

AGREEMENT ALLOCATING PILOT PAYMENTS

THIS AGREEMENT ALLOCATING PILOT PAYMENTS (the “Agreement”), dated as of October _____, 2008 (the “Effective Date”), is by, between and among **NEW HARTFORD CENTRAL SCHOOL DISTRICT**, a New York municipal corporation with its principal offices at 33 Oxford Road, New Hartford, New York 13413 (the “School District”), **COUNTY OF ONEIDA**, a New York municipal corporation with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York 13501 (the “County”), **TOWN OF NEW HARTFORD**, a New York municipal corporation with its principal offices at Butler Hall, 48 Genesee Street, New Hartford, New York 13413 (the “Town”), (the School District, the County and the Town 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 its offices at 153 Brooks Road, Rome, New York 13441 (the “Agency”).

RECITALS:

WHEREAS, pursuant to 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”) the purposes of the Agency are to “to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing” of, among others things, “industrial” and “commercial” facilities and “thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living”; and

WHEREAS, on the basis of various planning initiatives and studies conducted over the past fifteen (15) or more years as well as other information and data available to it, the Town has determined that the development of that certain 126.5± acre parcel of real property situate on the northeasterly corner of the NYS Route 5 (Seneca Turnpike)/Woods Highway intersection in the Town of New Hartford, County of Oneida, State of New York commonly known as the New Hartford Business Park (the “New Hartford Business Park”) will result in various economic and quality of life benefits to the people who reside and/or work in the Affected Tax Jurisdictions, including the retention and/or creation of job opportunities, the stabilization and/or increase of the population and real property tax bases, the encouragement of business and other economic development, the extension and/or modernization of public utility systems and other public infrastructure, and the improvement of recreational facilities such as the Rayhill Trail; and

WHEREAS, the Town has further determined that it will be necessary for it to design, construct and/or make certain Public Improvements (as such term is hereinafter defined) to the surface transportation network and/or other public infrastructure located in or near the New Hartford Business Park so as to improve the existing condition of such surface transportation network and public infrastructure and manage the increased vehicular traffic which can be reasonably expected to result from the development of the New Hartford Business Park and surrounding areas, facilitate the orderly flow of such traffic, and reduce any congestion that may be caused by such traffic; and

WHEREAS, the School District and the County support the development of the New Hartford Business Park, having recognized the multitude of benefits expected to result therefrom including the retention and/or creation of job opportunities and the stabilization and/or increase of the population and real property tax bases within their respective jurisdictions, and acknowledge the need for the Town to design, construct and/or make the Public Improvements (as such term is hereinafter defined); and

WHEREAS, heretofore the Agency has been requested to utilize its powers under the Act in order to induce, assist in and facilitate the development of the New Hartford Business Park in general, and the designing, construction and/or making by the Town of the Public Improvements (as such term is hereinafter defined) in particular, by (a) entering into the Lease Agreement and the Leaseback Agreement (as such terms are hereinafter defined) with Ryan Companies US, Inc. (the “Ryan Companies”) and (b) entering into the PILOT Agreement (as such term is hereinafter defined) with the Ryan Companies and the Hartford Fire Insurance Company (“The Hartford”) for the purpose of generating certain PILOT Payments (as such term is hereinafter defined) in lieu of Exempt Taxes (as such term is hereinafter defined); and

WHEREAS, the Affected Tax Jurisdictions also support, in principle, the approval by the Agency of one or more additional payment-in-lieu-of-tax agreements within the New Hartford Business Park and the allocation to the Town of the payments in lieu of taxes received pursuant to such additional payment-in-lieu-of-tax agreements in such manner as will enable the Developer to reduce and/or eliminate its obligations pursuant to the Letter of Credit (as such term is hereinafter defined) or otherwise reduce or eliminate its obligations to make up or cover each Shortfall in PILOT Payments (as such term is hereinafter defined), provided, however, that nothing contained herein or elsewhere in this Agreement shall obligate the Agency to enter into any such additional payment-in-lieu-of-tax agreements or obligate the parties hereto to enter into any additional agreement allocating the payments in lieu of taxes resulting therefrom; and

