

**LEASEBACK AGREEMENT**  
**(AGENCY to RYAN)**

THIS LEASEBACK AGREEMENT dated to be effective as of the 9<sup>th</sup> day of October 2007 by and between the **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 153 Brooks Road, Rome, New York 13441-4105 (the "AGENCY") and **RYAN COMPANIES US, INC.**, with its principal office at 50 South 10<sup>th</sup> Street, Suite 300, Minneapolis, MN 55403-2012 ("RYAN")

**WITNESSETH:**

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

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such AGENCY to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, by Deed dated November 16, 2007, recorded as Instrument No. 2007-\_\_\_\_\_ in the Oneida County Clerk's Office, RYAN has acquired the land legally described on Exhibit A attached hereto ("Land") and is constructing thereon an approximately 122,760 square foot office building (the Land together with said office building collectively referred to herein as the "Facility"); and

WHEREAS, pursuant to and in connection with the provisions of the Act, Chapter 372 of the Laws of 1972 of the State (collectively, the "Act") created the AGENCY which is empowered under the Act to undertake the providing, financing and leasing of the Facility; and

WHEREAS, the AGENCY has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the AGENCY has appointed RYAN and HARTFORD and their agents and designees as its agent for the purposes of acquiring the Land and constructing and equipping the Facility; and

WHEREAS, pursuant to a lease between RYAN as Lessor and the AGENCY as Lessee, RYAN has leased the Facility to the AGENCY for a period of 15 years (the "Prime Lease"); and

WHEREAS, pursuant to this agreement (the "Leaseback Agreement"), the AGENCY is leasing the Facility back to RYAN; and

WHEREAS, RYAN as a condition hereto is subletting the Facility to HARTFORD pursuant to a sublease (the "Sublease"); and

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

## **ARTICLE I** **REPRESENTATIONS AND COVENANTS**

### **Section 1.1 Representations and Covenants of the AGENCY.**

The AGENCY makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The AGENCY is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of HARTFORD as to HARTFORD's utilization of the Facility, the Facility is of a character included in the definition of a "Project" in the Act.
- (b) The AGENCY has been duly authorized to execute and deliver this Leaseback Agreement.
- (c) The AGENCY will acquire a leasehold interest in the Facility from RYAN pursuant to the Prime Lease and leaseback the Facility to RYAN pursuant to this Leaseback Agreement and cause or have caused the Project to be constructed and equipped by RYAN or HARTFORD and the Equipment to be acquired and installed in the Building or elsewhere on the Land, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Oneida and improving their standard of living.
- (d) Neither the execution and delivery of the Prime Lease or this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the AGENCY is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien

of any nature upon any of the property of the AGENCY under the terms of any such instrument or agreement.

(e) The AGENCY has been induced to enter into this Leaseback Agreement by the undertaking of HARTFORD to locate and maintain the Facility and jobs in Oneida County, New York.

(f) The AGENCY has determined that the Facility will not have a "significant effect" on the environment within the meaning of the State Environmental Quality Review Act and the regulations of the Department of Environmental Conservation promulgated thereunder.

### **Section 1.2 Representations and Covenants of RYAN.**

RYAN makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) RYAN has the power to enter into and to execute and deliver this Leaseback Agreement.

(b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of the Prime Lease or this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which RYAN is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of RYAN under the terms of any such instrument or agreement.

(c) The construction of the Facility will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility in effect at the time of construction, and RYAN shall defend, indemnify and hold the AGENCY harmless from any liability or expenses resulting from any failure by RYAN to comply with the provisions of this subsection (c).

(d) Pursuant to the Prime Lease, RYAN has transferred to the AGENCY insurable title to the leasehold interest and assets contemplated by this Leaseback Agreement.

(e) There is no litigation pending or, to the respective knowledge of RYAN, threatened, in any court, either state or federal, to which RYAN is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of RYAN to fulfill its obligations under this Leaseback Agreement.

## **ARTICLE II** **FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS**

### **Section 2.1 Agreement to Lease to AGENCY.**

Pursuant to the terms of the Prime Lease, RYAN has granted to the AGENCY a leasehold interest in the Facility, or any other structures or improvements on the Land, and the

Equipment and personal property described in Exhibit B attached hereto. RYAN agrees that the AGENCY's interest in such Facility will be sufficient for the purposes intended by this Leaseback Agreement and agrees that it will defend, indemnify and hold the AGENCY harmless from any expense or liability arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the AGENCY in defending any action respecting title to or a lien affecting the Facility, except to the extent such defect in title or lien is caused by the AGENCY.

