

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of November 5, 2024 (the "Effective Date"), is by and between **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation, having an office at 420 East German Street, Suite 101A, Herkimer, New York 13350 (the "Seller") and **STARK DEVELOPMENT, LLC**, a New York Limited Liability Company with offices at 6405 Walker Road, Deerfield, New York 13502 (the "Buyer").

RECITALS:

WHEREAS, Seller is the fee owner of the Property (as such term is hereinafter defined);
and

WHEREAS, Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, all upon the terms and conditions hereinafter set forth; and

WHEREAS, Buyer intends to use the Property for the purpose of erecting a commercial building and storage structure for the purpose of operating an associated business, known as Utica Roof Pros.

1. **Property Included in Sale.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

(a) that certain 4.138+ acre parcel of land more particularly described as Parcel "B" on the Map entitled "Survey Map showing Reallotment of Lands Belonging to the Herkimer county Industrial Development Agency Designated as Parcels "A" and "B" dated February 22, 2022, prepared by Emrich Land Surveying PLLC and located on Diamond Drive in the Town of Schuyler, County of Herkimer, State of New York, which parcel of land is designated on the Herkimer County Tax Maps as part of Tax Map Parcel No. 105.3-2-9 and is more generally described in the description attached hereto and made a part hereof as **Exhibit A** (the "Real Property").

(b) all rights, privileges and easements appurtenant to the Real Property including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, water, water rights and water stock relating to the Real Property and any other easements, right-of-way or appurtenances used in connection with the beneficial use and enjoyment of the Real Property (all of which are collectively referred to herein as the "Appurtenances"); and

(c) the buildings and all other improvements (if any), and fixtures to provide any utility services, located on the Real Property (all of which are collectively referred to herein as the "Improvements").

All of the items referred to in subparagraphs 1 (a), (b), and (c) above are hereinafter collectively referred to as the "Property".

2. **Marketable Title.**

At Closing, Seller shall transfer and convey to Buyer good and marketable title to the Property, free and clear of all liens, charges and encumbrances except for (a) building and use restrictions of record and governmental laws, regulations and/or ordinances (provided that said restrictions, laws, regulations and/or ordinances have not been violated and permit Buyer's intended use of the Property), (b) easements, rights-of-way, covenants, conditions and restrictions of record (provided that the same do not render title unmarketable, have not been violated and permit Buyer's intended use of the Property), (c) any matters that would be disclosed by an accurate survey and physical inspection of the Property including possible projections and/or encroachments (provided that the same do not render title unmarketable and permit Buyer's intended use thereof), (d) real estate taxes and assessments that are a lien, but are not yet due, and (e) all public utility lines, poles, wires, cables, pipes, distribution boxes and appurtenant equipment and/or apparatus (provided that the same do not render title unmarketable and permit Buyer's intended use thereof), and (f) a right of reverter and option to repurchase the property, wherein if the Buyer fails and/or neglects to receive approval to develop the above-described parcel and commence construction within two (2) years of the delivery of the Deed, Seller shall have the option to repurchase the premises for the purchase price set forth in paragraph 3 herein, subject to customary prorations, upon giving Buyer notice to do so.

All of the items referred to in subparagraphs 2(a) through (e) above are hereinafter collectively referred to as the "Permitted Exceptions".

3. **Purchase Price.**

(a) The purchase price for the Property is \$15,000.00 per acre for a total of Sixty Thousand Dollars (\$62,070.00) (the "Purchase Price").

(b) The Purchase Price shall be paid by Buyer to Seller as follows:

(i) an earnest money deposit of \$6,000, to be held by Seller's attorney in his IOLA account, shall be paid upon execution of this Agreement and credited against the Purchase Price at Closing or refunded to Buyer in accordance with the provisions of this Agreement,

(ii) the balance thereof shall be paid at Closing by means of an official bank check, a certified check or by a wire transfer of immediately available funds, whichever means Buyer elects.

