10

**EXHIBIT "A"**  
**Description of the Land and Facility Parcel**

**5 Union Street:**

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

BEGINNING at a point marked by a found iron pipe in the south edge of the south walk of Union Street, said point being located westerly, as measured along said edge of south walk of Union Street, a distance of 137.27 feet from its intersection with the west edge of the west walk of South Main Street; running

Thence S.  $10^{\circ} 45'$  W. a distance of 143.00 feet to a point marked by a found iron pipe; running

Thence N.  $80^{\circ} 00'$  W. a distance of 60.43 feet to a point marked by a found iron rod; running

Thence N  $10^{\circ} 45'$  E. a distance of 143.00 feet to a point marked by a found iron bolt in the aforementioned south edge of the south walk of Union Street; running

Thence S.  $80^{\circ} 00$  E. along said south edge of the south walk of Union Street, a distance of 60.43 feet to a point and place of beginning.

Said Parcel of Land being more modernly described in accordance with a survey of Gary Bruce Davison, LLS No. 49603 dated September 11, 2006 as follows:

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

BEGINNING at a point marked by a found iron pipe in the south edge of the south walk of Union Street, said point being located westerly, as measured along said edge of south walk of Union Street, a distance of 137.27 feet from its intersection with the west edge of the west walk of South Main Street; running

Thence S.  $05^{\circ} 43' 02"$  W. a distance of 143.00 feet through an iron pipe and to a point marked by a found set 5/8" rebar with survey cap; running

Thence N.  $83^{\circ} 31' 40"$  W. a distance of 60.43 feet to a point marked by a found iron pipe and set 5/8" rebar with survey cap; running

Thence N  $05^{\circ} 43' 20"$  E. a distance of 141.42 feet to a point marked by a set 5/8" rebar with survey cap in the aforementioned south edge of the south walk of Union Street; running

Thence S.  $85^{\circ} 01' 40"$  E. along said south edge of the south walk of Union Street, a distance of 60.43 feet to a point and place of beginning

Together with all right title and interest in and to the strip of land adjoining the above described parcel to the north, to the centerline of Union Street, subject to its use as a public highway.

**162-164 South Main Street:**

**As to 162 South Main Street:**

ALL THAT TRACT OR PARCEL OF LAND situate on the southwest corner of South Main Street and Frederick Street, City of Cortland, County of Cortland and State of New York, being bounded and described as follows:

Beginning at a point where the west line of South Main Street is intersected by the south walk line of Frederick Street; running thence S.  $12^{\circ} 39'$  W. along the south walk line of South Main Street, a distance of 42.87 feet to a point;

Thence running N.  $78^{\circ} 15'$  W. across the lands of Grantor, a distance of 73.15 feet to a point;

Thence running N.  $12^{\circ} 35'$  E. across the lands of Grantor, a distance of 43.19 feet to a point in the south walk line of Frederick Street;

Thence running S.  $78^{\circ} 00'$  E. along said walk line, a distance of 73.20 feet to the place of beginning and containing 3,148.5 square feet, more or less.

Together with all right title and interest, subject to its use as a public highway, to the lands lying to the east of the above described premises to the center of South Main Street and to the north of the above described premises to the center of Frederick Street.

**As to 164 South Main Street:**

ALL THAT TRACT OR PARCEL OF LAND situate on the south side of Frederick Street and the west side of South Main Street, City of Cortland, County of Cortland and State of New York, being bounded and described as follows:

Beginning at a point located S.  $12^{\circ} 39'$  W. a distance of 42.87 feet from the point where the west walk line of South Main Street is intersected by the south walk line of Frederick Street;

Thence continuing S.  $12^{\circ} 39'$  W. along the west walk line of South Main Street, a distance of 61.63 feet to a point;

Thence running N.  $77^{\circ} 53'$  W. along the north line of lands owned by Baker (R.O.) and along the lands owned by Kane (R.O.), a distance of 166.82 feet to a point;

Thence running N. 13° 26' E. along the east line of lands owned by said Kane (R.O.) and also the east line of lands owned by DelVecchio (R.O.), a distance of 103.90 feet to a point in the south walk line of Frederick Street;

Thence running S. 87° 00' E. along the said walk line a distance of 92.20 feet to a point;

Thence running S. 12° 35' W. across lands of Grantor, a distance of 43.19 feet to a point;

Thence running S. 78° 15' E. across the lands of Grantor, a distance of 73.15 feet to the place of beginning and containing 14,179.5 square feet, more or less.