**Section 2.2 Construction and Equipping of the Facility.**

RYAN and/or HARTFORD, as agent for the AGENCY, will construct and equip the Facility.

**Section 2.3 Demise of Facility.**

The AGENCY hereby demises and leases the Facility to RYAN and RYAN hereby rents and leases the Facility from the AGENCY upon the terms and conditions of this Leaseback Agreement. RYAN shall sublease the Facility to HARTFORD and HARTFORD shall sublease the Facility from RYAN upon the terms and conditions of the Sublease.

**Section 2.4 Remedies to be Pursued Against Contractors and Subcontractors and their Sureties.**

In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, RYAN, at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the AGENCY, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. RYAN, in its own name or in the name of the AGENCY, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which RYAN deems reasonably necessary, and in such event, the AGENCY, at RYAN'S expense, hereby agrees to cooperate fully with RYAN and to take all action necessary to effect the substitution of RYAN and/or HARTFORD for the AGENCY in any such action or proceeding.

**Section 2.5 Duration of Lease Term; Quiet Enjoyment.**

(a) The AGENCY shall deliver to RYAN sole and exclusive possession of the Facility (subject to the provisions of Section 5.3 hereof) and the leasehold estate created hereby shall commence as of the date hereof. RYAN shall and may peaceably and quietly have, hold and enjoy the Facility during the Term (as defined below) without any manner of hindrance or molestation from AGENCY or anyone claiming under AGENCY, subject to the terms of this Leaseback Agreement.

(b) The leasehold estate created hereby shall commence as of March 1, 2008 and shall terminate at 11:59 P.M. on the last day of February, 2023, or on such earlier date as may be permitted by Section 8.1 hereof (the "Term").



**Section 2.6 Rents.**

(a) RYAN agrees that it will pay to the AGENCY, for the lease of the FACILITY, rent of One Dollar (\$1.00) per annum payable on March 1, 2008 and on March 1 of each year thereafter during the Term hereof.

(b) The obligations of RYAN to make the payments required in this Section 2.6 and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of RYAN and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the AGENCY.

**Section 2.7 Obligations of RYAN Hereunder Unconditional.**

(a) RYAN agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for HARTFORD's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part of the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the AGENCY to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Leaseback Agreement, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the AGENCY from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of RYAN to seek reimbursement, and in the event the AGENCY should fail to perform any such agreement, RYAN or HARTFORD may institute such separate action against the AGENCY as it may deem necessary to compel performance or recover damages for nonperformance, and the AGENCY covenants that it will not, subject to the provisions of Section 6.1, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estates of RYAN hereunder, except upon written consent of RYAN. None of the foregoing shall relieve RYAN of its obligations under Section 5.2 hereof.

**Section 2.8 Easements.**

RYAN shall have the sole and exclusive right and obligation to execute any and all easements in connection with the Project and Facility.

**ARTICLE III  
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

**Section 3.1 Maintenance and Modifications of Facility By RYAN.**

(a) RYAN agrees that during the Term, it will (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; and (iv) indemnify and hold the AGENCY harmless from any liability or expenses from the failure by RYAN to comply with (i), (ii) or (iii) above.

(b) RYAN at its own expense, from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses that do not adversely affect the structural integrity or impair the operating efficiency of the Facility or substantially change the nature of the Facility. All such structural additions, modifications or improvements so made by RYAN shall become a part of the Facility and subject to the terms of this Leaseback Agreement. RYAN agrees to deliver to the AGENCY all documents which may be necessary or appropriate to convey to the AGENCY leasehold title to such property.

### **Section 3.2 Installation of Additional Equipment.**

RYAN from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. RYAN from time to time may remove or permit the removal of such machinery, equipment or other personal property; provided that any such removal of such machinery, equipment or other personal property shall not adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended and provided further that if any damage is occasioned to the Facility by such removal, RYAN agrees to promptly repair such damage at its own expense.

### **Section 3.3 Taxes, Assessments and Utility Charges.**

(a) RYAN agrees to pay, or require HARTFORD to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility; provided, however, that HARTFORD and RYAN shall only be responsible for their respective payments under the PILOT Agreement dated of even date herewith executed by HARTFORD, RYAN and the AGENCY as set forth therein, (ii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, RYAN shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the Term.