WHEREAS, the parties hereto desire that all or some portion of the PILOT Payments (as such term is hereinafter defined) received by the Agency pursuant to the PILOT Agreement (as such term is hereinafter defined) in each calendar year during the term of this Agreement (beginning in CY 2008) be allocated and paid over to the Town so as to provide the Town with a source of funding first to pay the Town’s Actual Annual Debt Service (as such term is hereinafter defined) with respect to the Public Improvements (as such term is hereinafter defined) before the Town uses the same to directly pay for and/or reimburse itself for the Costs of the Public Improvements (as such term is hereinafter defined); and

WHEREAS, by virtue of the foregoing, and 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 (as such term is hereinafter defined) 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 (as such term is hereinafter defined) among the Affected Tax Jurisdictions as is hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein contained, 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. **Definitions:** All capitalized terms used in this Agreement and not otherwise defined shall have the meanings set forth below.

“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 Costs Incident to Bid Contract #1 and Bid Contract #2” means any and all incidental costs, escalation costs, inspection fees, engineering costs, paving costs, costs of any additional work and other costs incident or related to Bid Contract #1 and Bid Contract #2 as may arise from or in the performance of said contracts, but which may not be reflected, expressly stated or provided for therein, all as more fully set forth in the Agreement and Individual Guaranty by and between the Town and Developer attached hereto and made a part hereof as **Exhibit I**.

“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 \$34.39 (with the Town Tax Rate at \$2.11, the County Tax Rate at \$7.50 and the School District Tax Rate at \$24.78), each Affected Tax Jurisdiction’s Regular Percentage Share for such Exemption Year would be as follows:

Town 6.1% ($\$2.11 \div \$34.39 = 6.1\%$)
County 21.8% ($\$7.50 \div \$34.39 = 21.8\%$)
School 72.1% ($\$24.78 \div \$34.39 = 72.1\%$)

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

“Agreement and Individual Guaranty” means that certain Agreement and Individual Guaranty to be executed and delivered to the Town by the Developer’s members, which Agreement and Individual Guaranty shall be in form and content satisfactory to the Town, in its sole discretion. Upon the execution and delivery of the Agreement and Individual Guaranty, the same shall be attached hereto and made a part hereof as **Exhibit I**.

“Bid Contract #1” means that certain contract dated as of August 12, 2008 by and between the Town and Fred Burrows Trucking and Excavating, LLC for the construction of the Road C/Road D Improvements at or within the vicinity of the New Hartford Business Park. A copy of Bid Contract #1 is attached hereto and made part hereof as **Exhibit A**.

“Building” means that certain 122,760± square foot office building constructed or being constructed on the Land by the Ryan Companies.

“Bid Contract #2” means, collectively, the contract or contracts to be entered into by and between the Town and the successful bidder(s) for the construction of the NYS Route 5 (Seneca Turnpike)/Woods Highway Intersection Improvements, all of which will be more particularly described therein. Upon the execution and delivery of Bid Contract #2, the same shall be attached hereto and made a part hereof as **Exhibit B**.

“Break-In-Access” shall mean full access to NYS Route 840 from the Woods Highway extension.

“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 \$24.78, the Combined Tax Rate would be \$34.39 for such Exemption Year.

“Company” shall mean the Hartford Fire Insurance Company, 690 Asylum Ave., New Hartford, CT, 06155, and its permitted successors and assigns, or Ryan Companies US, Inc., 50 South 10th Street, Suite 300 Minneapolis, Minnesota 55403, and its permitted successors and assigns, as applicable under the terms and provisions of the PILOT Agreement.

“Costs of the Public Improvements” means all construction or “hard” costs and all non-construction or “soft” costs incurred or paid for by the Town in connection with designing, constructing and/or making and completing the Public Improvements including, without limitation, the costs of acquiring fee title and/or easements for roadway/intersection rights-of-way, the costs of labor, materials, supplies, equipment, architects, engineers, land surveyors, attorneys, accountants and other professionals or consultants, contractors, subcontractors, laborers, mechanics and materialmen, and the costs of financing all or any portion of the foregoing costs, including the costs

of issuance with respect to the Public Improvements BAN and the Public Improvements Bond, and all other costs of any kind or nature arising from or relating to the Public Improvements.