Together with all right title and interest, subject to its use as a public highway, to the lands lying to the east of the above described premises to the center of South Main Street and to the north of the above described premises to the center of Frederick Street.

**2 Argyle Place:**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Cortland, County of Cortland and State of New York, being bounded and described as follows: BEGINNING at the intersection of the west street line of Main Street with the north street line of Argyle Place; thence S. 85° 51' W. a distance of 168.08 feet to a point;

Thence N. 03° 56' W. a distance of 70.50 feet to a point;

Thence N. 85° 51' E a distance of 66.08 feet to a point;

Thence S. 03° 56' E. a distance of 26.55 feet to a point;

Thence N. 85° 51' E a distance of 102.0 feet to a point;

Thence S. 03° 56' E. a distance of 43.95 feet to the point and place of beginning.

TOGETHER WITH an easement for access for building maintenance four (4) feet in width over the southerly boudary of the lands conveyed to Stewart J. Wills dated December 30, 1983 and recorded December 30, 1983 in Book of Deeds 390, page 282.

**148 South Main Street:**

ALL THAT TRACT OR PARCEL OF LAND, situate on the West side of Main Street in the City and County of Cortland and State of New York, being bounded and described as follows: BEGINNING at a point on the west street line of said Main Street, said street line also being the west walk line, located N 03° 56' W a distance of 71.5 feet from the north walk line of Argyle Place; thence running S 85° 51' W a distance of 168.08 feet to a point; thence running N 03° 56' W parallel with Main Street a distance of 54.25 feet to a point; thence running N 85° 26' E a distance of 168.08 feet to a point on the west street line of Main Street; thence running S 03° 56'

E along said street line, a distance of 55.45 feet to the place of beginning and containing 0.21 acres of land.

There is also conveyed herewith all the land adjacent to the above-described premises to the centerline of Main Street, subject to the rights of the public to use the same for street or highway purposes.

The above-referenced tract or parcel of land being modernly described according to a survey prepared by Gary Bruce Davison, Licensed Land Surveyor, number 49603, dated September 15, 2006 as follows:

**ALL THAT TRACT OR PARCEL OF LAND**, situate on the west side of Main Street in the City and County of Cortland and State of New York being bounded and described as follows:

Beginning at a point on the west street line of said Main Street, said street line also being the west walk line, located North 05° 29' 00" East 70.34 feet from the north walk line of Argyle Place; thence running North 84° 39' 36" West a distance of 167.58 feet to a point; thence running North 05° 20' 13" East a distance of 53.89 feet to a point; thence running South 85° 11' 36" East a distance of 167.73 feet to a point on the west walk line of Main Street; thence running South 5° 29' 00" West a distance of 55.45 feet to the point and place of beginning, and containing .21 acres of land, more or less.

**152 – 156 South Main Street:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City and County of Cortland and State of New York being bounded and described as follows Beginning at the intersection of the south street line of Argyle Street and the west line of Main Street;

THENCE running S 05-25' W a distance of 126.32 feet to point marked by a 5/8" rebar with survey cap set in the west walk line of Main Street;

THENCE running N 84-47' W a distance of 167.77 feet to a point 0.2 feet east and 0.4 feet south of an existing iron pipe;

THENCE running 05-25' E a distance of 74.69 feet to a point marked by a 5/8" rebar with survey cap;

THENCE running S 84-39' E a distance of 100.05 feet to a point at the west face of House No. 156;

THENCE running N 05-25' E a distance of 52.02 feet to a point marked by a 5/8" rebar with survey cap set in said south line of Argyle Street (0.4 feet south of the back of walk);

THENCE running S 84-39' E a distance of 67.72 feet to a point and the place of beginning and containing 0.368 acres of land, more or less.



