



**NYS DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES**

RP-412-a (1/95)

**INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)**

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Broome County IDA
 Street P.O. Box 1510
 City Binghamton, New York 13902
 Telephone no. Day (607) 584-9000
 Evening () N/A
 Contact Richrd D'Attilio
 Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Washington Development Associates, LLC
 Street 3101 Shippers Road
 City Vestal, New York 13850
 Telephone no. Day () 607-770-1010
 Evening () N/A
 Contact Marc Newman
 Title Managing Membe

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) See Attached
- b. Street address See Attached
- c. City, Town or Village City of Binghamton
- d. School District Binghamton
- e. County Broome
- f. Current assessment See Attached
- g. Memorandum of Lease
~~Deed~~ to IDA (date recorded, liber and page)
Rec'd: 9/1/10 in Book 2325 at Page 457

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) Apartment complex for students attending Binghamton University, along with additional land for a parking lot
- b. Type of construction Brick and mortar
- c. Square footage 173,600+/-
- d. Total cost \$20,395,000 (estimated)
- e. Date construction commenced August 31, 2010
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) August 31, 2032

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment See attached Final PILOT Agreement dated January 14, 2011 which replaces the Interim PILOT Agreement dated August 31, 2010.
- b. Projected expiration date of agreement August 31, 2032

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Broome</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town /City <u>Binghamton</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input type="checkbox"/>
School District <u>Binghamton</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name Marc Newman
 Title Managing Member
 Address 3101 Shippers Road
Vestal, New York 13850

e. Is the IDA the owner of the property? Yes No (check one)

If "No" identify owner and explain IDA rights or interest Telephone 607-770-1010

in an attached statement. Property is owned by Washington Development Associates, LLC and leased to the Broome County Industrial Development Agency.

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted: exemption Section 8 assessment roll year 2010


7. A copy of this application, including all attachments, has been mailed or delivered on 1/12/12 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Richard D'Attilio, Executive Director of
 Name Title
Broome County Industrial Development Agency hereby certify that the information
 Organization

on this application and accompanying papers constitutes a true statement of facts.

1/12/2012
Date


Signature

FOR USE BY ASSESSOR

1. Date application filed _____

2. Applicable taxable status date _____

3a. Agreement (or extract) date _____

3b. Projected exemption expiration (year) _____

4. Assessed valuation of parcel in first year of exemption \$ _____

5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

ATTACHMENT TO RP-412-a

3.a. DESCRIPTION OF PARCELS

1. Tax Map No.: 160.56-2-5
Address: 45 Washington Street, City of Binghamton, Broome County
2. Tax Map No.: 160.56-2-6
Address: 43 Washington Street, City of Binghamton, Broome County
3. Tax Map No.: 160.56-2-7
Address: 37 Washington Street, City of Binghamton, Broome County
4. Tax Map No.: 160.56-2-8
Address: 35 Washington Street, City of Binghamton, Broome County
5. Tax Map No.: 160.56-2-9
Address: 31 Washington Street, City of Binghamton, Broome County
6. Tax Map No.: 160.56-2-10
Address: 21 Washington Street, City of Binghamton, Broome County
7. Tax Map No.: 160.56-2-12
Address: 38 Water Street, City of Binghamton, Broome County
8. Tax Map No.: 160.56-2-13
Address: 40 Water Street, City of Binghamton, Broome County
9. Tax Map No.: 160.56-2-16
Address: 11 Water Street, City of Binghamton, Broome County

PAYMENT IN LIEU OF TAXES AGREEMENT

By

WASHINGTON DEVELOPMENT ASSOCIATES, LLC

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the "Agreement"), dated as of ~~December~~ ^{Jan.} ~~14,~~ ²⁰¹¹ 2010, by and among WASHINGTON DEVELOPMENT ASSOCIATES, LLC (the "Company"), a limited liability company organized and existing pursuant to the laws of the State of New York with offices at 3101 Shippers Road, Vestal, New York 13850, the CITY OF BINGHAMTON (the "City"), a municipal corporation located within the County of Broome and the State of New York with offices at 38 Hawley Street, Binghamton, New York 13901, and the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation organized and existing under the laws of the State of New York with offices at 60 Hawley Street, P.O. Box 1510, Binghamton, New York 13902 (collectively, the "Parties").

WITNESSETH:

The Company intends to construct and operate a Student Housing project consisting of 119 rooms as approved by the City of Binghamton Planning Commission on March 1, 2010 (the "Facility") on a nine lot parcel located at the intersection of Washington Street and Susquehanna Street, Binghamton, New York, Parcel ID # 160.56-2-5, 160.56-2-6, 160.56-2-7, 160.56-2-8, 160.56-2-9, 160.56-2-10, 160.56-2-12, 160.56-2-13, and 160.56-2-16 (the "Property"). The Facility and the Property are referred to herein collectively as the "Project".