“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, 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).

“Developer” means New Hartford Office Group, LLC, its members, successors and assigns.

“Effective Date” means the day and year first set forth above.

“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 the Facility or the interest therein of the Company or the occupancy thereof by the Company from which the Facility is exempt (because the Agency has a leasehold or other interest in the 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, 2008.

“Exemption Year” means each one (1) year period of time during the Exemption Term, the first Exemption Year to commence on March 1, 2008.

“Facility” shall mean, collectively, the Land and the Building, which Facility has been leased by the Ryan Companies to the Agency pursuant to the Lease Agreement and leased back by the Agency to the Ryan Companies pursuant to the Leaseback Agreement. The Facility has been or is to be subleased by Ryan Companies to The Hartford. The construction of the Facility is to be 100% complete for real property tax assessment purposes on or before March 1, 2009.

“First Exemption Year Commencement Date” means March 1, 2008.

“Land” shall have the meaning ascribed to such term in the Leaseback Agreement. Generally, the Land consists of that certain 13.5± acre parcel situate in the New Hartford Business Park and more particularly described in Exhibit A to the Leaseback Agreement.

“Lease Agreement” means that certain Prime Lease Agreement, dated as of October 9, 2007, by and between the Ryan Companies, as lessor, and the Agency, as lessee, with respect to the Facility, a copy of which Lease Agreement is attached hereto and made a part hereof as Exhibit C.

“Leaseback Agreement” means that certain Leaseback Agreement, dated as of October 9, 2007, by and between the Agency, as lessor, and the Ryan Companies, as lessee, with respect to the Facility, a copy of which is attached hereto and made a part hereof as Exhibit D.

“Letter of Credit” means that certain irrevocable standby letter of credit to be issued for, or at the behest of, the Developer, as account party in favor of the Town, as beneficiary, upon such terms and conditions (including the stated amount thereof), and by a commercial bank, satisfactory to the Town, in its sole discretion. Upon the delivery of the original Letter of Credit to the Town, a copy thereof shall be attached hereto and made a part hereof as Exhibit J.

“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 Highway intersection in the Town of New Hartford, County of Oneida, State of New York, which said parcel of real property is currently being developed as a business/office park by and/or under the auspices of the Developer. The approximate location of the New Hartford Business Park is depicted on the map annexed hereto and made a part hereof as Exhibit E.

“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 pursuant to the PILOT Agreement 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 the Town and to each of the Affected Tax Jurisdictions pursuant to this Agreement, if any.

“NYS Route 5(Seneca Turnpike)/Woods Highway Intersection Improvements” means those certain roadway, realignment, signalization and related improvements to be constructed by or for the Town at or within the vicinity of the NYS Route 5 (Seneca Turnpike)/Woods Highway intersection as set forth in Bid Contract #2 in the approximate location depicted in blue on the map attached hereto and made a part hereof as Exhibit F.

“PILOT Payments” means the amount annually to be paid by either The Hartford, the Ryan Companies, and/or their respective successors and assigns to the Agency in lieu of Exempt Taxes pursuant to the PILOT Agreement.

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

“Public Improvements” means those certain public improvements to be made by or for the Town at and within the vicinity of the New Hartford Business Park pursuant to Bid Contract #1 and Bid Contract #2 which are necessary or desirable, in the Town’s sole judgment to improve existing conditions 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, (a) the Road C/Road D Improvements, and (b) the NYS Route 5 (Seneca Turnpike)/Woods Highway Intersection Improvements. The approximate locations where the Public Improvements are to be made are depicted in yellow and blue, respectively, on the map attached hereto and made a part hereof as Exhibit F.

“Public Improvements BAN” means the bond anticipation note or notes (or tranches thereof) to be issued 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 aggregate principal amount of the Public Improvements BAN shall not exceed the sum of \$ 2,300,000.00.

“Public Improvements BAN Issuance Date” means the date on which the Town issues the Public Improvements BAN.

