

TOWN OF BETHLEHEM

Albany County - New York

INDUSTRIAL DEVELOPMENT AGENCY

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DELMAR, NEW YORK 12054

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Regular Meeting Minutes

Friday, January 22, 2016

8:00 AM

Town Hall Auditorium

Thomas P. Connolly

*Executive Director,
Assistant Secretary and
Agency Counsel
518-447-3303*

Allen F. Maikels

*Treasurer, Chief Financial Officer
and Contracting Officer
518-487-4679*

Elizabeth Staubach

*Economic Development
Coordinator
Ext. 1189*

Robin Nagengast

*Assistant to the Executive Director
and Clerk
Ext. 1164*

Frank S. Venezia

Chairman

Joseph P. Richardson

Vice Chairman

Tim McCann

Secretary

Victoria Storrs

Assistant Secretary

Sandra Shapard

Member

Tim Maniccia

Member

David Kidera

Member

I. Call to Order/Roll Call/Quorum Determination

A Regular Meeting of the Bethlehem Industrial Development Agency of the Town of Bethlehem was held on the above date at the Town Hall Auditorium, 445 Delaware Avenue, Delmar, NY.

The Meeting was called to order at 8:00 AM with the presence of a quorum noted.

Attendee Name	Title	Status	Arrived
Frank S. Venezia	Board Member/Chairman	Present	
Joseph P. Richardson	Board Member/Vice Chairman	Present	
Tim McCann	Board Member/Assistant Secretary	Present	
Victoria Storrs	Board Member	Present	
Sandra Shapard	Board Member	Present	
Tim Maniccia	Board Member	Absent	
Pat Bulgaro	Board Member	Absent	
Thomas P. Connolly	Executive Director/Agency Counsel	Present	
Joe Scott	Bond Counsel	Present	
Allen F. Maikels	CFO and Contracting Officer	Present	
Elizabeth Staubach	Senior Planner/ED Coordinator	Present	
Robin Nagengast	Assistant to the Executive Director	Present	
Robert Leslie	Director of Planning	Present	
John Clarkson	Town Supervisor	Present	

II. Minutes Approval

Friday, December 18, 2015

RESULT: ACCEPTED AS AMENDED [UNANIMOUS]
MOVER: Joseph P. Richardson, Board Member/Vice Chairman
SECONDER: Sandra Shapard, Board Member
AYES: Venezia, Richardson, McCann, Storrs, Shapard
ABSENT: Tim Maniccia

III. Reports of Committees

- **REPORT OF AUDIT COMMITTEE MEETING JANUARY 6, 2016 (VENEZIA)**

Chairman Venezia reported out on the January 6 Audit Committee meeting.

- **DRAFT MINUTES OF AUDIT COMMITTEE MEETING 1/6/16**

- **RATIFY ENGAGEMENT OF CUSACK & COMPANY AS AUDITORS/RESOLUTION (VENEZIA)**

Upon motion by Ms. Storrs, seconded by Mr. Richardson, and approved by all members present, the engagement of Cusack & Co as auditors of the Agency's financial statements for the year ending December 31, 2015 was ratified.

RESULT: APPROVED [UNANIMOUS]
MOVER: Victoria Storrs, Board Member
SECONDER: Joseph P. Richardson, Board Member/Vice Chairman
AYES: Venezia, Richardson, McCann, Storrs, Shapard
ABSENT: Tim Maniccia

- **REPORT OF GOVERNANCE COMMITTEE/RESIGNATION OF PAT BULGARO EFFECTIVE 1/31/16 /LETTER TO SUPERVISOR & TOWN BOARD (RICHARDSON)**

Governance Committee Chair Richardson announced Mr. Bulgaro has resigned from the IDA effective 1/31/16. A letter was sent to Supervisor Clarkson and the Town Board recommending qualifications to be considered in appointing new members to the Agency,

IV. Communications

No update.

V. Old Business

- **PLANNING BOARD UPDATE (LESLIE)**

Monolith has applied for a building permit. Expiration of the project's site plan approval may be later than March because of an amendment done in June 2015. A new site on Frontage Road has been submitted that could be an IDA applicant. The Rosenblum project proposed for Route 144 near exit 22 will be on the February 10 Town Board agenda.

- **REPORT OF ED COORDINATOR (STAUBACH)**

Meetings are taking place with Rosenblum and prospective tenants. There is another small business resource roundtable scheduled at the Library on March 29. Statebook.com, a new site selector website will be rolled out February 1 and a town microsite can be hosted there

at no charge. There is a new director of leasing and marketing at Picotte. A tour of Glenmont Abbey is scheduled for January 28.

- **COLUMBIA 15 PROJECT (CONNOLLY)**

The developer is seeking 2-3 more tenants before proceeding.

- **SAE SUN (MONOLITH) PROJECT (SCOTT)**

Monolith is in the process of obtaining a mortgage loan commitment.