4. **Conditions to Closing.** In addition to any other conditions the following conditions are conditions precedent to Buyer's obligation to purchase the Property:

(a) Buyer/Buyer's attorney having reviewed and approved the title to the Property, including Buyer's review and approval, in Buyer's sole discretion, of the following:

(i) a current title insurance commitment on the Property, accompanied by copies of all documents referred to in the commitment;

(ii) copies of all existing and proposed easements, covenants, restrictions, agreements or other documents which affect the Property and which are not disclosed by the title insurance commitment or, if no such documents exist, a certificate of Seller to that effect; and

(iii) a current survey of the Property by a NYS-licensed surveyor or civil engineer. The survey shall show the location of all easements, utilities, and Improvements (including underground Improvements, if any) and any and all other pertinent information with respect to the Property. The survey shall also indicate any encroachments of Improvements onto easements or onto adjacent properties or certify to their absence and shall indicate the presence of other improvements and easements on property adjoining the Real Property if located within five (5) feet of the boundaries of the Real Property.

(b) Buyer having satisfied itself, in its reasonable discretion, as to the physical condition of the Property (including, without limitation, its environmental condition) and all other matters relating to the Property including, without limitation, the suitability of the Property for Buyer's intended use thereof.

The foregoing conditions contained in subparagraphs 4(a) and (b) above are intended solely for the benefit of Buyer. If any of the foregoing conditions contained in subparagraphs 4 (a) and (b) above are not satisfied on or before the last day of the Inspection Period (as such term is defined in paragraph 11 hereof), Buyer shall have the right, in its sole discretion, to either to waive the condition in question and proceed with the purchase or, in the alternative, terminate this Agreement without further obligation and receive a refund of any earnest money deposit paid hereunder. If Buyer fails to give written notice to Seller on or before the date which is seven (7) days after the last day of the Inspection Period that the conditions contained in the subparagraphs 4(a) and (b) above have been satisfied (or waived) and that it is ready to proceed with the Closing then, and in such event, Buyer shall be deemed to have terminated this Agreement whereupon Seller shall immediately refund to Buyer any earnest money deposit paid hereunder.

Buyer shall be responsible for obtaining the title insurance commitment, the survey, engineering, environmental, architectural and other studies of the Property and any other items necessary in order to satisfy the foregoing conditions, all at Buyer's own cost and expense.

4A. **Seller's Pre-Closing Deliverables.** Within thirty (30) days after the Effective Date, Seller or its counsel shall deliver to Buyer or his counsel a 40-year abstract of title to the Real Property (which shall have a Warranty Deed in the chain of title which has been of record for of at least forty (40) years), applicable County and Village tax search certificates, applicable water/sewer rent searches and applicable bankruptcy searches against the record owners of the Real Property during the last twenty (20) years, UCC/Federal Tax Lien searches against the Seller showing all UCC filings and federal tax liens, if any, on file against Seller in the New York State Department of State and the Oneida County Clerk's Office, and a proposed Bargain and Sale Deed, proposed Form TP-584, and proposed Form RP-5217, all at Seller's own cost and expense (all of the foregoing being, collectively, the "Title Documents"). In addition, within thirty (30) days after the Effective Date, Seller or its counsel shall deliver to Buyer or his counsel copies of all title insurance policies, survey maps, environmental assessments and other examinations, inspections, reports, studies or assessments relating to the Property in Seller's possession or under its control.

4B. **Explanatory Statement.** Buyer's obligation to consummate the transactions contemplated by this Agreement shall be conditioned upon Seller's satisfactory compliance with New York Public Authorities Law Section 2897(6)(d) which requires Seller to send notice and an explanatory statement of the circumstances surrounding the disposition of the Property at least ninety (90) days prior to Closing (as such term is defined in paragraph 5 hereof). Seller agrees to

send the required notice and explanatory statement within thirty (30) days of the execution of this Agreement.

5. **The Closing.** The closing (the "Closing") hereunder shall be held, and delivery of all items required to be delivered at Closing under the terms of this Agreement shall occur, at the offices of Seller's attorneys, Felt Evans, LLP, 4 – 6 North Park Row, Clinton, New York 13323 at 10:00 a.m. on or about January 30, 2025, or such other time, date and/or place as may be mutually agreed upon by the parties hereto. The date on which the Closing occurs is referred to herein as the "Closing Date".

