

**AGREEMENT ALLOCATING PILOT PAYMENTS**

**THIS AGREEMENT ALLOCATING PILOT PAYMENTS** (the “Agreement”), dated as of May \_\_\_, 2008, is by, between and among **COUNTY OF ONEIDA**, a New York municipal corporation with offices at County Office Building, 800 Park Avenue, Utica, New York 13501 (the “County”), **TOWN OF NEW HARTFORD**, a New York municipal corporation with offices at Butler Hall, 48 Genesee Street, New Hartford, New York 13413 (the “Town”), **NEW HARTFORD CENTRAL SCHOOL DISTRICT**, a New York municipal corporation with offices at 33 Oxford Road, New Hartford, New York 13413 (the “School District”) (the County, the Town and the School District are hereinafter sometimes each individually referred to as an “Affected Tax Jurisdiction” and collectively referred to as the “Affected Tax Jurisdictions”), and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with offices at 153 Brooks Road, Rome, New York 13441 (the “Agency”).

**RECITALS:**

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

**WHEREAS**, in order to induce the Company to develop the Facility, the Agency is willing to take a leasehold interest in the Land, Improvements and Equipment constituting the Facility and lease said Land, Improvements and Equipment constituting the Facility to Company pursuant to the terms and conditions of a Leaseback Agreement of even date herewith (the “Leaseback Agreement”); and

**WHEREAS**, the Agency has taken a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

**WHEREAS**, the Facility will be exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing \_\_\_\_\_ (the “Exempt Taxes”), because the Facility is under the jurisdiction, supervision and/or control of the Agency and used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption will not extend to special assessments or ad volarem levies; and

**WHEREAS**, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments-in-lieu-of-taxes and such assessments by the Company to the Town, School District and County which may be incorporated after the date hereof, within which the Facility is or may be, wholly

or partially (hereinafter each “taxing Authority” and collectively the “Tax Authorities”) in which any part of the Facility or Facilities are to be located; and

**WHEREAS**, all capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions which is attached hereto and made a part hereof as Schedule “A”; and

**WHEREAS**, the first phase of the development of the New Hartford Business Park either has commenced or is about to commence; and

**WHEREAS**, as part of said first phase of development, (a) Company No. 1 has, in accordance with the provisions of Leaseback Agreement No. 1, undertaken and/or will undertake the construction and equipping of Facility No. 1, (b) Company No. 2 has, in accordance with the provisions of Leaseback Agreement No. 2, undertaken and/or will undertake the construction and equipping of Facility No. 2, and (c) Company No. 3 has, in accordance with the provisions of Leaseback Agreement No. 3, undertaken and/or will undertake the construction and equipping of Facility No. 3; and

**WHEREAS**, in connection with Leaseback Agreement No. 1, the Agency and Company No. 1 have entered into or will enter into PILOT Agreement No.1 pursuant to which Company No. 1 will be obligated to make the PILOT Payments provided for therein to the Agency (see attached Exhibit A); and

**WHEREAS**, in connection with Leaseback Agreement No. 2, the Agency and Company No. 2 have entered into or will enter into PILOT Agreement No. 2 pursuant to which Company No. 2 will be obligated to make the PILOT Payments provided for therein to the Agency (see attached Exhibit B); and

**WHEREAS**, in connection with Leaseback Agreement No. 3, the Agency and Company No. 3 have entered into or will enter into PILOT Agreement No. 3 pursuant to which Company No. 3 will be obligated to make the PILOT Payments provided for therein to the Agency (see attached Exhibit C); and

**WHEREAS**, the Town has determined that development of the New Hartford Business Park will result in various economic and quality of life benefits, including the retention and/or creation of job opportunities, an increase in real property tax base, promotion of ongoing business development in New Hartford within and without the business park, expansion of public utilities and improvement in recreational facilities such as the Rayhill Trail; and

