

A special meeting of Broome County Industrial Development Agency (the "Agency") was convened in public session at the Broome County Public Library Exhibit Room, 2<sup>nd</sup> Floor, in the City of Binghamton, Broome County, New York on October 24, 2011 at 12:00 o'clock p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:**

George Akel, Jr.	Chairman
Terrance M. Kane	Vice Chairman
Peter N. Hankin	Treasurer
Stephen D. Herz	Member
John J. Stevens	Member
Wayne L. Howard	Member

**ABSENT:**

James W. Orband	Secretary
James G. Rounds	Asst. Secretary/Treasurer
Patrick J. Brennan	Member

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Richard D'Attilio	Executive Director
Joseph B. Meagher, Esq.	Agency Counsel

The following resolution was offered by Mr. Hankin, seconded by Mr. Stevens, to wit:

RESOLUTION AUTHORIZING A CERTAIN LEASE AND LEASEBACK TRANSACTION TO FACILITATE THE FINANCING OF THE RENOVATION, CONSTRUCTION, AND EQUIPPING OF A 167,000+/- SQUARE FOOT APARTMENT COMPLEX FOR COLLEGE STUDENTS LOCATED AT 20 HAWLEY STREET IN THE CITY OF BINGHAMTON, COUNTY OF BROOME AND STATE OF NEW YORK (THE "FACILITY"), APPOINTING HAWLEY STREET MEMBERS LLC (THE "COMPANY") AS THE AGENT FOR THE PURPOSE OF THE RENOVATION, CONSTRUCTION, AND EQUIPPING AND LEASING OF THE FACILITY AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT THERETO.

WHEREAS, the Broome County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of the State of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 564 of the 1970 Laws of the State of New York, as amended by Chapter 402 of the 1987 Laws of the State of New York, constituting Section 895-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, recreation and civic facilities, among others, for the purpose of promoting, attracting and

developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Hawley Street Members LLC (the "Company") has presented an application (the "Application") to the Broome County Industrial Development Agency (the "Agency"), a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of property located at 20 Hawley Street in the City of Binghamton, Broome County, New York (the "Land"), (2) the renovation and construction on the Land of a 167,000+/- square foot apartment complex for college students (the "Facility") and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be leased by the Company as an apartment complex for college students and any other directly or indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including certain exemptions from sales taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in compliance with the provisions of Section 859-a of the Act, the undertakings of the Agency are contingent upon the Agency making a determination to proceed with the Project following compliance by the Agency with the public notice and public hearing requirements set forth in Section 859-a of the Act; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing"), to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on August 31, 2011 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on September 1, 2011 in the Press and Sun Bulletin, a newspaper of general circulation available to residents of the City of Binghamton, (C) conducted the Public Hearing on October 7, 2011 at 12:00 o'clock p.m., local time, at the Broome County Public Library in the City of Binghamton, Broome County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Agency; and

WHEREAS, on August 2, 2010, the City of Binghamton Planning Board, acting as Lead Agency, adopted a resolution determining that the Facility would not have a significant impact on the environment and adopting a negative declaration for the Facility; and

WHEREAS, in order to complete the documentation necessary to consummate the aforesaid Project described in the Notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"):

- (A) lease agreement (the "Lease Agreement") and a memorandum thereof (the "Memorandum of Lease") by and between the Agency and the Company, pursuant to which, among other things, the Agency acquires an interest in the Project

Facility;

- (B) leaseback agreement (the "Leaseback Agreement") and a memorandum thereof (the "Memorandum of Leaseback") by and between the Agency and the Company pursuant to which, among other things, the Company agrees to undertake and complete the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereof, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project;
- (C) PILOT Agreement by and among the Company and the Agency, pursuant to which the Company agrees to make payments in lieu of taxes with respect to the Project Facility;
- (D) agency agreement (the "Agency Agreement") by and between the Agency and the Company authorizing the Company to act as the agent of the Agency for the purpose of the renovation, construction and equipping of the Project Facility;
- (E) sales tax exemption letter exempting the Company from sales tax for purchases related to the Project Facility which would, otherwise, be subject to such tax;
- (F) various certificates relating to the Project (the "Closing Documents"); and
- (G) all other documents necessary to effect this transaction.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency hereby finds and determines that:

- (A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and
- (B) The Project constitutes a "project", as such term is defined in the Act; and
- (C) The renovation, construction and equipping of the Project Facility and the leaseback of the Project Facility to the Company will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Broome County, New York and the State of New York and improve their standard of living by providing college student housing that will enable college students to live in Broome County and attend Binghamton University and Broome Community College and, thereby, support the businesses, retailers, banks and other financial institutions, insurance companies, health care and legal service providers, and other merchants in Broome County and, thus, help preserve and increase permanent, private sector jobs within Broome County in furtherance of the Agency's public purposes as set forth in the Act; and
- (D) Having reviewed the Report of the Public Hearing and having fully considered all comments contained therein, the Agency hereby further determines that it is desirable and in the public interest for the Agency to proceed with the Project and

enter into the Agency Documents.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire by lease the Land, the Facility and all other improvements now or hereafter located on the Land (collectively, the "Premises") from the Company; (C) renovate, construct and equip the Project Facility, or cause the Project Facility to be renovated, constructed and equipped; (D) leaseback the Project Facility to the Company pursuant to the Leaseback Agreement pursuant to which, among other things, the Company shall be obligated (1) to pay all costs incurred by the Agency with respect to the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Agency with respect to, or in connection with, the Project Facility, and (2) to comply with the provisions of the Act applicable to beneficiaries of financial assistance from the Agency; and (E) enter into the Payment-in-Lieu-of-Tax Agreement.

Section 3. The Agency is hereby authorized to acquire (A) a leasehold interest in the Project Facility pursuant to the Lease Agreement dated as of December 19, 2011, and (B) title to the Equipment pursuant to an assignment of facility equipment dated as of December 19, 2011 (the "Assignment of Facility Equipment to Agency") from the Company to the Agency and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 4. The Agency hereby authorizes the Company to act as its agent with respect to the renovation, construction and equipping of the Project Facility and to do all things necessary or appropriate for the accomplishment thereof.

Section 5. The form and substance of the Agency Documents (in substantially the forms presented to this meeting with revisions agreed to and to be agreed to by the Agency in its discretion) are hereby approved.

Section 6. (A) The Chairman, Vice Chairman, Secretary, Assistant Secretary or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this meeting, with such changes, variations, omissions and insertions thereto as the Chairman, Vice Chairman, Secretary, Assistant Secretary or Executive Director shall approve, the execution thereof by the Chairman, Vice Chairman, Secretary, Assistant Secretary or Executive Director to constitute conclusive evidence of such approval.

(B) The Chairman, Vice Chairman, Secretary, Assistant Secretary or Executive Director of the Agency are hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 7. The officers, employees and agents of the Agency are hereby authorized and directed for, and in the name and on behalf of, the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the

Agency Documents binding upon the Agency.

Section 8. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

George Akel, Jr.	voting	Yes
Terrance M. Kane	voting	Yes
James W. Orband	voting	Absent
Peter N. Hankin	voting	Yes
James G. Rounds	voting	Absent
Stephen D. Herz	voting	Yes
John J. Stevens	voting	Yes
Patrick J. Brennan	voting	Absent
Wayne L. Howard	voting	Yes

The Resolution was thereupon declared duly adopted.

STATE OF NEW YORK:

: ss.:


COUNTY OF BROOME:

I, the undersigned Secretary of Broome County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Agency, including the Resolution contained therein, held on October 24, 2011, with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of such proceedings of the Agency and of such Resolution set forth therein and insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting, (B) said meeting was, in all respects, duly held, (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and public notice of the time and place of said meeting was duly given in accordance with such Article 7, and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 24<sup>th</sup> day of October, 2011.



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James W. Orband  
Secretary

(SEAL)