**EXHIBIT "E"**

**EMPLOYMENT PLAN STATUS REPORT**

**To Be Filled by**

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TYPE OF BUSINESS:** \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

**TELEPHONE NUMBER:** \_\_\_\_\_

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed<sup>1</sup></u>	<u>Number Filled</u>	<u>Average Number of Full Time Equivalent Employees During Preceding Twelve Months<sup>2</sup></u>
			Job Service Division Applicants	Job Training Partnership Act eligible persons

<sup>1</sup>With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

<sup>2</sup>Forty hours worked per week equals one full time equivalent employee.

**EXHIBIT "G"**  
**ANNUAL REPORT**  
**ST-340 Annual Report of Sales and Use Tax Exemptions Form**



**Annual Report of Sales and Use Tax Exemptions  
Claimed by Agent/Project Operator of  
Industrial Development Agency/Authority (IDA)**

For Period Ending December 31, \_\_\_\_\_ (enter year)

**Project information**

Name of IDA agent/project operator	Federal employer identification number (FEIN)	
------------------------------------	---	--

Street address	Telephone number (      )	
----------------	------------------------------	--

City	State	ZIP code
------	-------	----------

Name of IDA agent/project operator's authorized representative, if any	Title	
--	-------	--

Street address	Telephone number (      )	
----------------	------------------------------	--

City	State	ZIP code
------	-------	----------

Name of IDA
-------------

Street address
----------------

City	State	ZIP code
------	-------	----------

Name of project
-----------------

Street address of project site
--------------------------------

City	State	ZIP code
------	-------	----------

1 Project purpose:

Services       Construction       Agriculture, forestry, fishing  
 Wholesale trade       Retail trade       Finance, insurance or real estate  
 Transportation, communication, electric, gas, or sanitary services  
 Manufacturing       Other (specify) \_\_\_\_\_

2 Date project began: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM      DD      YYYY

3 Beginning date of construction or installation (actual or expected): \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM      DD      YYYY

4 Completion date of construction phase of project (actual or expected): \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM      DD      YYYY

5 Completion date of project (actual or expected): \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM      DD      YYYY

6 Duration of project (years/months; actual or expected): \_\_\_\_\_ / \_\_\_\_\_  
Years      Months

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) ..... 7 \$ \_\_\_\_\_

Print name of officer, employee, or authorized representative signing for the IDA agent/project operator

Title of person signing

Signature

Date

Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.

Mail completed report to: NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.

**EXHIBIT "H"**  
**ST-60 IDA Appointment of Project Operator or Agent Form**



# IDA Appointment of Project Operator or Agent

## For Sales Tax Purposes

ST-60

(7/02)

The industrial development agency or authority (IDA) **must** submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA		IDA project number (use OSC numbering system for projects after 1998)		
Street address		Telephone number (      )		
City		State	ZIP code	
Name of IDA project operator or agent		Check box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street address		Telephone number (      )	Primary operator or agent? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City		State	ZIP code	
Name of project		Purpose of project (see instructions)		
Street address of project site				
City		State	ZIP code	
Description of goods and services intended to be exempted from sales and use taxes				
Date project operator or agent appointed		mm dd yyyy	Date project operator or agent status ends	mm dd yyyy

Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:

Print name of officer or employee signing on behalf of the IDA		Print title
Signature		Date
		Telephone number (      )

### Instructions

#### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

#### Need help?

 **Telephone assistance** is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.

Business tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).



**Internet access:** [www.tax.state.ny.us](http://www.tax.state.ny.us)

 **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



If you need to write, address your letter to: NYS Tax Department, Taxpayer Contact Center, W A Harriman Campus, Albany NY 12227.