**WHEREAS**, the Town has further determined that it will be necessary to make public improvements to the existing nearby transportation network, including Woods Highway, Rt. 5, Rt. 840 and surrounding areas of the New Hartford Business Park, as defined in attached Schedule A (Public Improvements), in order to improve existing conditions and address increases in traffic which can be reasonably expected to result from the development of the New Hartford Business Park and surrounding areas, facilitate the flow of such traffic, and reduce any congestion caused by such traffic; and

**WHEREAS**, the School District and County support the development of the New Hartford Business Park having recognized and acknowledged the multitude of benefits expected to result therefrom, including the retention and/or creation of job opportunities and an increase in the tax base within their respective jurisdictions; and

**WHEREAS**, the parties hereto desire to facilitate the development of the New Hartford Business Park by making a source of funding available to the Town, through the use of the PILOT Payments, which source of funding the Town would then dedicate toward the payment of the 15 year debt service it incurs on monies borrowed to pay some portion or all of the projected costs of the aforementioned public improvements as defined in attached Schedule A (Costs of the Public Improvements) and set forth in attached Exhibit D; and

**WHEREAS**, in accordance with and pursuant to the authority set forth in Section 858 (15) of the General Municipal Law, the parties hereto desire to allocate the PILOT Payments received by the Agency (and the interest income generated thereby, if any, by the deposit thereof into the New Hartford Business Park PILOT Payments Fund) among the Affected Tax Jurisdictions as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises, the sum of One Dollar (\$1.00), and other good and valuable consideration, the payment, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.
2. Before the Agency enters into any of the PILOT Agreements, it shall submit the same to each of the Affected Tax Jurisdictions for its review and approval. By affixing signature to this Agreement, each Affected Tax Jurisdiction gives its written approval to each such PILOT Agreement submitted by the Agency (see again attached Exhibit A, Exhibit B, and Exhibit C) provided, however, that the same incorporates the terms and provisions of this Agreement applicable thereto and is otherwise consistent with the parties' understanding with respect to such PILOT Agreement as set forth in this Agreement.
3. The Agency promptly shall deposit all of the PILOT Payments actually received by it from PILOT Agreement No. 1, PILOT Agreement No. 2 and PILOT Agreement No. 3 into the interest bearing New Hartford Business Park PILOT Payments Fund.
4. As soon as is reasonably practical, the Town shall issue Bond Anticipation Notes (BAN) in the sum of Two million nine hundred thousand dollars (\$2,900,000) at prevailing interest rates to pay part of the Costs of the Public Improvements in and near the New Hartford Business Park.
5. Within 12 months of the BAN, the Town will either convert said Bond Anticipation Notes to a 14 year General Obligations Bond with principal amortization or renew the subject BAN with principal amortization and thereby incur a debt service obligation as defined in attached Schedule A (Public Improvements Debt) and set forth in attached Exhibit E.
6. The Town shall commence making the subject Public Improvements in and around the Spring of 2008 and substantially complete the same as soon thereafter as is reasonably practicable. The Town agrees that it shall use all monies allocated and paid over to it by the Agency pursuant to this Agreement to pay for the debt service it will incur on the aforementioned BAN/Bond to pay for all or a portion of the subject improvements.

7. As soon as is reasonably practicable during each Debt Service Year, the Town shall certify to the Agency and each of the other Affected Tax Jurisdictions, in writing, the Town's Actual Annual Debt Service for such Debt Service Year.

8. Within thirty (30) days of receipt of the Town's Actual Annual Debt Service for each debt service year, the Agency shall remit or otherwise pay to the Town from the New Hartford Business Park PILOT Payments Fund an amount equal to the lesser of PILOT payments actually received that given year from PILOT Agreements No. 1, No. 2, and No. 3, or the certified amount of the Town's actual debt service for that given year.

9. In the event of the Town's Actual Annual Debt Service in any of the given 15 debt service years is less than the PILOT payments actually received by the Agency that given year from PILOT Agreements No. 1, No. 2, and No. 3, then the excess amount received by the Agency shall be distributed and paid pro-ratably by the Agency to the School District, County and Town in accordance with each 'Affected Tax Jurisdiction's Regular Percentage Share' as that term is defined in attached Schedule A.