(b) The AGENCY shall permit RYAN, or at RYAN's election, HARTFORD, each at its own expense, and in its own name and on its own behalf or in the name and/or on behalf of the AGENCY, in good faith to contest any such taxes, assessments and other charges. In the

event of any such contest, RYAN may not permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom.

**Section 3.4 Insurance Required.**

At all times throughout the Term, including without limitation during any period of construction of the Facility, RYAN shall maintain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the replacement cost of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by RYAN. As an alternative to the requirements in this subsection (a), including the requirement of periodic appraisal, RYAN may insure such property under a blanket insurance policy or policies covering not only the Facility, but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which RYAN is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of RYAN who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by RYAN under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon RYAN by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than \$2,000,000.00, protecting the AGENCY against any loss or liability or damage for personal injury or property damage.

**Section 3.5 Additional Provisions Respecting Insurance.**

(a) All insurance required by Section 3.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by RYAN, and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which RYAN is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of RYAN and the AGENCY as their respective interests may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to RYAN and the AGENCY.

(b) A certificate or certificates of the insurers that such insurance is in force and effect showing the AGENCY as an "added insured" as its interest may appear shall be deposited with the AGENCY on or before the date hereof. RYAN shall deliver to the AGENCY on or

before the first business day of each calendar year thereafter a certificate dated not earlier than the immediately preceding December 1<sup>st</sup> reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 3.4 and 3.5 hereof. Prior to expiration of any such policy, RYAN shall furnish the AGENCY evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

**Section 3.6 Application of Net Proceeds of Insurance.**

The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

- (i) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and
- (ii) the net proceeds of the insurance required by Sections 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 3.7 Right of AGENCY to Pay Taxes, Insurance Premiums and Other Charges.**

If RYAN fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Sections 3.4 and 3.5 hereof, the AGENCY may pay such tax, assessment or other governmental charge or the premium for such insurance. RYAN shall reimburse the AGENCY for any amount so paid together with interest thereon from the date of payment at nine percent (9%) per annum.

**ARTICLE IV  
DAMAGE, DESTRUCTION AND CONDEMNATION**

**Section 4.1 Damage or Destruction.**

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Term:

- (i) the AGENCY shall have no obligation to replace, repair, rebuild or restore the Facility;
- (ii) there shall be no abatement or reduction in the amounts payable by RYAN under this Leaseback Agreement; and
- (iii) except as otherwise provided in subsection (b) of this Section 4.1, RYAN shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by RYAN.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of RYAN's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) RYAN shall not be obligated to replace, repair, rebuild or restore the Facility, and the net proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 4.1, if RYAN shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) RYAN may adjust all claims under any policies of insurance required by Section 3.4(a) hereof. The AGENCY shall not have any interest whatsoever in any insurance proceeds and RYAN shall have the exclusive right to same.

#### **Section 4.2 Condemnation.**

(a) If at any time during the Term the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the AGENCY shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by RYAN under this Leaseback Agreement. The AGENCY shall not have any interest whatsoever in any condemnation award, and RYAN shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, RYAN shall promptly:

- (i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or
- (ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility.

The Facility, as so restored, or the substitute facilities, whether or not requiring the expenditure of RYAN's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) RYAN shall not be obligated to restore the Facility or acquire substitute facilities, nor shall the net proceeds of any condemnation award be applied as provided in Section 4.2(a), if RYAN shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The AGENCY shall cooperate fully with RYAN in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the AGENCY voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of RYAN.

#### **Section 4.3 Condemnation of RYAN Owned Property.**



RYAN shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

**ARTICLE V**  
**SPECIAL COVENANTS**

**Section 5.1 No Warranty of Condition or Suitability by the AGENCY.**

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR ANY LAND, BUILDING OR EQUIPMENT OR THAT IT OR THEY IS OR ARE OR WILL BE SUITABLE FOR RYAN'S PURPOSES OR NEEDS.

**Section 5.2 Hold Harmless Provisions.**

RYAN hereby releases the AGENCY from, agrees that the AGENCY shall not be liable for and agrees to indemnify and hold the AGENCY harmless from and against any and all liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply to the extent not the willful misconduct or gross negligence of the AGENCY, or any of its respective members, directors, officers, agents or employees.