- **A. EXPIRATION OF APPROVING RESOLUTION ON 2/27/16 (CONNOLLY)**

Mr. Connolly sent separate emails to Columbia Development and SAE Sun (Monolith) notifying them that the approving resolution would terminate on February 27, 2016. The Company plans to apply for an extension of the approving resolution.

VI. New Business

- **FINANCIAL STATEMENTS 12/31/15 (MAIKELS)**

Mr. Maikels presented the financial report for December 2015. Income for 2015 was \$42,423 under budget. The shortfall was expected as there were no closings and the amount billed to PSEG for usage was low.

- **OSC AUDIT (CONNOLLY)**

No new information about the OSC Audit.

- **CONSENT TO LEASE ALBANY ENTERPRISES, LLC (CONNOLLY/SCOTT)**

Albany Enterprises would like to lease space on the rooftop of 9 Vista to Empire for a telecommunications antenna. It was agreed that the IDA has no issues or objections.

Upon motion by Ms. Shapard, seconded by Mr. Richardson, with all members present in favor, the Agency granted consent to Albany Enterprises to lease a portion of its building to Empire Site Communications Management, Inc. And authorized the Chairman to execute a consent document.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sandra Shapard, Board Member
SECONDER:	Joseph P. Richardson, Board Member/Vice Chairman
AYES:	Venezia, Richardson, McCann, Storrs, Shapard
ABSENT:	Tim Maniccia

- **2015 OPERATIONS AND ACCOMPLISHMENTS/RESOLUTION (CONNOLLY)**

Mr. Connolly presented the Agency's 2015 Operations and Accomplishments.

Upon motion by Mr. Richardson, seconded by Ms. Shapard, with all members present in favor, the Agency approved the 2015 Operations and Accomplishments for posting to the IDA website.

RESULT: APPROVED [UNANIMOUS]
MOVER: Joseph P. Richardson, Board Member/Vice Chairman
SECONDER: Sandra Shapard, Board Member
AYES: Venezia, Richardson, McCann, Storrs, Shapard
ABSENT: Tim Maniccia

- **PROJECT QUESTIONNAIRES (MAIKELS)**

The annual project questionnaires were mailed at the end of December and beginning of January. Some have been completed and returned. Mr. Maikels will follow up on the remainder.

- **BILLING OF 2016 ADMINISTRATIVE FEES (MAIKELS)**

Invoices were sent to projects for over \$11,000 of administration fees. Checks have begun to come in.

- **BOARD EVALUATION REMINDER (CONNOLLY)**

2015 board evaluations are due.

- **REPORT PILOT BILL MONITORING FOR 1/1/16 (CONNOLLY)**

Mr. Connolly reviewed the PILOT bills with Town Comptroller Mike Cohen before they were sent and received and reviewed copies of the bills after they were sent. The next step will be to meet with Mr. Cohen to confirm the funds were distributed to the appropriate taxing jurisdictions.

- **REFORM LEGISLATION COMPLIANCE DOCUMENTATION STATUS (CONNOLLY)**

The reform legislation becomes effective June 15, 2016.

Mr. Connolly discussed the documents and language the Agency previously reviewed and revised to comply with new legislation.

- **B. RECAPTURE POLICY REVIEW PROCEDURE/RESOLUTION (CONNOLLY)**

Based on prior discussions, additional recapture language regarding agency review has been drafted.

Upon motion by Ms. Storrs, seconded by Mr. Richardson, with all members present in favor, the Agency approved adding the following language to the Project Benefit Agreement and then adopted the revised Project Benefit Agreement attached to these minutes as Appendix A as the Agency's policy on the recapture of benefits with said policy to be added to the Agency's Uniform Tax Exemption Policy.

(F) Agency Review of Recapture Determination.

If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have fourteen (14) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (iv) no action.

(9) failure by the Company to make an actual investment in the Project by the Project's construction completion date equal to or exceeding 80% of the Total Project Costs as set forth in the Company's application for Financial Assistance.

Motion To: add the language set forth above to the Project Benefit Agreement and then adopt the revised Project Benefit Agreement attached to these minutes as Appendix A as the Agency's policy on the recapture of benefits with said policy to be added to the Agency's Uniform Tax Exemption Policy.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Victoria Storrs, Board Member
SECONDER:	Joseph P. Richardson, Board Member/Vice Chairman
AYES:	Venezia, Richardson, McCann, Storrs, Shapard
ABSENT:	Tim Maniccia

- **A. UNIFORM AGENCY PROJECT AGREEMENT (SCOTT/CONNOLLY)**

Updating the name for the projects benefit agreement to match the statute will comply exactly with the reform legislation. The document, attached as Appendix A, will now be called the Uniform Agency Project Agreement. There isn't a policy change and the name change doesn't need to be voted on by the Board.