10. In the event the Town's Actual Annual Debt Service in any of the given 15 debt service years exceeds the PILOT payments actually received by the Agency that given year from PILOT Agreements No. 1, No. 2, and No. 3, then the Town shall be responsible for the shortfall in its debt service obligation without cost or obligation from the Agency, School District, or County, except as provided the Agency by contractual agreement under the terms and conditions of PILOT Agreements No. 1, No. 2, and No. 3. and the corresponding Leaseback Agreements.

11. On or before February 15 of each of the Town's 15 debt service years, the Agency shall account to each of the Affected Tax Jurisdictions with respect to all transactions involving the New Hartford Business Park PILOT Payments Fund. Without limiting the generality of the foregoing, the Agency shall account for all deposits made by it into and disbursements made by it from said New Hartford Business Park PILOT Payments Fund.

12. If any of the PILOT Agreements identified herein continues in effect after the fifteenth (15<sup>th</sup>) Exemption Year, then, and in such event, the Agency promptly shall, during each such subsequent Exemption Year, allocate and pay over to each of the Affected Tax Jurisdictions such Affected Tax Jurisdiction's Regular Percentage Share of the PILOT Payments received by the Agency during the Exemption Year.

13. In the case of one or more Unfulfilled PILOT Agreements, if reasonable and prudent, the parties hereto shall cooperate with one another and use their reasonable efforts to arrange for and/or enter into one or more Additional PILOT Agreements and one or more corresponding Additional Allocation Agreements so as to provide each of the Affected Tax Jurisdictions with the same aggregate allocation of PILOT Payments it would have otherwise received pursuant to the PILOT Agreements and this Agreement assuming that such PILOT Agreements and this Agreement were fully and completely performed in accordance with their respective terms.

14. Nothing contained herein shall be deemed to abridge, limit or restrict the ability of an Affected Tax Jurisdiction, if any, (a) to impose or levy and to collect utility and/or service charges (in accordance with its standard rates for such utility and/or service charges in effect from time to time) for furnishing a municipal or private utility service including, without limitation, charges for water service, sanitary sewer service, solid waste collection, etc. to the users within the New Hartford Business Park or (b) to create special assessment districts

within the boundaries of the New Hartford Business Park and/or to add, levy and collect special assessments for improvements made within the boundaries of the New Hartford Business Park.

15. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Oneida County Industrial Development Agency  
153 Brooks Road  
Rome, New York 13441-4105  
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

To the Town: Town of New Hartford  
Butler Hall, 48 Genesee Street  
New Hartford, New York 13413  
Attn.: Town Supervisor

With a Copy To: Gerald J. Green, Esq.  
Paravati, Karl, Green & DeBella  
12 Steuben Park  
Utica, New York 13501

To the County: County of Oneida  
County Office Building  
800 Park Avenue  
Utica, New York 13501  
Attn: County Executive

With a Copy To: Linda M.H. Dillon, Esq.  
County Attorney  
Oneida County Office Building  
800 Park Avenue  
Utica, New York 13501

To the School District: New Hartford Central School District  
33 Oxford Road  
New Hartford, New York 13413  
Attn: District Superintendent

With a Copy To:

Joseph G. Shields, Esq.  
Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.  
5010 Campuswood Drive  
East Syracuse, New York 13057

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

16. (a) The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than a Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than a 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. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York or of the County of Oneida, and neither the State of New York nor the County of Oneida 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 (if any) of the Agency derived and to be derived from the lease, sale or other disposition of the Facilities. The limitations on the obligations of the Agency contained in this Section 12 by virtue of any lack of assurance required by paragraph 12(b) hereof shall not be deemed to prevent the occurrence and full force and effect of any event of default pursuant hereto.

(b) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless (A) 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 (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (B) 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 (C) 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 (1) agree to indemnify 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 (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Nothing contained in this Section shall be deemed to render a Company an agent of the Agency.

17. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

19. This Agreement may not be amended, changed, modified, altered or terminated except by an instrument in writing executed by all parties to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement Allocating PILOT Payments to be executed and delivered by their duly authorized officers as of the day and year first above written.