6. **Covenants and Agreements of Seller Prior to Closing.** From and after the Effective Date until the termination of this Agreement or the Closing, Seller agrees not to (a) transfer the Property or any interest therein or part thereof, (b) grant, create or suffer to exist any mortgages, easements, liens, security interests or other encumbrances on the Property or any part thereof, other than the Permitted Exceptions, (c) enter into any contracts or commitments with respect to the Property other than contracts or commitments entered into in the ordinary course of business and which are terminable at or prior to Closing, (d) incur any major expenses with respect to the Property or any part thereof, other than expenses incurred in the ordinary course of business or which are necessitated by emergency situations involving the Property, or (e) commit, cause or suffer to exist, conscious waste on the Property, in each case without the prior written consent of Buyer.

Seller shall give Buyer prompt written notice of (f) any pending or threatened condemnation or eminent domain proceeding involving the Property or any part thereof known to Seller, (g) any damage or destruction caused to the Property or any part thereof known to Seller, (h) any proposed changes in zoning affecting the Property known to Seller, and (i) any violations known to Seller of applicable federal, state or local health, safety, fire, zoning or environmental laws, rules or regulations alleged by any governmental agency or authority having jurisdiction over the Property.

7. **Obligations at Closing.** At the Closing, Buyer shall be obligated to pay the Purchase Price (plus or minus any adjustments thereto made pursuant to paragraph 8 hereof) to Seller in the manner set forth in Paragraph 3 hereof, in exchange for which Seller shall be obligated to execute and deliver, or cause to be executed and delivered, as applicable, the following items to Buyer, in form and substance reasonably acceptable to Buyer:

(a) A Bargain and Sale Deed to the Property (with the trust fund provision pursuant to Section 13 of the Lien Law), in recordable form, conveying to Buyer fee simple title to the Property, free and clear of all liens, charges and encumbrances, except for the Permitted Exceptions, together with the accompanying Form TP-584 and Form RP-5217 and undisturbed possession of the Property.

(b) An Affidavit indicating that on the Closing Date there is no outstanding and unsatisfied judgment, special assessment, tax lien (other than the lien of real estate taxes and assessments which are not yet due), mortgage foreclosure, or bankruptcy against or involving Seller or the Property, that there has been no skill, labor or material furnished to the Property for which mechanics' or materialmen's or other liens could lawfully be filed against the Property, and that there are no other unrecorded interests in the Property of any kind created by Seller, together with whatever owner's affidavit or other affidavits or evidences of title may be required by Buyer's Title Company;

(c) All other documents affecting title to, and exclusive possession of, the Property and necessary or appropriate to transfer or assign the same to Buyer, free and clear of all liens, charges and encumbrances, other than the Permitted Exceptions.

8. **Prorations.** The parties shall prorate, as of the day immediately preceding the Closing Date, on a daily basis; (a) all ad valorem real estate taxes and (b) all other expensed and items customarily prorated in connection with the sale of real property in Herkimer County, New York. All ad valorem real estate taxes to be prorated hereunder shall be prorated according to the most recent tax bill, with an appropriate adjustment to be made, if any upon receipt by Seller or Buyer of the actual bill for said taxes for the appropriate period.

Buyer shall pay all fees and expenses of closing customarily borne by buyers in connection with real property transfers in Herkimer County, New York, and Seller shall pay all fees and expenses of closing customarily borne by sellers in connection with real property transfers in Herkimer County, New York. Without limiting the generality of the foregoing, the Seller shall pay all transfer taxes, documentary stamp taxes and TP-584 filing fees charged with respect to the conveyance of the Property by Seller to Buyer and Buyer shall pay the fees for the recordation of the Bargain and Sale Deed referred to in Section 7(a) above, abstract continuation charges, survey charges, the costs of any assessments, investigations, reports, inspections, studies and the like ordered by Buyer, and all title insurance premiums.

9. **Representations and Warranties of Seller.** As of the Effective Date, Seller represents and warrants to Buyer, and as of the Closing Date, Seller will represent and warrant to Buyer, as follows, all of which representations and warranties (as well as any other warranties and representations made by Seller in this Agreement) shall automatically expire and terminate on the date (the "Representation/Warranty Expiration Date") which is six (6) months after the Closing Date.

(a) Portions of the Property are proximate to wetlands area and a designated conservation easement.

(b) Seller has not received any notification from any governmental agency or authority of any pending public improvements and/or assessments pertaining to or affecting the Property or of any repairs, replacements or alterations to the Property that are required.