**Section 5.3 Right to Inspect the Facility.**

The AGENCY and its duly authorized agents shall have the right at all reasonable times, and upon reasonable prior notice, to inspect the Facility; any inspections shall be conducted so as not to interfere with RYAN's or HARTFORD's business operations.

**Section 5.4 RYAN to Maintain its Existence; Conditions Under Which Exceptions Permitted.**

RYAN agrees that during the Term it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets.

**Section 5.5 Qualification in the State.**

Throughout the Term, RYAN shall continue to be duly authorized to do business in the State.

**Section 5.6 Agreement to Provide Information.**

RYAN agrees, whenever requested by the AGENCY, to provide and certify or cause to be provided and certified such information concerning either RYAN or its sublessee

HARTFORD and the Facility as reasonably necessary to enable the AGENCY to make any report required by law or governmental regulation.

**Section 5.7 Books of Record and Account; Financial Statements.**

RYAN at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of RYAN regarding the Facility.

**Section 5.8 Compliance With Orders, Ordinances, Etc.**

(a) RYAN agrees that it will, throughout the Term, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.8, RYAN may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, RYAN, with the prior written consent of the AGENCY (which shall not be unreasonably withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom.

**Section 5.9 Discharge of Liens and Encumbrances.**

(a) RYAN shall not permit or create or suffer to be permitted or created any lien, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.9, RYAN may in good faith contest any such lien. In such event, RYAN may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

**Section 5.10 Sales Tax.**

RYAN shall file an Annual Statement with the New York State Department of Taxation and Finance regarding the value of sales tax exemptions RYAN, its agents, consultants or subcontractors have claimed pursuant to the benefits the AGENCY conferred in connection with the Facility. RYAN acknowledges that failure to file such statement is a default under the terms of this Leaseback Agreement.

**Section 5.11 Depreciation Deductions and Investment Tax Credit.**

The parties agree that RYAN shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to section 167 of the United States Internal

Revenue Code (the "Code") and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility.

**ARTICLE VI**  
**RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING;**  
**MORTGAGE AND PLEDGE OF INTERESTS**

**Section 6.1 Restriction on Sale of Facility; Release of Certain Land.**

Except as otherwise specifically provided in these Articles VI or VII, the AGENCY shall not sell, convey, transfer, encumber, use, or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement.

**Section 6.2 Removal of Equipment.**

(a) The AGENCY shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where RYAN determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, RYAN may remove such item of Equipment from the Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The AGENCY shall execute and deliver to RYAN all instruments necessary or appropriate to enable RYAN to sell or otherwise dispose of any such item of Equipment. RYAN shall pay any costs (including reasonable counsel fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle RYAN to any abatement or diminution of the rents payable under Section 2.6 hereof.

**ARTICLE VII**  
**DEFAULT**

**Section 7.1 Events of Default Defined.**

(a) Each of the following shall be an "Event of Default" under this Leaseback Agreement:

(1) If RYAN fails to pay the amounts required to be paid pursuant to Section 2.6 of this Leaseback Agreement and such failure shall have continued for a period of thirty (30) days after the AGENCY gives written notice of such failure to RYAN.

(2) If any representation or warranty of RYAN contained in this Leaseback Agreement is incorrect in any material respect.

(3) If there is any default by RYAN to observe or perform any covenant, condition or agreement required by this Leaseback Agreement, or any other agreement between RYAN and the AGENCY to be observed or performed by RYAN and such failure shall have

continued for a period of sixty (60) days after the AGENCY gives written notice to RYAN, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such 60 day period, RYAN's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence.

(4) If there is default by HARTFORD in the performance of any of its obligation under the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and such failure shall have continued for a period of sixty (60) days after the AGENCY gives a Failure Notice to HARTFORD and RYAN, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such 60 day period, HARTFORD'S failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence.

(b) Notwithstanding the provisions of Section 7.1 (a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under this Leaseback Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations to make the payments required by Section 2.6 and Section 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10 and 7.1(a)(1) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike; lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

(c) No notice of default, notice of failure or any notice from AGENCY to RYAN shall be effective unless and until a copy of the same is given to HARTFORD at HARTFORD's address specified below (as it may from time to time be changed), and the curing of any of RYAN's defaults by HARTFORD within a reasonable time after such notice shall be treated as performance by RYAN.