“Public Improvements Bond” means the general obligation bond or bonds (or tranches thereof) to be issued by the Town to pay off the Public Improvement BAN. Notwithstanding anything to the contrary contained in this Agreement, the aggregate principal amount of the Public Improvements Bond shall not exceed the sum of \$2,300,000.00.

“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 Improvements Debt shall not exceed the sum of \$2,300,000.00, and the aggregate term of the Public Improvements Debt shall not exceed fifteen (15) years.

“Road C/Road D Improvements” means those certain roads and related improvements constructed or to be constructed by or for the Town at or within the vicinity of the New Hartford Business Park as set forth in Bid Contract #1 in the approximate locations depicted in yellow on the map attached hereto and made a part hereof as **Exhibit F**.

“School District” means the New Hartford Central School District, a New York municipal corporation with its principal 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), 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).

“Shortfall in PILOT Payments” means, (a) with respect to the Town’s Actual Annual Debt Service, the difference between the Town’s Actual Annual Debt Service for the calendar year in question and the amount actually allocated to and paid over by the Agency to the Town pursuant to this Agreement for such calendar year (if such paid over amount is less), and (b) with respect to the Town’s Estimated Annual Debt Service, the difference between the Town’s Estimated Annual Debt Service for the calendar year in question and the amount actually allocated to and paid over by the Agency to the Town pursuant to this Agreement for such calendar year (if such paid over amount is less).

“Smith Affidavit” means that certain Affidavit of Paul Smith, Assessor for the Town, sworn to on October 3, 2008, a copy of which is annexed hereto as **Exhibit K**.

“State” means the State of New York, and its agencies and political subdivisions.

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

“Town Tax Rate” means, with respect to any Exemption Year 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 any given calendar year during the term of this Agreement, the aggregate amount actually necessary in such calendar year to pay the Town’s debt service (principal, interest and any other sums) with respect to the Public Improvements Debt.

“Town’s Estimated Annual Debt Service” means, with respect to any given calendar year during the term of this Agreement, the aggregate amount estimated (based on certain financial 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 Estimated Debt Service (in the column thereof entitled “Total Debt Service”) is attached hereto and made a part hereof as **Exhibit G**.

2. Approval of PILOT Agreement by Affected Tax Jurisdictions. Each of the Affected Tax Jurisdictions hereby acknowledges receipt of a copy of the PILOT Agreement, the terms and provisions of which PILOT Agreement are incorporated by reference into and made a part of this Agreement as if set forth in full herein. A copy of the PILOT Agreement is attached hereto and made a part hereof as **Exhibit H**.

3. New Hartford Business Park PILOT Payments Fund. The Agency promptly shall deposit all of the PILOT Payments actually received by it pursuant to the PILOT Agreement into the interest-bearing New Hartford Business Park PILOT Payments Fund. On or before February 15th of each calendar year (beginning CY 2009), 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 which occurred during the preceding calendar year. 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 during such preceding calendar year.

4. Issuance of Public Improvements BAN/Public Improvements Bond. As soon as is reasonably practicable and prudent after the date of this Agreement, the Town shall issue the Public Improvements BAN in the maximum principal sum of Two Million Three Hundred Thousand Dollars (\$2,300,000.00), at the then prevailing interest rate, to pay for all or some portion of the Costs of the Public Improvements to be located at or within the vicinity of the New Hartford Business Park. Within twelve (12) months of the Public Improvements BAN Issuance Date, the Town will incur a principal debt service obligation with respect to the Public Improvements by either (a) issuing the Public Improvements Bond (the principal of which is to be fully self-amortizing over a term of fourteen (14) years) and use the proceeds thereof to pay off the Public Improvements BAN or (b) renewing the Public Improvement BAN (with a principal amortization). On or before December 31, 2008, (with respect to CY 2008) and on or before February 15th of each calendar year (beginning in CY 2009), the Town shall certify to the Agency and each of the Affected Tax Jurisdictions, in writing, the amount of the Town's Actual Annual Debt Service for such calendar year.