**COUNTY:**

COUNTY OF ONEIDA

By: \_\_\_\_\_  
Anthony J. Picente, Jr.  
County Executive

**TOWN:**

TOWN OF NEW HARTFORD

By: \_\_\_\_\_  
Earle C. Reed  
Town Supervisor

**SCHOOL DISTRICT:**

NEW HARTFORD CENTRAL  
SCHOOL DISTRICT

By: \_\_\_\_\_  
Daniel P. Gilligan  
Superintendent of Schools

**AGENCY:**

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
David C. Grow  
Chairman

**ACKNOWLEDGEMENTS**

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

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared ANTHONY J. PICENTE, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared EARLE C. REED, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared DANIEL P. GILLIGAN personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID C. GROW personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## SCHEDULE "A"

### SCHEDULE OF DEFINITIONS

“Act” means the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of the General Municipal Law.

“Additional PILOT Agreement” means a PILOT Agreement by and between the Agency and a Company relating to a “project” (as that term is defined in the Act) within the New Hartford Business Park other than PILOT Agreements No. 1, No. 2, and No. 3.

“Additional Allocation Agreement” means an agreement allocating PILOT Payments entered into by, between and among the parties hereto with respect to an Additional PILOT Agreement.

“Affected Tax Jurisdictions” means the County, the Town and the School District.

“Affected Tax Jurisdiction’s Regular Percentage Share” means, with respect to any given Exemption Year, the percentage total of the Combined Tax Rate for such Exemption Year which is attributable to the Affected Tax Jurisdiction in question. By way of illustration, if, during a given Exemption Year, the Combined Tax Rate were \$33.68 (with the Town Tax Rate at \$2.11, the County Tax Rate at \$7.50 and the School District Tax Rate at \$24.07), each Affected Tax Jurisdiction’s Regular Percentage Share for such Exemption Year would be as follows:

Town 6.2% ( $\$2.11 \div \$33.68 = 6.2\%$ )  
County 22.3% ( $\$7.50 \div \$33.68 = 22.3\%$ )  
School 71.5% ( $\$24.07 \div \$33.68 = 71.5\%$ )

“Agency” means the Oneida County Industrial Development Agency, a New York public benefit corporation with offices at 153 Brooks Road, Rome, New York 13441.

“Combined Tax Rate” means, with respect to a given Exemption Year, the aggregate of the Town Tax Rate, the County Tax Rate and the School District Tax Rate. By way of illustration, if, during a given Exemption Year, the Town Tax Rate were \$2.11, the County Tax Rate were \$7.50 and the School District Tax Rate were \$24.07, the Combined Tax Rate would be \$33.68 for such Exemption Year.

“Company” means the party which is obligated under any PILOT Agreement or Additional PILOT Agreement to make the PILOT Payments provided for therein. With respect to PILOT Agreement No. 1, the Company is the Hartford Fire Insurance Company and Ryan Companies US, Inc., both jointly and severally. With respect to PILOT Agreement No. 2, the Company is LT Group, LLC.. With respect to PILOT Agreement No. 3, the Company is BCK Enterprises, LLC.

“Company No. 1” shall mean Ryan Companies US, Inc., 50 South 10<sup>th</sup> Street, Suite 300, Minneapolis, Minnesota 55403, and its permitted successors and assigns, jointly and severally with Hartford Fire Insurance Company, 690 Asylum Ave., New Hartford, CT, 06155 and its permitted successors and assigns.

“Company No. 2” shall mean LT Group, LLC, a New York limited liability company with offices at 6007 Fair Lakes Road, Suite 100, East Syracuse, New York 13057, and its permitted successors and assigns.

“Company No. 3” shall mean BCK Enterprises, LLC, a New York limited liability company with offices at \_\_\_\_\_, and its permitted successors and assigns.

“Corresponding Debt Service Year” means, with respect to the Exemption Year in question, the Debt Service Year which corresponds thereto (based on numerical sequence). By way of illustration, if the Exemption Year in question is the fifth (5<sup>th</sup>) Exemption Year, the Corresponding Debt Service Year is the fifth (5<sup>th</sup>) Debt Service Year.