The Agency was created as a public benefit corporation pursuant to and for the purposes specified in Title 1 of Article 18-A of the General Municipal Law.

The Company has agreed to lease the Property to the Agency and has agreed to construct and operate the Facility thereon.

The Agency will lease the Project to the Company for a construction period through 2012 and a twenty (20) year term from 2013 through 2032.

In that the Agency is exempt from the payment of real estate taxes and certain assessments imposed upon real property, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the City, the Binghamton City School District (the "School"), and the County of Broome (the "County") (collectively the "Taxing Entities"), during the term of the lease in lieu of general tax levies as provided herein.

The Parties to this Agreement acknowledge and agree that the Taxing Entities, although not all parties to this Agreement, are third party beneficiaries to this Agreement; having all the rights thereunder; including the ability and rights under law and under contract to enforce this agreement. The Parties to this Agreement also acknowledge and agree that the Taxing Entities, collectively and individually, have all the rights and remedies available to them under New York State Law to enforce this Agreement; including but not limited to conversion of a delinquent PILOT payment to unpaid taxes; filing of a tax levy and tax lien; and collection of unpaid taxes using various methods under New York State Law.

On August 31, 2010, the Parties executed an Interim Payment in Lieu of Taxes Agreement (the "Interim Agreement") and that this Agreement is intended to replace the Interim Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

SECTION 1. TAX-EXEMPT STATUS OF THE PROJECT

a. General Assessment of the Project: Pursuant to General Municipal Law §874 and Real Property Tax Law §412-a, the parties hereto understand that, upon acquisition of the Property by the Agency in 2010, and provided the Project continues to be leased by the Agency, the Project shall be assessed by the Taxing Entities as exempt upon the assessment rolls of the respective Taxing Entities for the term as provided below.

b. Water and Sewer charges and Special Assessments: The parties hereto understand that the tax exemption extended to the Agency by General Municipal Law §874 and Real Property Tax Law §412-a does not entitle the Agency to exemption from water and sewer charges, fire district charges, if any, or special assessments and special ad valorem levies. Commencing on the date hereof and continuing during the term of the lease, the Company will be required to pay all water and sewer charges, fire district charges, if any, special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

SECTION 2. DEFAULT, LOSS OF EXEMPTION STATUS AND TERMINATION OF LEASES

In addition to the expiration of the Term of this Agreement, any of the following specified events shall constitute a default hereunder, any default shall terminate any leases between the Company and the Agency relating to the Project, and the tax exemption herein shall terminate and be of no further force or effect:

a. The failure of the Company to diligently and consistently undertake the

construction of the Project once commenced, subject to force majeure and to pursue the Project to completion with all due speed.

b. The failure of the Company to make timely payments of the sums due and payable hereunder.

c. In the event of a failure of the Company to comply with the terms of Section 2(a) or 2(b) above, the Agency or one or more of the Taxing Entities may deliver written notice of such failure to the Company and any Mortgagee or Lender of record and the Company (or the Mortgagee or Lender of record), shall have sixty (60) days to cure any monetary failure and, in the event of a non-monetary failure, sixty (60) days to cure or commence to diligently proceed to cure such failure, if it can not be reasonably cured within such sixty (60) day period, subject to force majeure. Only upon the passage of such sixty (60) day period, if the Company or any Mortgagee or Lender of record has not cured such failure or default, shall the Agency or any of the Taxing Entities be entitled to the remedies described herein.

d. The Taxing Entities, collectively and individually, have all the rights and remedies available to them at law, under this Agreement and under New York State Law Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of any unpaid monies due under this Agreement. As this Agreement is not meant to be a complete substitution for real property taxes and assessments, the act of a default and/or nonpayment under this Agreement allows the Taxing Entities to convert any nonpayment into a tax levy, tax lien and shall entitle the Taxing Entities to employ the remedies and procedures enumerated in the Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of the monies due and owing. In addition, the Company agrees to pay all costs of collection, including reasonable attorneys' fees.

e. Any nonpayment shall survive bankruptcy, as the Parties agree that a default converts those unpaid monies into unpaid taxes and such protects and empowers the Taxing Entities to proceed as such.

SECTION 3. AMOUNT OF PAYMENTS IN LIEU OF TAXES

a. During the anticipated construction period in 2010-2012 and during the 20-year period commencing January 1, 2013, the Company agrees to pay to the Taxing Entities the amounts set forth in Exhibit A annexed hereto and made a part hereof. The amounts to be paid in Exhibit A provide a total to be paid and the amount and date to be paid to each of the Taxing Entities.

b. The payments in lieu of taxes set forth in Exhibit A are based upon an agreed assessment of \$8,200,000 for the Project during the entire term of this Agreement. The payment schedule is not subject to challenge or adjustment by the Company, the Agency, or the Taxing Entities, even if the City or County conducts a City wide reassessment of all commercial properties.

c. The County, acting as collecting agent for all the Taxing Entities, shall bill the Company on or about January 1 of each year for the payment due hereunder for the City and County payments and on September 1 of each year for the payment due hereunder for the School payment. The Company shall pay the City and County payments on or before January 31 of each year and shall pay the School payment on or before September 30 of each year.

d. The County shall timely pay the City and School their respective payments within the same time allowed to pay over taxes collected during the same time period, *i.e.*, the City will be paid on or before February 10 of each year.