**Section 7.2 Remedies on Default.**

Whenever any Event of Default shall have occurred and be continuing, the AGENCY may take, to the extent permitted by law, any one or more of the following remedial steps;

(1) Declare, by written notice to RYAN, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid amounts payable pursuant to Section 2.6 (a) hereof and (ii) all other payments due under this Leaseback Agreement.

(2) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

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

(4) Terminate this Leaseback Agreement and the Prime Lease.

**Section 7.3 Remedies Cumulative.**

No remedy herein conferred upon or reserved to the AGENCY is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 7.4 Agreement to Pay Attorneys' Fees and Expenses.**

In the event RYAN should default under any of the provisions of this Leaseback Agreement and the AGENCY should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of RYAN herein contained, RYAN shall, on demand therefor, pay to the AGENCY, the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.5 No Additional Waiver Implied by One Waiver.**

In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE VIII  
EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF RYAN**



**Section 8.1 Early Termination of Agreement.**

(a) This Leaseback Agreement shall not be terminated except for cause without the prior written consent of both RYAN and the AGENCY or in the event the Sublease is terminated due to casualty or condemnation.

**Section 8.2 Obligation to Terminate Lease.**

Upon termination of the Term in accordance with Section 2.5 or Section 8.1 hereof, the AGENCY and RYAN shall terminate the Prime Lease for the consideration of One (\$1.00) Dollar.

**Section 8.3 Termination.**

Upon termination of the Prime Lease pursuant to Section 8.2 hereof, the AGENCY shall, upon receipt of the consideration, deliver to RYAN all necessary documents, to terminate the Leaseback Agreement and the Prime Lease and surrender to RYAN the Facility being leased, as such Facility exists, subject only to the following:

(a) any liens to which title to the Land and the Facility was subject when leased to the AGENCY, and

(b) any mechanic's liens or mortgage liens suffered by RYAN or HARTFORD created at the request of RYAN or HARTFORD or to the creation of which RYAN or HARTFORD consented or in the creation of which RYAN or HARTFORD acquiesced.

**ARTICLE IX**

Intentionally deleted.

**ARTICLE X**

Intentionally deleted.

**ARTICLE XI**

Intentionally deleted.

**ARTICLE XII**

**NO RECOURSE; SPECIAL OBLIGATION**

**Section 12.1** The obligations and agreements of the AGENCY contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the AGENCY, and not of any member, officer, agent or employee of the AGENCY in his/her individual capacity, and the members, officers, agents 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; provided, however, the terms of this Section shall not affect the obligations of Ryan acting as the agent of the Agency for the purchase of construction materials for the Facility and of Hartford acting as the agent of the Agency for the purchase of materials to equip the Facility.

**Section 12.2** The obligations and agreements of the AGENCY contained hereby shall not constitute or give rise to an obligation of the State or of the County of Oneida, New York, and neither the State nor the County of Oneida, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the AGENCY, but rather shall constitute limited obligations of the AGENCY, payable solely from the revenues of the AGENCY derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the AGENCY with respect to the Unassigned Rights [as hereinafter defined]).

**Section 12.3** No order or decree of specific performance with respect to any of the obligations of the AGENCY hereunder shall be sought or enforced against the AGENCY unless (i) 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, (ii) 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 (iii) 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 RYAN and HARTFORD) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the AGENCY and its members, officers, agents (other than RYAN and HARTFORD) and employees against all liability expected to be incurred as a result of compliance with such request.

## ARTICLE XIII

### MISCELLANEOUS

#### **Section 13.1 Surrender of Facility.**

Except as otherwise expressly provided in this Leaseback Agreement, at the termination of this Leaseback Agreement and the Prime Lease, the AGENCY shall surrender to RYAN the Facility in its "as is" condition without obligations, responsibility or liability for any damage, destruction or loss to the Facility or any portion thereof.

#### **Section 13.2 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  
Attention: David Grow

With a Copy to: Kernan and Kernan, PC  
258 Genesee Street #10  
Suite 600  
Utica, New York 13502  
Attention: Michael H. Stephens, Esq.