“Costs of the Public Improvements” means all “hard” and “soft” costs incurred by the Town to make public improvements to the Town’s existing transportation network, including Woods Highway, Route 5 Seneca Turnpike, Route 840 and surrounding areas located in or near the New Hartford Business Park, located in the Town of New Hartford, County of Oneida County, State of New York, which includes the Seneca Turnpike/Woods Highway intersection realignment with traffic signal; Woods Highway reconstruction; Woods Highway extension; Route 840 intersection-Right-in/Right-out or other suitable connection; other additional road construction, public utility improvements, land acquisition or rights-in-land, sidewalks, curbs, gutters, landscaping, grading or improving rights-of-way, as well as related improvements and expenses in connection therewith, the costs of acquiring fee title and/or easements for roadway/intersection rights-of-way, labor, materials, equipment, architects, engineers, land surveyors, attorneys, accountants and other professionals or consultants, and financing all or any portion of the foregoing costs, including the costs of issuance with respect to the Town’s expected Bond Anticipation Notes and subsequent General Obligations Bond, along with publication costs, closing costs, and interest.

“County” means the County of Oneida, a New York municipal corporation with offices at County Office Building, 800 Park Avenue, Utica, New York 13501.

“County Tax Rate” means, with respect to any Exemption Year (as that term is defined in the PILOT Agreement in question), the total tax rate per \$1,000.00 of taxable assessed valuation for all taxes levied or imposed by the County for such Exemption Year (excluding special assessments and ad valorem levies).

“Debt Service Term” means the fifteen (15) year period of time commencing on the Public Improvements BAN Commencement Date.

“Debt Service Year” means each period of twelve (12) consecutive months, the first Debt Service Year to commence on the Public Improvements BAN Commencement Date, and each subsequent Debt Service Year to commence on the anniversary of said Public Improvements BAN Commencement Date. By way of illustration, if the Public Improvements BAN Commencement Date were May 30 2008, (a) the first Debt Service Year would run from May 30, 2008 to May 29, 2009, inclusive, and (b) the second Debt Service Year would run from May 30, 2009 to May 29, 2010, inclusive, and so on throughout the Debt Service Term.

“Deficiency Amount” means, (a) with respect to the Town’s Actual Annual Debt Service, the difference between the Town’s Actual Annual Debt Service for the Debt Service Year in question and the amount actually allocated to and paid over by the Agency to the Town pursuant to this Agreement for such Debt Service Year (if less), and (b) with respect to the Town’s Projected Annual Debt Service, the difference between the Town’s Projected Annual

Debt Service for the Debt Service Year and the amount actually allocated to and paid over by the Agency to the Town pursuant to this Agreement for such Debt Service Year (if less).

“Exempt Taxes” means real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon a Facility or the interest therein of a Company or the occupancy thereof by a Company from which the Facility is exempt (because the Agency has a leasehold or other interest in said Facility and the same is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Act) but excluding special assessments and ad valorem levies.

“Exemption Term” means the fifteen (15) year period of time commencing on March 1, 2009.

“Exemption Year” means each one (1) year period of time during the Exemption Term, the first Exemption Year to commence on the First Exemption Year Commencement Date, and each subsequent Exemption Year to commence on the anniversary of said First Exemption Year Commencement Date. By way of illustration, (a) the first Exemption Year would run from March 1, 2009 to the last day of February, 2010, inclusive, and (b) the second Exemption Year would run from March 1, 2010 to the last day of February, 2011, inclusive, and so on throughout the Exemption Term.

“Facility” shall have the meaning ascribed to such term in the Leaseback Agreement and/or PILOT Agreement in question. With respect to Leaseback Agreement No. 1 and PILOT Agreement No. 1, the Facility is the Facility referred to herein as Facility No. 1. With respect to Leaseback Agreement No. 2 and PILOT Agreement No. 2, the Facility is the Facility referred to herein as Facility No. 2. With respect to Leaseback Agreement No. 3 and PILOT Agreement No. 3, the Facility is the Facility referred to herein as Facility No. 3.

