



**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 () _____
Contact Richard D'Attilio
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Hawley Street Members LLC
Street 120 Old Post Road
City Rye, New York 10580
Telephone no. Day () _____ (914) 481-5800
Evening () _____
Contact Alfred Weissman
Title Manager

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no./roll year) 160.49-1-22
b. Street address 20 Hawley Street
c. City, Town or Village City of Binghamton

d. School District Binghamton
e. County Broome
f. Current assessment \$1,000,000.00
g. Memorandum of Lease
Filed to IDA (date recorded; liber and page)

Rec'd: 2/10/12; Book 2367; Page 404

4. GENERAL DESCRIPTION OF PROPERTY

(if necessary, attach plans or specifications)

a. Brief description (include property use) renovation and construction of apartment complex for college students
b. Type of construction brick and mortar
c. Square footage 167,000+/-
d. Total cost \$10,637,000.00
e. Date construction commenced June 1, 2011
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 2022

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 PILOT Agreement

b. Projected expiration date of agreement December 31, 2022

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 Alfred Weissman
 Title Manager
 Address 120 Old Post Road
Rye, New York 10580

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

If "No" identify owner and explain IDA rights or interest Telephone (914) 481-5800
 in an attached statement. Property is owned by Hawley Street Members 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 _____ assessment roll year _____


7. A copy of this application, including all attachments, has been mailed or delivered on 2/10/11 (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.

2/10/11
 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

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the "Agreement"), dated as of December 19, 2011 by and among HAWLEY STREET MEMBERS LLC (the "Company"), a limited liability company organized and existing pursuant to the laws of the State of New York, with offices located at c/o Alfred Weissman Real Estate, LLC, 120 Old Post Road, Rye, New York 10580 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 located at 60 Hawley Street, P.O. Box 1510, Binghamton, New York 13902, collectively, the "Parties".

WITNESSETH:

WHEREAS, the Company intends to construct and operate a 167,000+/- square foot apartment complex for college students (the "Facility") located at 20 Hawley Street, tax map parcel number Section 160.49; Block 1; Lot 22, respectively, in the City of Binghamton, Broome County, New York (the "Property"). The Facility and the Property are referred to herein collectively as the "Project"; and

WHEREAS, 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; and

WHEREAS, simultaneously herewith, the Company is leaseing the Property to the Agency and has agreed to renovate, construct, equip and operate the Facility thereon pursuant to a Lease Agreement of even days (the "Lease Agreement"); and

WHEREAS, simultaneously herewith, the Agency is leasing the Project back to the Company for an ELEVEN (11) year term from January 1, 2012 through December 31, 2022 pursuant to a Leaseback Agreement of even days (the "Leaseback Agreement"); and

WHEREAS, 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 of Binghamton (the "City"), the City of Binghamton 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.

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

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 by lease of the Property by the Agency, 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.

2. AMOUNT OF PAYMENTS IN LIEU OF TAXES

A. During the period that the Facility is leased by the Agency pursuant to a Lease Agreement with the Company, the Company agrees to pay to the Taxing Entities the percentage of full real property taxes as set forth in Exhibit "A" attached hereto that would have otherwise been levied on the Project if the same were subject to full real property taxation. The payments in lieu of taxes set forth in Schedule A are based upon an agreed pre-construction assessment of \$1,000,000.00 and thereafter a post-construction assessment of \$5,200,000.00 for the Project during the balance of the term of this Agreement. The payment schedule set forth in Exhibit A is not subject to challenge or adjustment by the Agency or Taxing Authorities even if the City conducts a city-wide reassessment of all commercial properties unless such proposed adjustment would result in a lowered assessment of the Project. In such case, the agreed-upon assessments herein and payment schedule shall be reduced accordingly. Nothing contained herein shall be construed as a waiver of the Company's right to challenge or otherwise contest the Project's assessed value at any time during the term of this Agreement. In the event of any reduction in the assessed value of the Project during the term of this Agreement for any reason including as a result of the Company's challenge of same shall be reflected in the assessments and payment schedule set forth in Exhibit A shall be reduced accordingly.

B. Pursuant to Section 858(15) of the General Municipal Law, the Agency agrees to give each of the Taxing Entities a copy of this PILOT Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy thereof be given to the appropriate officer or officers with respect to each taxing jurisdiction responsible for preparing the tax rolls for said jurisdiction, together with a request that said officer or officers

submit to the Company, and the appropriate receiver of taxes, periodic statements specifying the amount and due date or dates of the payments due to each hereunder consistent with Schedule A of this Agreement. Such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such jurisdictions.

C. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any timely payment required by this PILOT Agreement, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall thereafter pay a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month, plus interest thereon to the extent permitted by law at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

D. Pursuant to Section 874(6) of the General Municipal Law, if the Company should default in performing any of its obligations, covenants or agreements under this Agreement and the Agency, or any Taxing Entity, should employ attorneys or incur other expenses for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefore, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred whether or not an action is commenced.

3. 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, School and County, unless otherwise agreed by the Parties and Taxing Entities hereto.

4. 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, (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 first class mail, of a copy of this Agreement and Real Property Tax Form RP-412-a to the City, the School and the County. If the conditions required above are not completed on or before December 31, 2011, then this Agreement shall become null and void. The Company may extend the time for completion of the conditions in its discretion. This Agreement shall continue to remain in effect through December 31, 2022 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.

5. PRIORITY

The Parties do hereby 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. In addition, the City, the School and the County shall have the same rights afforded by the Real Property Tax Law regarding the collection and enforcement of unpaid

taxes.