(c) Seller is fee simple owner of Property and has all power and authority to execute, deliver and perform this Agreement and all documents and instruments referred to herein to be executed, delivered and performed by Seller, and all necessary or appropriate authorizations required in connection with the execution, delivery and performance by Seller of this Agreement and the other documents and instruments referred to herein have been or, prior to Closing will be, duly obtained by Seller.

(d) The conveyance of the Property to Buyer pursuant hereto will not violate any applicable statute, ordinance, governmental restriction or regulation, or any private restriction or agreement applicable to Seller or to the Property or any part thereof.

(e) There is no lawsuit, action, litigation, investigation, condemnation or proceeding of any kind pending or, to the Seller's best knowledge, threatened against the Seller or the Property (or any part thereof).

(f) Seller has not granted and/or entered into commitments or other agreements including, without limitation, any right of first refusal or option to purchase granted in favor

of a third party which would or could prevent Seller from completing the sale of the Property to Buyer pursuant to this Agreement or which would bind Buyer subsequent to consummation of the transaction contemplated hereby.

(g) During the period of its ownership thereof, Seller has not used, or permitted or suffered others to use, the Property in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, and no above-ground or underground storage tanks have been located on the Property, and there has been no Release or threat of Release of any Hazardous Substance on, at or from the Property.

10. **Notices.** All notices or other communications necessary or desirable to be given hereunder shall be in writing and either delivered in person or sent by certified mail, return receipt requested, or by a nationally-recognized overnight delivery service:

If to Seller, addressed to Seller at:

Herkimer County Industrial Development Agency
420 East German Street, Suite 101A
Herkimer, New York 13350
Attn: John J. Piseck, Jr., Chief Executive Officer

and if to Buyer, addressed to Buyer at:

Stark Development, LLC
6405 Walker Road
Deerfield, New York 13502
Attn: John Kosak

or to such other address as is stated in a notice given in compliance herewith. Any notice or other communication made in accordance with the foregoing shall be deemed to have been given when delivered in person or, if mailed or sent by a nationally-recognized overnight delivery service (e.g., UPS, FedEx), on the day deposited with the U.S Postal Service or nationally recognized overnight delivery service. A notice or other communications may be given on behalf of a party hereto by such party's attorney(s) as identified above.

11. **Property Investigations and Environmental Surveys.**

(A) During the first one hundred twenty (120) days following the Effective Date (the "Inspection Period"), Seller grants to Buyer, through and under the supervision of Buyer's consultants, the right to enter the Property or any portion thereof at any time upon notice to Seller for the purpose of conducting engineering investigations, survey, soil, geological, and title review ("Property Investigations") and Phase I environmental reports ("Environmental Survey") concerning the presence of any contamination of the Property by hazardous materials; apparent violation of environmental requirements upon or associated with activities upon the Property; or potential incurrence of environmental damages by the prior or current owner(s) or operator(s) of the Property. Environmental Surveys may include, without limitation, (i) a site inspection; (ii) interviews of present

- occupants of the Property; (iii) a review of public records concerning the Property and other properties in the vicinity of the Property; and (iv) a review of aerial photographs of the Property and other evidence of historic land uses, as Buyer may desire or as may be required by any public agency or department which must approve any aspect of the acquisition or development of the property by Buyer.
- (B) Buyer's consultants shall not be permitted to conduct any Phase II testing or intrusive testing, drilling or core sampling without Seller's prior written consent. Seller will cooperate with the consultants and supply to the consultants such historical and operational information known to Seller, if any, as may be reasonably requested by the consultants.
- (C) Seller and its employees and agents shall have the right to be present during any investigation or survey. Buyer shall deliver to Seller certificates of general liability insurance and worker's compensation insurance with respect to employees, representatives, or agents of Buyer and its consultants prior to entering the Property for any purpose.
- (D) No such investigation shall be made which causes damage or change to the physical condition of the Property unless within a reasonable time following such investigation Buyer shall cause the Property to be restored substantially to its condition prior to such investigation. The right of entry granted hereby is at the sole risk of the Buyer and its consultants. Buyer and its consultants shall indemnify and defend and hold Seller harmless against any and all costs, claims and expenses, including reasonable attorneys' fees, arising out of any claims made in connection with any physical investigation of the Property conducted by Buyer or its consultants; provided, however, that Buyer and its consultants shall not indemnify Seller for any claims, actions or other proceedings caused solely and directly by the negligence or willful misconduct of Seller, its employees or agents.
- (E) During the Inspection Period, Seller shall provide reasonable cooperation to Buyer with respect to Buyer's investigations as to whether all utility services, including, water, sewer, electric, gas and telephone, are available for connection at the boundary line of the Property and such utilities have adequate capacity for Buyer's intended uses, and are subject to only such regulatory limitations as are sufficient and reasonably acceptable to Buyer to support Buyer's intended use. Upon Buyer's request and at Buyer's sole cost and expense, Seller agrees to work collaboratively with Buyer and the utility companies to grant reasonably necessary utility easements over the Property in order to provide utility services for Buyer's intended use.
- (F) During the Inspection Period, Seller authorizes Buyer to apply for all such approvals and Seller agrees that it shall use its commercially reasonable efforts to promptly cooperate with Buyer to consummate municipal approvals. The obligation of the Buyer to acquire the Property is subject to receipt of final approval by applicable governmental authorities of the zoning, site plan and permits required in order to allow the construction and operation of a proposed project facility providing for a convenience store, fuel station and/or car wash. The