5. Design, Construction and/or Making of Public Improvements. Subject to the satisfaction of all conditions precedent to the Town's obligation to perform Bid Contract #1, and subject to the due execution and delivery of Bid Contract #2, the Town forthwith shall commence and/or continue designing, constructing and/or making the Public Improvements located at or within the vicinity of the New Hartford Business Park, and shall substantially complete the same as soon as is reasonably practicable. Without limiting the generality of the foregoing, the Town shall have no obligation to perform Bid Contract #1 unless and until such time as (a) it has acquired fee title to the lands upon which the Road C/Road D Improvements have been or are being constructed, including the land at or near the Cell Tower and National Grid parcels, which fee title shall be satisfactory to the Town, in its sole discretion, (b) each of the Affected Tax Jurisdictions and the Agency has fully executed and delivered this Agreement; (c) the Developer has delivered to the Town the executed original of the Letter of Credit referenced herein and the same is satisfactory to the Town, in its sole discretion, and (d) the Developer has duly executed and delivered to the Town the Agreement and Individual Guaranty referenced herein and the same is satisfactory to the Town, in its sole discretion. Similarly, the Town shall have no obligation to execute, deliver and/or perform Bid Contract #2 unless and until such time as (x) each of the Affected Tax Jurisdictions and the Agency has fully executed and delivered this Agreement, (y) the Developer has delivered to the Town the executed original of the Letter of Credit referenced herein, and the same is satisfactory to the Town, in its sole discretion, and (z) the Developer has duly executed and delivered to the Town the Agreement and Individual Guaranty referenced herein, and the same is satisfactory to the Town, in its sole discretion. The Town agrees that it shall use all monies allocated and paid over to it by the Agency pursuant to this Agreement in each calendar year (beginning in CY 2008) first to pay the Town's Actual Annual Debt Service for such calendar year before using such monies to directly pay for and/or reimburse itself for the Costs of Public Improvements.

6. Allocation and Distribution of PILOT Payments to Town. As soon as is reasonably practicable during each calendar year (beginning in CY 2009), 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 (a) the PILOT Payments actually received by the Agency in such calendar year pursuant to the PILOT Agreement or (b) the certified amount of the Town's Actual Annual Debt Service for such calendar year. Notwithstanding anything to the contrary herein contained, if in any given calendar year during the term of this Agreement the Town has no actual debt service due with respect to the Public Improvements, 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 (1) the PILOT Payments actually received by the Agency in such calendar year or (2) the Town's Estimated Annual Debt Service for such calendar year.

7. Allocation and Distribution of Excess Amount PILOT Payments to Affected Tax Jurisdictions. If the amount of the PILOT Payments actually received by the Agency pursuant to the PILOT Agreement in any given calendar year during the term of this Agreement exceeds the amount of the Town's Actual Annual Debt Service for such calendar year, then, and in such event, the Agency shall distribute and pay over to each Affected Tax Jurisdiction such Affected Tax Jurisdiction's Regular Percentage Share of such excess amount (but only after the Agency has first distributed and paid over to the Town an amount equal to the Town's Actual Annual Debt Service for such calendar year). If the Town has no actual debt service due with respect to the Public Improvements, and if the amount of the PILOT Payments actually received by the Agency in any given calendar year during the term of this Agreement exceeds the amount of the Town's Estimated Annual Debt Service for such calendar year, then, and in such event, the Agency shall distribute and pay over to each Affected Tax Jurisdiction such Affected Tax Jurisdiction's Regular Percentage Share of such excess amount (but only after the Agency has first distributed and paid over to the Town an amount equal to the Town's Estimated Annual Debt Service for each calendar year).

8. Shortfalls in PILOT Payments. The Town acknowledges that in any one or more given calendar years during the term of this Agreement, there may be a Shortfall in PILOT Payments. The parties hereto acknowledge and agree that neither the County nor the School District nor the Agency shall be obligated to make up any such Shortfall in PILOT Payments. Nothing contained in this Section 8 shall relieve the Agency of its obligation under this Agreement to remit to the Town all or some portion of the PILOT Payments actually received by it in any given calendar year, all as is more particularly set forth herein.

9. Letter of Credit. Any and all Shortfalls in PILOT Payments the Town may realize or incur during the term of this Agreement shall be paid in full by and with monies provided by, and pursuant to, the Letter of Credit from the Developer herein, a copy of which shall be attached hereto and made a part hereof as **Exhibit J**. Any such Shortfalls in PILOT Payments which the Town may reasonably expect to realize or incur have been calculated and determined in accordance with representations made and information provided in **Exhibit G** and Smith Affidavit attached hereto and made a part hereof as **Exhibit K**.