#### Purpose of project

For **Purpose of project**, enter one of the following:

- Services
- Construction
- Agriculture, forestry, fishing
- Wholesale trade
- Finance, insurance, real estate
- Retail trade
- Transportation, communication, electric, gas, sanitary services
- Manufacturing
- Other (specify)

#### Mailing instructions

Mail completed form to: NYS Tax Department, IDA Unit, Building 8 Room 738, W A Harriman Campus, Albany NY 12227

**EXHIBIT "A" to EXHIBIT "J"**  
**Description of Facility Parcel**

**5 Union Street:**

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

BEGINNING at a point marked by a found iron pipe in the south edge of the south walk of Union Street, said point being located westerly, as measured along said edge of south walk of Union Street, a distance of 137.27 feet from its intersection with the west edge of the west walk of South Main Street; running

Thence S.  $10^{\circ} 45'$  W. a distance of 143.00 feet to a point marked by a found iron pipe; running

Thence N.  $80^{\circ} 00'$  W. a distance of 60.43 feet to a point marked by a found iron rod; running

Thence N  $10^{\circ} 45'$  E. a distance of 143.00 feet to a point marked by a found iron bolt in the aforementioned south edge of the south walk of Union Street; running

Thence S.  $80^{\circ} 00'$  E. along said south edge of the south walk of Union Street, a distance of 60.43 feet to a point and place of beginning.

Said Parcel of Land being more modernly described in accordance with a survey of Gary Bruce Davison, LLS No. 49603 dated September 11, 2006 as follows:

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

BEGINNING at a point marked by a found iron pipe in the south edge of the south walk of Union Street, said point being located westerly, as measured along said edge of south walk of Union Street, a distance of 137.27 feet from its intersection with the west edge of the west walk of South Main Street; running

Thence S.  $05^{\circ} 43' 02''$  W. a distance of 143.00 feet through an iron pipe and to a point marked by a found set 5/8" rebar with survey cap; running

Thence N.  $83^{\circ} 31' 40''$  W. a distance of 60.43 feet to a point marked by a found iron pipe and set 5/8" rebar with survey cap; running

Thence N  $05^{\circ} 43' 20''$  E. a distance of 141.42 feet to a point marked by a set 5/8" rebar with survey cap in the aforementioned south edge of the south walk of Union Street; running

Thence S.  $85^{\circ} 01' 40''$  E. along said south edge of the south walk of Union Street, a distance of 60.43 feet to a point and place of beginning

Together with all right title and interest in and to the strip of land adjoining the above described parcel to the north, to the centerline of Union Street, subject to its use as a public highway.

**162-164 South Main Street:**

**As to 162 South Main Street:**

ALL THAT TRACT OR PARCEL OF LAND situate on the southwest corner of South Main Street and Frederick Street, City of Cortland, County of Cortland and State of New York, being bounded and described as follows:

Beginning at a point where the west line of South Main Street is intersected by the south walk line of Frederick Street; running thence S.  $12^{\circ} 39'$  W. along the south walk line of South Main Street, a distance of 42.87 feet to a point;

Thence running N.  $78^{\circ} 15'$  W. across the lands of Grantor, a distance of 73.15 feet to a point;

Thence running N.  $12^{\circ} 35'$  E. across the lands of Grantor, a distance of 43.19 feet to a point in the south walk line of Frederick Street;

Thence running S.  $78^{\circ} 00'$  E. along said walk line, a distance of 73.20 feet to the place of beginning and containing 3,148.5 square feet, more or less.

Together with all right title and interest, subject to its use as a public highway, to the lands lying to the east of the above described premises to the center of South Main Street and to the north of the above described premises to the center of Frederick Street.

**As to 164 South Main Street:**

ALL THAT TRACT OR PARCEL OF LAND situate on the south side of Frederick Street and the west side of South Main Street, City of Cortland, County of Cortland and State of New York, being bounded and described as follows:

Beginning at a point located S.  $12^{\circ} 39'$  W. a distance of 42.87 feet from the point where the west walk line of South Main Street is intersected by the south walk line of Frederick Street;

Thence continuing S.  $12^{\circ} 39'$  W. along the west walk line of South Main Street, a distance of 61.63 feet to a point;

Thence running N.  $77^{\circ} 53'$  W. along the north line of lands owned by Baker (R.O.) and along the lands owned by Kane (R.O.), a distance of 166.82 feet to a point;

Thence running N. 13° 26' E. along the east line of lands owned by said Kane (R.O.) and also the east line of lands owned by DelVecchio (R.O.), a distance of 103.90 feet to a point in the south walk line of Frederick Street;

Thence running S. 87° 00' E. along the said walk line a distance of 92.20 feet to a point;

Thence running S. 12° 35' W. across lands of Grantor, a distance of 43.19 feet to a point;

Thence running S. 78° 15' E. across the lands of Grantor, a distance of 73.15 feet to the place of beginning and containing 14,179.5 square feet, more or less.