conditions of such approval, and all other terms and conditions of the approval shall be subject to the approval of the Buyer.

In the event Buyer, despite its good faith efforts, is unable to obtain governmental approvals within the inspection period, then Seller shall upon Buyer's written request twenty (20) days prior to end of the inspection period, grant a sixty (60) day extension to secure such approvals.

12. **Default and Cancellation.** If the Buyer fails to perform under this Agreement, then the Seller may, at the Seller's option, declare this Agreement in default and receive all sums deposited by the Buyer as liquidated damages, the exact amount of actual damage being incapable of ascertainment, all as Seller's sole remedy. If the Seller fails to perform under this Agreement, then the Buyer may, at Buyer's option and as Buyer's sole remedy either (a) declare this Agreement in default whereupon Seller shall refund to Buyer any earnest money deposit made by Buyer pursuant to this Agreement, or (b) obtain an order of specific performance compelling Seller to convey such title to the Property as Seller is able to convey, without reduction in, or offset against, the Purchase Price, or (c) exercise any remedies available to it at law or in equity. In any litigation concerning this Agreement, the losing party shall pay the successful party's litigation expenses, including reasonable attorneys' fees.

13. **Assignment.** Seller expressly acknowledges that the rights granted hereby may be assigned by Buyer with written consent of Seller, which written consent shall not be unreasonably withheld; to a third party affiliated by common ownership with Buyer without the consent of Seller. No assignment shall relieve Buyer of its obligations under this Agreement.

14. **Brokers.** Seller and Buyer warrant and represent to each other that no broker or other person entitled to broker's fees, real estate commissions or other compensation has been instrumental in bringing about this Agreement for the sale of the Property. In the event any person or entity makes claim for broker's fees, real estate commissions or other compensation by virtue of this Agreement for the sale of the Property, the party whose acts are determined to have been responsible therefor shall hold the other party harmless therefrom and shall indemnify such other party in the event such other party is required to pay the same. The warranty, representation and indemnity obligations of Seller and Buyer under this Section shall survive the Closing and/or the termination of this Agreement.

15. **Condemnation/Damage.** Section 5-1311 of the General Obligations Law establishes the risk of loss and obligation of the parties in the event of the destruction or taking by eminent domain of all or a portion of the Property being conveyed prior to Closing.

16. **"AS IS" Sale.** Buyer covenants and warrants that Buyer will make its own inspection of the Property prior to Closing and agrees to accept title to the Property in its "AS IS" condition, "WITH ALL FAULTS," subject to reasonable use, wear, tear and natural deterioration between the Effective Date and the Closing.

17. **Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

18. **Remedies Cumulative.** All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

19. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

20. **Partial Invalidity.** If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. **Section Headings and Exhibits.** The section headings in this Agreement are for convenience and for reference only and in no way define or limit the scope or contents of this Agreement or in any way affect its provisions. All exhibits attached hereto are hereby made a part of this Agreement.

22. **Counterparts.** This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Agreement.