To RYAN: RYAN COMPANIES US, INC.  
50 South 10<sup>th</sup> Street, Suite 300  
Minneapolis, MN 55403-2012  
Attention: Mark Nordland

With a Copy to: RYAN COMPANIES US, INC.  
50 South 10<sup>th</sup> Street, Suite 300  
Minneapolis, MN 55403-20  
Attention: Mary Wawro

With a Copy to: HARTFORD FIRE INSURANCE COMPANY  
One Hartford Plaza  
Hartford, CT 06155  
Attention: Workplace Resources, HO-2-18

**Section 13.3 Binding Effect.**

This Leaseback Agreement shall inure to the benefit of and shall be binding upon the AGENCY, RYAN and their respective successors and assigns.

**Section 13.4 Severability.**

In the event any provision of this Leaseback Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 13.5 Amendments, Changes and Modifications.**

This Leaseback Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

**Section 13.6 Execution of Counterparts.**

This Leaseback Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13.7 Applicable Law.**

This Leaseback Agreement shall be governed exclusively by the applicable laws of the State.

**Section 13.8 Recording and Filing.**

This Leaseback Agreement or a memorandum thereof, may be recorded or filed, as the case may be, in the Office of the Clerk of Oneida County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

**Section 13.9 Assignment; Survival of Obligations.**

This Leaseback Agreement may not be assigned, with the exception of (i) corporate reorganization or (ii) sale or financing of the Facility by RYAN, its successors and assigns or (iii) transfers for estate planning purposes, in whole or in part. Following any such permitted assignment, the obligations of RYAN arising or accruing under this Leaseback Agreement after an assignment shall be enforceable only against the assignee provided the same shall have been expressly assumed by the assignee, except for the hold harmless and indemnification obligations pursuant to Section 5.2 hereof which shall remain enforceable against RYAN following an assignment, but only to the extent they arise out of RYAN's breach of its obligations hereunder prior to the effective date of the assignment.

**Section 13.10 Unassigned Rights.**

The AGENCY agrees that this Leaseback Agreement shall be and hereby is subject and subordinate at all times to the lien of any mortgage or mortgages now or hereafter granted by RYAN against the Facility, and to all advances made or hereafter to be made upon the security thereof, and to all renewals, modifications, consolidations, replacements and extensions therefor; provided, however, that the AGENCY's rights under this Leaseback Agreement shall not be disturbed so long as the AGENCY is not in default thereunder. This Section is self-operative and no further instrument of subordination shall be required, provided that in confirmation of such subordination, the AGENCY shall promptly execute such further instrument as may be requested by RYAN, but that under no circumstances shall the AGENCY be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 of the Leaseback Agreement or its rights under Sections 1.2(d), 12.1, 3.1(a), 5.2, 3.4, and 7.4 of the Leaseback Agreement (the "Unassigned Rights"). Within ten (10) days after written request therefor, the AGENCY shall execute and deliver to RYAN, in a form provided by or satisfactory to Ryan, a certificate stating that this Leaseback Agreement is in full force and effect, describing any amendments or modifications thereto and whether either party hereto is in default under the terms of this Leaseback Agreement. Any person or entity purchasing, acquiring an interest in or extending financing with respect to the Facility shall be entitled to rely upon any such certificate.

**Section 13.11 Table of Contents and Section Headings Not Controlling.**

The table of contents and the headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.

**Section 13.12 Merger of the AGENCY.**

(A) Nothing contained in this Leaseback Agreement shall prevent the consolidation of the AGENCY with, or merger of the AGENCY into, or assignment by the AGENCY of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the AGENCY hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Leaseback Agreement to be kept and performed by the AGENCY shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the AGENCY's rights and interests hereunder shall be assigned.

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

**Section 13.13 Appointment of AGENCY as attorney-in-fact.** The AGENCY is appointed as attorney-in-fact for RYAN for purposes of executing all documents on behalf of RYAN required of RYAN to effect a termination of this Leaseback Agreement pursuant to Section 8.1(b) and (c) and record a memorandum of such termination.

**Section 13.14. Inducement Agreement.** This Leaseback Agreement, the Prime Lease dated October 9, 2007, PILOT Agreement, Environmental Compliance and Indemnification Agreement, Guaranty, Job Creation, Job Retention and Recapture Agreement and the Sublease dated October 9, 2007, as amended by the First Amendment to Lease, each dated of even date herewith unless otherwise noted represent the entire agreement of the AGENCY, RYAN and HARTFORD and supersede the terms of the Inducement Agreement dated December \_\_, 2007 among the same parties.


**Section 13.15. Successors and Assigns.** The rights and obligations of Ryan and the Agency hereunder shall be binding upon and inure to the benefit of their respective successors and assigns.