Together with all right title and interest, subject to its use as a public highway, to the lands lying to the east of the above described premises to the center of South Main Street and to the north of the above described premises to the center of Frederick Street.

**2 Argyle Place:**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Cortland, County of Cortland and State of New York, being bounded and described as follows: BEGINNING at the intersection of the west street line of Main Street with the north street line of Argyle Place; thence S. 85° 51' W. a distance of 168.08 feet to a point;

Thence N. 03° 56' W. a distance of 70.50 feet to a point;

Thence N. 85° 51' E a distance of 66.08 feet to a point;

Thence S. 03° 56' E. a distance of 26.55 feet to a point;

Thence N. 85° 51' E a distance of 102.0 feet to a point;

Thence S. 03° 56' E. a distance of 43.95 feet to the point and place of beginning.

TOGETHER WITH an easement for access for building maintenance four (4) feet in width over the southerly boudary of the lands conveyed to Stewart J. Wills dated December 30, 1983 and recorded December 30, 1983 in Book of Deeds 390, page 282.

**148 South Main Street:**

ALL THAT TRACT OR PARCEL OF LAND, situate on the West side of Main Street in the City and County of Cortland and State of New York, being bounded and described as follows: BEGINNING at a point on the west street line of said Main Street, said street line also being the west walk line, located N 03° 56' W a distance of 71.5 feet from the north walk line of Argyle Place; thence running S 85° 51' W a distance of 168.08 feet to a point; thence running N 03° 56' W parallel with Main Street a distance of 54.25 feet to a point; thence running N 85° 26' E a distance of 168.08 feet to a point on the west street line of Main Street; thence running S 03° 56'

E along said street line, a distance of 55.45 feet to the place of beginning and containing 0.21 acres of land.

There is also conveyed herewith all the land adjacent to the above-described premises to the centerline of Main Street, subject to the rights of the public to use the same for street or highway purposes.

The above-referenced tract or parcel of land being modernly described according to a survey prepared by Gary Bruce Davison, Licensed Land Surveyor, number 49603, dated September 15, 2006 as follows:

**ALL THAT TRACT OR PARCEL OF LAND**, situate on the west side of Main Street in the City and County of Cortland and State of New York being bounded and described as follows:

Beginning at a point on the west street line of said Main Street, said street line also being the west walk line, located North 05° 29' 00" East 70.34 feet from the north walk line of Argyle Place; thence running North 84° 39' 36" West a distance of 167.58 feet to a point; thence running North 05° 20' 13" East a distance of 53.89 feet to a point; thence running South 85° 11' 36" East a distance of 167.73 feet to a point on the west walk line of Main Street; thence running South 5° 29' 00" West a distance of 55.45 feet to the point and place of beginning, and containing .21 acres of land, more or less.

**152 – 156 South Main Street:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City and County of Cortland and State of New York being bounded and described as follows Beginning at the intersection of the south street line of Argyle Street and the west line of Main Street;

THENCE running S 05-25' W a distance of 126.32 feet to point marked by a 5/8" rebar with survey cap set in the west walk line of Main Street;

THENCE running N 84-47' W a distance of 167.77 feet to a point 0.2 feet east and 0.4 feet south of an existing iron pipe;

THENCE running 05-25' E a distance of 74.69 feet to a point marked by a 5/8" rebar with survey cap;

THENCE running S 84-39' E a distance of 100.05 feet to a point at the west face of House No. 156;

THENCE running N 05-25' E a distance of 52.02 feet to a point marked by a 5/8" rebar with survey cap set in said south line of Argyle Street (0.4 feet south of the back of walk);

THENCE running S 84-39' E a distance of 67.72 feet to a point and the place of beginning and containing 0.368 acres of land, more or less.