“Facility No. 1” shall mean the Land, the Improvements and the Equipment (as those terms are defined in Leaseback Agreement No. 1) leased by the Agency to Company No. 1 pursuant to said Leaseback Agreement No. 1. Generally, Facility No. 1 is to include a 122,760± square foot, 3-story office building being or to be constructed by Company No. 1 on a 13.5± acre parcel situate in the New Hartford Business Park, which Facility No. 1 is to be subleased by Ryan Companies US, Inc. to the Hartford Fire Insurance Company. The construction of Facility No. 1 is to be 100% complete for tax assessment purposes on or before November 1, 2008.

“Facility No. 2” shall mean the Land, the Improvements and the Equipment (as those terms are defined in Leaseback Agreement No. 2) leased by the Agency to Company No. 2 pursuant to Leaseback Agreement No. 2. Generally, Facility No. 2 is to include a 90 room Hampton Inn and Suites hotel to be constructed by Company No. 2 on a 4.0± acre parcel situate in the New Hartford Business Park. The construction of Facility No. 2 is to be 100% complete on or before March 1, 2009.

“Facility No. 3” shall mean the Land, the Improvements and the Equipment (as those terms are defined in Leaseback Agreement No. 3) leased by the Agency to Company No. 3 pursuant to Leaseback Agreement No. 3. Generally, Facility No. 3 is to include a 15,000 to 20,000 square foot office building to be constructed by Company No. 3 on a 2.0± acre parcel situate within the New Hartford Business Park. The construction of Facility No. 3 is to be at least 60% complete on or before March 1, 2009 and 100% complete on or before March 1, 2010.

“First Exemption Year Commencement Date” means March 1, 2009.

“Leaseback Agreement No. 1” means that certain Leaseback Agreement entered or to be entered into by and between the Agency, as lessor, and Company No. 1, as lessee, with respect to Facility No. 1, a copy of which is annexed as Exhibit “\_\_\_”.

“Leaseback Agreement No. 2” means that certain Leaseback Agreement entered or to be entered into by and between the Agency, as lessor, and Company No. 2, as lessee, with respect to Facility No. 2, a copy of which is annexed as Exhibit “\_\_\_”.

“Leaseback Agreement No. 3” means that certain Leaseback Agreement entered or to be entered into by and between the Agency, as lessor, and Company No. 3, as lessee, with respect to Facility No. 3, a copy of which is annexed as Exhibit “\_\_\_”.

“New Hartford Business Park” means that certain 126.5± acre parcel of real property situate on the northeasterly corner of the NYS Route 5 (Seneca Turnpike)/Woods Road intersection in the Town of New Hartford, County of Oneida, State of New York, which said parcel of real property is being developed as a business/office park by and/or under the auspices of New Hartford Office Group, LLC. The approximate location of the New Hartford Business Park is depicted on the map annexed hereto and made a part hereof as Schedule “D”.

“New Hartford Business Park PILOT Payments Fund” means that certain interest-bearing account to be established and maintained by the Agency at an FDIC-insured banking organization with an office located in Oneida County, New York (a) into which all of the PILOT Payments actually received by the Agency from PILOT Agreements No. 1, No. 2, and No. 3 during each Exemption Year are to be deposited and (b) from which it is to pay out (to the extent that there are sufficient funds therein to do so) the monies due to each of the Affected Tax Jurisdictions pursuant to this Agreement, if any.

“PILOT Agreement” means, individually, each of PILOT Agreement No. 1, PILOT Agreement No. 2, and PILOT Agreement No. 3, and any Additional New Hartford Business Park PILOT Agreement.

“PILOT Agreements” means, collectively, PILOT Agreement No. 1, PILOT Agreement No. 2, and PILOT Agreement No. 3, and any Additional New Hartford Business Park PILOT Agreement.