[signatures follow]




IN WITNESS WHEREOF, the AGENCY and RYAN have caused this Leaseback Agreement to be executed in their respective corporate names, all as of the date first above written.

**ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: David C. Grow  
Title: ~~Vice~~ Chairman

**RYAN COMPANIES US, INC.**

By:   
Name: Mark Nordland  
Title: Vice President

**Exhibit A**

**Legal Description of the Land**

## Legal Description

### 13.524+/- ACRE PARCEL

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of New Hartford, County of Oneida and State of New York, being part of Lot Number 50 in the Seventh Division of Coxe's Patent, bounded and described as follows:

BEGINNING at an iron rod on the easterly boundary of other lands of the New Hartford Office Group, LLC (Now or Formerly), as described in a Quit Claim Deed dated July 20, 2005 and filed in the Oneida County Clerks Office in Instrument Number 2007-019329, said iron rod standing therein distant  $N08^{\circ}15'01''W$  60.00 feet as measured along the easterly boundary of other lands of the New Hartford Office Group, LLC from an iron rod standing at the intersection of the easterly boundary of other lands of the New Hartford Office Group, LLC with the northerly boundary of Lloyd W. Yager, Lori J. Yager and Jon E. Yager (Now or Formerly), as described in a Warranty Deed dated September 17, 1996 and filed in the Oneida County Clerks Office in Liber 2753 of Deeds at Page 276; said point of beginning being further described as standing therein distant  $N08^{\circ}00'43''W$  345.80 feet and  $N08^{\circ}15'01''W$  60.00 feet as measured respectively along the easterly boundary of other lands of the New Hartford Office Group, LLC from an iron rod standing at the intersection of the easterly boundary of other lands of the New Hartford Office Group, LLC with the northerly boundary of Par Technology Corporation (Now or Formerly); thence  $N08^{\circ}15'01''W$  561.45 feet along the easterly boundary of other lands of the New Hartford Office Group, LLC to an iron rod standing on the southerly highway boundary of Judd Road Connector (Judd Road Extension) (Stanwix - Utica, Pt. 1); thence  $N88^{\circ}31'14''E$  235.27 feet along the southerly highway boundary of Judd Road Connector (Judd Road Extension) (Stanwix - Utica, Pt. 1) to an iron rod; thence  $N82^{\circ}52'06''E$  871.03 feet continuing along the southerly highway boundary of Judd Road Connector (Judd Road Extension) (Stanwix - Utica, Pt. 1) to an iron rod standing on the westerly boundary of other lands of Lloyd W. Yager, Lori J. Yager and Jon E. Yager (Now or Formerly), thence  $S07^{\circ}10'29''E$  528.26 feet along the westerly boundary of other lands of Lloyd W. Yager, Lori J. Yager and Jon E. Yager to an iron rod; thence  $S82^{\circ}20'59''W$  1094.64 feet to the point and place of beginning.

Together with and subject to Declaration Concerning Easements, Covenants and Restrictions executed by New Hartford Office Group, LLC, a New York limited liability company, dated November 20, 2007 and recorded November 27, 2007 in the Oneida County Clerk's Office as Instrument No. R2007-001563.

Together with the Declaration of Easement executed by Par Technology Corporation and New Hartford Office Group, LLC, a New York limited liability company, dated November 20, 2007 and recorded November 27, 2007 in the Oneida County Clerk's Office as Instrument No. R2007-001562.

## Exhibit B

### **Description of the Equipment**

All the right, title and interest of RYAN in and to all machinery, apparatus, construction materials, equipment, fittings, fixtures and articles of personal property installed in, attached to or used or usable in connection with the present or future use of the real estate described in Schedule "A", or the present or future operation or maintenance of the buildings, structures or other improvements now or hereafter erected on the Premises (collectively, the "Improvements"), whether now owned or hereafter acquired by RYAN, including but not limited to, all heating, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, exhaust and heater fans, air-cooling and air-conditioning apparatus, escalators, shades, awnings, screens, storm doors and windows, stoves, refrigerators, attached cabinets, partitions, ducts and compressors (which machinery, apparatus, equipment, fittings, fixtures and articles of personal property, all replacements thereof, substitutions therefor and additions thereto, together with the proceeds thereof, are hereafter collectively referred to as the "Equipment".)