23. **Further Assurances.** Each party hereto agrees to use all reasonable efforts to obtain all consents and approvals and to do all other things necessary to consummate the transactions contemplated by this Agreement. The parties agree to take such further action and to deliver or cause to be delivered any additional agreements or instruments as any of them may reasonably request for the purpose of carrying out this Agreement and the agreements and transactions contemplated hereby.

24. **Entire Agreement.** It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement with respect to the subject matter hereof.

[Signature page follows]

IN WITNESS WHEREOF, this Real Estate Purchase and Sale Agreement has been executed as of Effective Date.

SELLER:

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

John J. Piseck, Jr.
Chief Executive Officer

BUYER:

STARK DEVELOPMENT, LLC

By: 

John Kosak
Managing Member

EXHIBIT A

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate within the Town of Schuylers, County of Herkimer and State of New York, as shown on the map entitled "Survey Plat Showing Re-Allotment of Lands Belonging to Herkimer County Industrial Development Agency Designated as Parcel "C", dated September 27, 2022, prepared by Emrich Land Surveying, PLLC; said parcel more particularly described as follows:

BEGINNING at an iron pin (re-set) located on the northerly highway boundary of New York State Route 5 at its intersection with the division line between the herein described property, designated as Parcel "C" on the southeast and the property of Pavel Kislyak and Lyubov Kislyak (reputed owners) as described by deed L. 928 P. 532 on the northwest;

Thence North 32° 22' 00" East, along the last mentioned division line, a distance of 80.88 feet to an iron pin (set); said pin located at the intersection of the last mentioned division line with the division line between the herein described property, designated as Parcel "C" on the east and said property of Pavel Kislyak and Lyubov Kislyak on the west;

Thence North 10° 52' 00" East, along the last mentioned division line, a distance of 176.00 feet to an iron pin (found); said pin located at the intersection of the last mentioned division line with the division line between the herein described property, designated as Parcel "C" on the east and said property of Pavel Kislyak and Lyubov Kislyak on the west;

Thence North 06° 14' 00" West, along the last mentioned division line, a distance of 192.18 feet to an iron pin (set);

Thence through the property of Herkimer County Industrial Development Agency (reputed owner) as described by deed Liber 860 page 184 the following four (4) bearings and distances:

- 1) South 89° 59' 00" East, a distance of 265.00 feet to an iron pin (set);
- 2) South 10° 13' 50" East, a distance of 327.00 feet to an iron pin (set);
- 3) South 51° 15' 40" East, a distance of 477.48 feet to an iron pin (set);
- 4) South 64° 36' 20" West, a distance of 214.00 feet to an iron pin (found) located on the northeasterly road boundary of Drive-In Road;

Thence along said northeasterly and northerly road boundaries of Drive-In Road the following three (3) bearings and distances:

- 1) North 37° 24' 15" West, a distance of 226.07 feet to an iron pin (set);
- 2) South 88° 35' 05" West, a distance of 204.20 feet to an iron pin (set);
- 3) North 71° 48' 05" West, a distance of 138.17 feet to an iron pin (set); said pin located at the intersection of the last mentioned course with the aforementioned northerly highway boundary of New York State Route 5;

Thence North 53° 40' 15" West, along said boundary of New York State Route 5, a distance of 105.59 feet to the point of beginning, containing 221,537± square feet or 5.085 acres, more or less.

The herein above-described lands being designated as all of Lot 6, a portion of Lot 7, and a portion of platted roadways not dedicated nor intended to be dedicated by the Town of Schuyler, as shown on a map entitled "Final Plat, Herkimer County Industrial Development Agency, Schuyler Business Park, Town of Schuyler, New York", prepared by O'Brien & Gere, Engineers INC., dated October, 2003 and filed in the Herkimer County Clerks Office on June 13, 2006 in Map File #345.

RESERVING: a Permanent Easement to be granted for utility purposes; said easement being fifty (50) feet in width, adjacent to and parallel with the northerly highway boundary of New York State Route 5 and the northerly and northeasterly road boundary of Drive-In Road as described above and as shown on the above referenced map.

BEING: a portion of the premises conveyed by County of Herkimer to Herkimer County Industrial Development Agency by Deed dated February 25, 1999, recorded in the Herkimer County Clerk's Office in Book 860 of Deeds at Page 184.

EXHIBIT B