6. 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 have a material adverse effect on the financial condition of the Company.

7. RECAPTURE OF BENEFITS

Subject to the Company's rights in Section 7A of the Agreement, the Agency reserves the right to recapture the benefits provided through the abatement of real property taxes in the event that the Company's performance is substantially different than anticipated as defined below:

- A. Closure of the Project and a departure of the Company from Broome

County;

- B. Significant change in use of the Project and/or the business activities of the Company; and
- C. Significant employment reductions not reflective of the Company's normal business cycle and/or local or national economic conditions.

In cases deemed to meet one or more of the above conditions, the following recapture shall apply:

<u>Period</u>	<u>Accumulative Amount of Recapture</u>
Within 1 Year	100%
Within 2 Years	75%
Within 3 Years	50%
Within 4 Years	25%
After 4 Years	0%

7A. ASSIGNMENT OF AGREEMENT

A. Notwithstanding anything contained in this Agreement to the contrary, the Company may, without the consent of, but with prior written notice to, the Agency, (i) assign this Agreement to a Successor (as defined in Section 6.1(b) of the Leaseback Agreement) or to any unrelated third party, provided such Successor or unrelated third party, as the case may be, assumes and agrees to be bound by the Lease Agreement, Leaseback Agreement and this PILOT Agreement or (ii) assign this Leaseback Agreement as collateral security in favor of any Financing Parties (as defined in the Leaseback Agreement) or their successors and/or assigns. The Agency, at the cost of the Company, shall cooperate with the Company, its affiliates, any Successor, and any of the Financing Parties from time to time in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be

required by such Financing Parties. In the event this Agreement is assigned to a Successor, the Company shall have no further obligations hereunder.

B. Nothing contained in this Section 7A will be deemed or construed as limiting, in any way, the rights of any Financing Party or Mortgagee (as defined in Section 7.6, of the Leaseback Agreement) from effecting an assignment or other transfer of the Company's interest under this Agreement to a third party purchaser of all or any part of the Property at foreclosure, or upon any sale in lieu of foreclosure; provided, however, that no such assignment shall be effective until such third party purchaser (i) executes an instrument agreeing to assume all of the Company's obligations under this Agreement; (ii) executes an instrument agreeing to assume all of the Company's obligations under the Leaseback Agreement; and (iii) executes an instrument reaffirming the Agency's rights under the Lease Agreement.

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.

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.

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, certificates or other communications hereunder, shall be delivered are as follows:

To the Company: Hawley Street Members LLC
 c/o Alfred Weissman Real Estate, LLC
 120 Old Post Road
 Rye, New York 10580
 Attn: Manager

To the City: City of Binghamton
 38 Hawley Street
 Binghamton, New York 13901
 Attn: Mayor

To the School: Binghamton City School District
 164 Hawley Street
 Binghamton, New York 13901
 Attn: Superintendent

To the County: Broome County
 60 Hawley Street
 P.O. Box 1766
 Binghamton, NY 13901
 Attn: County Executive

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

A duplicate copy of each notice, certificate or other communication given hereunder shall be given to each Party and Taxing Entity. 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.

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.

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.

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.


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.

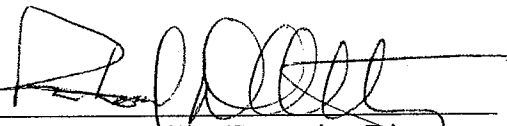
SIGNATURE PAGE FOLLOWS

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

HAWLEY STREET MEMBERS LLC

By: 
Alfred Weissman, Manager

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

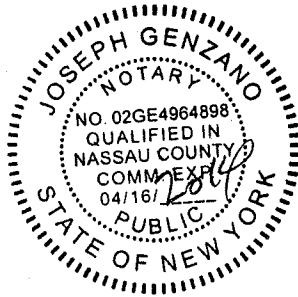
By: 
Richard D'Attilio, Executive Director

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On this 19th day of December, in the year 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared ALFRED WEISSMAN, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.





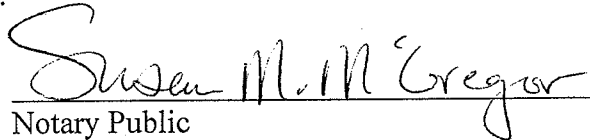
Notary Public

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On this 19th day of December, in the year 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared RICHARD D'ATTILIO, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



Notary Public

SUSAN M. MCGREGOR
Notary Public, State of New York
No. 01MC6215671
Qualified in Broome County
Commission Expires January 4, 2014

EXHIBIT "A"

BCIDA/HAWLEY STREET MEMBERS LLC
PILOT PAYMENT SCHEDULE

PILOT Years

PILOT Payment

2012

PILOT payment shall be equal to the amount of real property taxes that would have otherwise been levied had the Property been subject to full real property taxation based upon an assessment of \$1,000,000.00.

2013 thru 2015

The PILOT payment for 2013, 2014, and 2015 shall be equal to the PILOT payment for year 2012.

2016 thru 2017

The PILOT payment for 2016 and 2017 shall be equal to the PILOT payment for year 2012 plus fifty (50%) of any increase in the real property taxes, over and above that amount, that would otherwise have been levied had the Property been subject to full real property taxation based upon an assessment of \$5,200,000.00.

2018 thru 2022

The PILOT payment for 2018, 2019, 2020, 2021 and 2022 shall be equal to the PILOT payment for year 2012 plus seventy-five (75%) of any increase in the real property taxes, over and above that amount, that would otherwise have been levied had the Property been subject to full real property taxation based upon an assessment of \$5,200,000.00.