“PILOT Agreement No. 1” means that certain PILOT Agreement entered or to be entered into by and between the Agency and Company No. 1 with respect to Facility No. 1. PILOT Agreement No. 1 shall have an Exemption Term (as that term is defined in PILOT Agreement No. 1) of at least fifteen (15) years and shall provide that Company No. 1 shall make PILOT Payments to the Agency during each Exemption Year (as that term is defined in PILOT Agreement No. 1) as follows:

- (a) an amount equal to thirty-three and three-tenths of one percent (33.3%) of the Exempt Taxes during each Exemption Year from the first (1<sup>st</sup>) to the fifth (5<sup>th</sup>) Exemption Year, inclusive; and
- (b) an amount equal to sixty-six and seven-tenths of one percent (66.7%) of the Exempt Taxes during each Exemption Year from the sixth (6<sup>th</sup>) to the tenth (10<sup>th</sup>) Exemption Year, inclusive; and

- (c) an amount equal to one hundred percent (100%) of the Exempt Taxes during each Exemption Year after the tenth (10<sup>th</sup>) Exemption Year.

A copy of which shall be annexed as Exhibit "A".

The first (1<sup>st</sup>) Exemption Year shall be defined in PILOT Agreement No. 1 to mean the Exemption Year commencing on March 1, 2009. Said PILOT Agreement No. 1 shall also provide, among other things, that Company No. 1 unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect to Facility No. 1 including, without limitation, any real property tax exemption that may be available to it under Section 485-b of the Real Property Tax Law.

"PILOT Agreement No. 2" means that certain PILOT Agreement entered or to be entered into by and between the Agency and Company No. 2 with respect to Facility No. 2. PILOT Agreement No. 2 shall have any Exemption Term (as that term is defined in PILOT Agreement No. 2) of at least fifteen (15) years and shall provide that Company No. 2 shall make PILOT Payments to the Agency during each Exemption Year (as that term is defined in PILOT Agreement No. 2) as follows:

- (a) an amount equal to one hundred percent (100%) of the Exempt Taxes during each Exemption Year from the first (1<sup>st</sup>) to the fifteenth (15<sup>th</sup>) Exemption Year, inclusive; and
- (b) an amount equal to one hundred percent (100%) of the Exempt Taxes during each Exemption Year after the fifteenth (15<sup>th</sup>) Exemption Year.

The first (1<sup>st</sup>) Exemption Year shall be defined in PILOT Agreement No. 2 to mean the Exemption Year commencing on March 1, 2009. Said PILOT Agreement No. 2 shall also provide, among other things, that Company No. 2 unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption that may be available to it with respect to Facility No. 2, except that Company No. 2 may apply for an exemption pursuant to Section 485-b of the Real Property Tax Law as the same pertains to the County's assessment of said Facility No. 2, a copy of which shall be annexed as Exhibit "B".

"PILOT Agreement No. 3" means that certain PILOT Agreement entered or to be entered into by and between the Agency and Company No. 3 with respect to Facility No. 3. PILOT Agreement No. 3 shall have an Exemption Term (as that term is defined in PILOT Agreement No. 3) of at least fifteen (15) years and shall provide that Company No. 3 shall make PILOT Payments to the Agency during each Exemption Year (as that term is defined in PILOT Agreement No. 3) as follows:

- (a) an amount equal to one hundred percent (100%) of the Exempt Taxes during each Exemption Year from the first (1<sup>st</sup>) to the fifteenth (15<sup>th</sup>) Exemption Year, inclusive; and
- (b) an amount equal to one hundred percent (100%) of the Exempt Taxes during each Exemption Year after the fifteenth (15<sup>th</sup>) Exemption Year.

The first (1<sup>st</sup>) Exemption Year shall be defined in PILOT Agreement No. 3 to mean the Exemption Year commencing on March 1, 2009. Said PILOT Agreement No. 3 shall also provide, among other things, that

Company No. 3 unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption that may be available to it with respect to Facility No. 3, except that Company No. 3 may apply for an exemption pursuant to Section 485-b of the Real Property Tax Law as the same pertains to the County's assessment of said Facility No. 3, a copy of which shall be annexed as Exhibit "C".

"PILOT Payments" means the amount annually to be paid by a Company to the Agency in lieu of Exempt Taxes pursuant to a PILOT Agreement.