10. Continuation of PILOT Agreement after Fifteenth (15th) Exemption Year. If the PILOT Agreement continues in effect after the fifteenth (15th) Exemption Year thereof, then, and in such event, the Agency promptly shall, during each such subsequent Exemption Year, allocate and pay over to the Town any monies due to the Town between March 1, 2023 and December 31, 2023, inclusive, pursuant to Section 6 above and thereafter 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.

11. Additional Means of Access. Each of the Affected Tax Jurisdictions acknowledges that the overall viability of the New Hartford Business Park, and prospects for the future development thereof, would be significantly enhanced if there were a means of access thereto from NYS Route 840 in addition to the NYS Route 5 (Seneca Turnpike)/Woods Highway intersection. To that end, the Town is currently (a) pursuing the approvals necessary for a break-in-access to NYS Route 840 from Road D, as extended, in the New Hartford Business Park through a signalized intersection, (b) investigating the possibility of land acquisitions and/or condemnation proceedings with respect to certain land located to the east of the Facility so as to provide access to the New Hartford Business Park via Middlesettlement Road and, (c) exploring funding options and alternatives for a bridge over NYS Route 840 (with cloverleaf or other ramps) to connect to Road D, as extended. Each of the Affected Tax Jurisdictions fully intends to pursue and support a Break-In-Access to NYS Route 840 provided such Break-In-Access:

(a) has all needed permits, authorizations, and approvals from all municipalities, regulatory agencies and/or other governmental authorities with jurisdiction thereof;

(b) is fully funded by and is to be paid for entirely with (i) monies generated by additional payment-in-lieu-of-tax agreements relating to properties situate within the New Hartford Business Park, (ii) monies provided directly by the Developer, and/or (iii) monies from State grants and/or other sources of State funding , or some combination thereof; and

(c) is deemed prudent, practical and most viable by each of the Affected Tax Jurisdictions, acting in its sole discretion.

12. Special Assessments and Other Charges. 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.

13. Notices. 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: Commissioner of Finance

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.

14. Special Obligation of Agency. (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 the 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 Facility. The limitations on the obligations of the Agency contained in this Section 13 by virtue of any lack of assurance required by Section 13(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 the Company an agent of the Agency.

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

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

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

18. Section Headings. The section headings contained in this Agreement are for convenience and reference only and shall not be used to interpret or construe provisions.

19. Further Assurances. The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as may be reasonably necessary to give effect to the purposes of this Agreement and the parties' agreements hereunder.

20. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

22. Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue through and including December 31, 2023, unless this Agreement is either extended or sooner terminated by the parties hereto.

23. Miscellaneous. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement Allocating PILOT Payments to be executed and delivered by its duly authorized officer as of the day and year first above written.

SCHOOL DISTRICT:

NEW HARTFORD CENTRAL
SCHOOL DISTRICT

By: _____
Daniel P. Gilligan
Superintendent of Schools

COUNTY:

COUNTY OF ONEIDA

By: _____
Anthony J. Picente, Jr.
County Executive

TOWN:

TOWN OF NEW HARTFORD

By: _____
Earle C. Reed
Town Supervisor

AGENCY:

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
David C. Grow
Chairman

ACKNOWLEDGEMENTS

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

On this ____ day of October, 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 October, 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 October, 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 October, 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

EXHIBIT A

Bid Contract #1

EXHIBIT B

Bid Contract #2

EXHIBIT C

Lease Agreement

EXHIBIT D

Leaseback Agreement

EXHIBIT E

Map Showing Approximate Location of New Hartford Business Park

EXHIBIT F

Map Showing Approximate Location of Public Improvements

EXHIBIT G

Table Showing Town's Estimated Annual Debt Service

EXHIBIT H

PILOT Agreement

EXHIBIT I

Agreement and Individual Guaranty

EXHIBIT J

Letter of Credit

EXHIBIT K

Smith Affidavit