SECTION 4. ADDITIONS TO PROJECT

Should the Company, during the term of this Agreement, cause to be constructed on the Property any addition to the Project, then such addition shall be assessed and real estate taxes imposed in the same manner as all other non-tax-exempt real property is then being assessed and taxed by the City, County, and School, unless otherwise agreed by all of the parties hereto.

SECTION 5. TERM OF AGREEMENT

This Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon (a) the execution of this Agreement by the Agency and the Company, and (b) the execution and filing of Real Property Tax Form RP-412-a with the Assessor of the City of Binghamton, and (c) the delivery, by certified mail, return receipt requested, of a copy of this Agreement and Real Property Tax Form RP-412-a to the City, the School and the County. This Agreement replaces the Interim Agreement executed on August 31, 2010. This Agreement shall continue to remain in effect through 2031, or the date upon which the leasehold interest to the Project is no longer held by the Agency, including a change of title due to foreclosure, whichever shall be sooner. In addition, the City, School and County shall have the same rights afforded by the Real Property Tax Law regarding the collection and enforcement of unpaid taxes.

SECTION 6. PRIORITY

The Parties agree that payments due hereunder shall be accorded a lien priority equivalent to the lien of unpaid real property taxes as provided in the Real Property Tax Law of the State of New York and, as such, shall have priority over any mortgages or other liens filed against the Property. The Parties do hereby further agree that a Memorandum of this Agreement shall be recorded in the office of the Broome County Clerk.

SECTION 7. REPRESENTATIONS OF THE COMPANY

The Company represents and warrants that:

a. It is duly organized as a limited liability company in good standing in accordance with the laws of the State of New York.

b. It has full power and authority to execute and deliver this Agreement and to perform its obligations.

c. This Agreement constitutes a legal, valid, and binding obligation of the Company enforceable in accordance with its terms.

d. To the best of its knowledge, the execution and delivery of this Agreement does not, and the performance of this Agreement will not, violate any law, regulation, ordinance, judicial order, judicial decree, or any agreement, indenture, note, or other instrument to which it is a party.

e. To the best of its knowledge, there is no claim, action, arbitration, or administrative proceeding pending, threatened against, or involving the Company which if adversely determined, would question the validity of this Agreement or would have a material adverse effect on the financial condition of the Company.

SECTION 8. AMENDMENT OF AGREEMENT

This Agreement may not be amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in writing intended for such purpose and executed and delivered by each of the Parties hereto.

SECTION 9. BINDING EFFECT

This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns, regardless of the tax exempt status of any successor or assign.

SECTION 10. NOTICES

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently deemed given when sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other method as shall provide the sender with documentary evidence of such delivery. The addresses to which notices, certificate or other communications hereunder, shall be delivered are as follows:

To the Company:	Washington Development Associates, LLC 3101 Shippers Road Vestal, New York 13850 Attn: Managing Member
To the City:	City of Binghamton 38 Hawley Street Binghamton, NY 13901 Attn: Mayor
To the School:	Binghamton City School District 164 Hawley Street Binghamton, NY 13901 Attn: District Superintendent
To the County:	Broome County 60 Hawley Street Binghamton, NY 13901 Attn: County Executive

To the Agency:

Broome County Industrial Development Agency
60 Hawley Street
P.O. Box 1510
Binghamton, NY 13902
Attn: Executive Director

A duplicate copy of each notice, certificate or other communication given hereunder shall be given to each party. Any person entitled to notice may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 11. SEVERABILITY

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 12. COUNTERPARTS

This Agreement may be simultaneously 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. APPLICABLE LAW

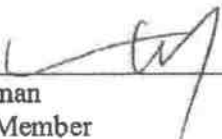
This Agreement shall be construed in accordance with the laws of the State of New York. Venue for any action or proceeding shall be in Broome County, New York.

SECTION 14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the Parties and shall not be modified unless in writing and signed by all of the Parties hereto in the same manner as this Agreement is executed.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the date set forth herein.

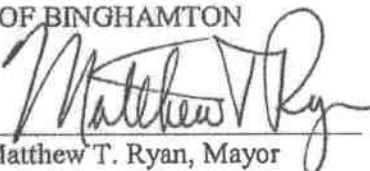
WASHINGTON DEVELOPMENT ASSOCIATES, LLC

By: 

Marc Newman
Managing Member

Date: Jan. 5, 2011

CITY OF BINGHAMTON

By: 

Matthew T. Ryan, Mayor

Date: 1/10/11

BROOME COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

By: 

Richard D'Attilio
Executive Director

Date: Jan. 6, 2011