"Project" shall have the meaning ascribed to such term in the Act.

"School District" means the New Hartford Central School District, a New York municipal corporation with offices at 33 Oxford Road, New Hartford, New York 13413.

"School District Tax Rate" means with respect to any given Exemption Year (as that term is defined in the PILOT Agreement in question), the total tax rate per \$1,000.00 of taxable assessed valuation for all taxes levied or imposed by the School District for such Exemption Year (excluding special assessments and ad valorem levies).

"Town" means the Town of New Hartford, a New York municipal corporation with offices at Butler Hall, 48 Genesee Street, New Hartford, New York 13413.

"Town Tax Rate" means, with respect to any Exemption Year (as that term is defined in the PILOT Agreement in question), the total tax rate per \$1,000.00 of taxable assessed valuation for all taxes levied or imposed by the County for such Exemption Year (excluding special assessments and ad valorem levies).

"Town's Actual Annual Debt Service" means, with respect to a given Debt Service Year, the aggregate amount actually necessary in such Debt Service Year to pay the Town's debt service (principal, interest and any other sums), due with respect to the Public Improvements Debt.

"Town's Projected Annual Debt Service" means, with respect to a given Debt Service Year, the aggregate amount projected (based on certain assumptions made as of the date of this Agreement) to be necessary to pay the Town's anticipated debt service (principal, interest and any other sums) due with respect to the Public Improvements Debt. A Table Showing Town's Projected Debt Service is annexed hereto and made a part hereof as Schedule "E".

"Unfulfilled PILOT Agreement" means any PILOT Agreement which is either (a) not entered into as contemplated herein or (b) if entered into, terminates or is terminated prior to the end of the Exemption Term.

"Woods Highway" means that certain Town road which runs in a generally north-south direction between Clark Mills Road at its northerly terminus and NYS Route 5 (Seneca Turnpike) at its southerly terminus.

"Public Improvements" means those certain public improvements to be made by the Town to Woods Highway and surrounding areas within and without the New Hartford Business Park which are necessary or desirable, in the Town's sole judgment, to accommodate the increase in traffic which is expected to result from the development of

the New Hartford Business Park, facilitate the flow of such traffic, and reduce any congestion caused by such traffic including, without limitation, improvements to the Town's existing transportation network, including Woods Highway, Route 5 Seneca Turnpike, Route 840 and surrounding areas located in or near the New Hartford Business Park, located in the Town of New Hartford, County of Oneida County, State of New York, which includes the Seneca Turnpike/Woods Highway intersection realignment with traffic signal; Woods Highway reconstruction; Woods Highway extension; Route 840 intersection-Right-in/Right-out or other suitable connection; other additional road construction, public utility improvements, land acquisition or rights-in-land, sidewalks, curbs, gutters, landscaping, grading or improving rights-of-way, as well as related improvements in connection therewith. The approximate locations where the Public Improvements are to be made are depicted on the map attached hereto and made a part hereof as Exhibit F.

"Public Improvement BAN" means that certain bond anticipation note to be made, executed and delivered by the Town to pay for and/or finance some portion or all of the Costs of the Public Improvements. Notwithstanding anything to the contrary contained in this Agreement, the original principal amount of the Public Improvement BAN shall not exceed the sum of \$2,900,000.00.

"Public Improvements BAN Commencement Date" means the date of the Public Improvements BAN.

"Public Improvement Bond" means that certain bond to be issued by the Town to pay off the Public Improvement BAN. Notwithstanding anything to the contrary contained in this Agreement, the original principal amount of the Public Improvement Bond shall not exceed the sum of \$2,900,000.00.

"Public Improvements Debt" means all indebtedness incurred by the Town to pay for, finance and/or refinance some portion or all of the Costs of the Public Improvements including, without limitation, (a) the Public Improvements BAN and (b) the Public Improvements Bond. Notwithstanding anything to the contrary contained in this Agreement, the aggregate principal amount of the Public Improvement Debt shall not exceed the sum of 2,900,000.00.