- **ANNUAL & REGULAR MEETING - FRIDAY, FEBRUARY 26, 2016 8:00 A.M. AUDITORIUM**

Chairman Venezia verified there will be a quorum for the March 25 Regular meeting.

The next Regular meeting and the Annual meeting are scheduled for February 26 at 8am.

- **AUDIT COMMITTEE MEETING - MARCH 4, 2016 8:00 A.M. 101A**

The next Audit Committee meeting is scheduled for March 4 at 8:00am

VII. Adjournment

Motion To: Adjourn

RESULT: ADJOURN [UNANIMOUS]
MOVER: Sandra Shapard, Board Member
SECONDER: Victoria Storrs, Board Member
AYES: Venezia, Richardson, McCann, Storrs, Shapard
ABSENT: Tim Maniccia

VIII. Appendix A (Project Management Agreement)

DRAFT FOR DISCUSSION PURPOSES ONLY

DATED: SEPTEMBER 17, 2015

CLOSING ITEM NO.: ____

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

AND

[BORROWER]

PROJECT BENEFITS AGREEMENT

DATED AS OF [DOCUMENTDATE]

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED AT [PROJECTADDRESS] IN [PROJECTCITY], [PROJECTCOUNTY], NEW YORK.

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Form of

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Copy of

PROJECT BENEFITS AGREEMENT

THIS PROJECT BENEFITS AGREEMENT dated as of [DocumentDate] (the “Project Benefits Agreement”) by and among TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the “Agency”) and [BORROWER], [BorrowerType] duly organized and validly existing under the laws of the [BorrowerJurisdiction] having an office for the transaction of business located at [BorrowerStreet], [BorrowerCityState] [BorrowerZip] (the “Company”);.

WITNESSETH :

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of 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 purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1973 of the State (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in [ApplicationMonthYear], [Borrower] (the “Company”), a [BorrowerType] duly organized and validly existing under the laws of the [BorrowerJurisdiction], presented an application (the “Application”) to the Agency, which Application requested that the Agency

consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) [ProjectDescription]; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer 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, by resolution adopted by the members of the Agency on [PublicHearingResolutionDate] (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the [AgencyDirectorTitle] of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, 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 [PublicHearingMailDate] to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted (1) on [PublicHearingPostDate] at [PublicHearingPostLocation] in [PublicHearingCity], New York and (2) on the Agency’s website, (C) caused notice of the Public Hearing to be published on [PublicHearingPublishDate] in [PublicHearingNewspaper], a newspaper of general circulation available to the residents of [ProjectCity], New York, (D) conducted the Public Hearing on [PublicHearingDate] at [PublicHearingTime], local time [PublicHearingPlace] in [PublicHearingCity], [PublicHearingCounty], New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on [PreliminarySeqrResolutionDate] (the “Preliminary SEQR Resolution”), the Agency (A) determined (1) that the Project involves more than one “involved agency”, and (2) that, although the Project may constitute an “unlisted action”, and coordinated review and notification of other involved agencies is strictly optional with respect to the Project, the Agency wished to investigate the advisability of undertaking a coordinated review with respect to the Project and (B) authorized the [AgencyDirectorTitle] of the Agency to contact all other “involved agencies” for the purpose of ascertaining whether such “involved agencies” were interested in undertaking a coordinated review of the Project and, if so, designating a “lead agency” with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, further pursuant to SEQRA, by [FinalSeqrDocument] [FinalSeqrDocumentMethod] by the [FinalSeqrLead] on [FinalSeqrResolutionDate] (the “[FinalSeqrDocumentReference]”), the [FinalSeqrLead] [FinalSeqrDetermination]; and

WHEREAS, by further resolution adopted by the members of the Agency on [ApprovingResolutionDate] (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into (or accept) various documents with respect to the Project (collectively, the “Lease Documents”), including but not limited to the following:

(A) a certain lease to agency dated as of [DocumentDate] (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”) for a lease term ending on [EndLeaseDate];

(B) a certain license agreement dated as of [DocumentDate] (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined);

(C) a bill of sale dated as of [DocumentDate] (the “Bill of Sale to Agency”) from the Company to the Agency, pursuant to which the Company will convey to the Agency its interest in the portion of the Project Facility constituting fixtures and other personal property (including but not limited to the Equipment);

(D) a lease agreement dated as of [DocumentDate] (the “Lease Agreement”) between the Agency, as landlord, and the Company, as tenant, pursuant to which (1) the Company will agree (a) to cause the Project to be undertaken and completed, (b) as agent of the Agency, to undertake and complete the Project, and (c) to pay, as rent thereunder, the Agency’s administrative fee with respect to the Project, together with the Agency’s expenses relating thereto, and (2) the Agency will (a) agree to undertake the Project, (b) appoint the Company as agent of the Agency to undertake and complete the Project, (c) agree to lease the Project Facility to the Company for a lease term ending on the earlier to occur of (i) [EndLeaseDate] or (ii) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof, and (d) grant to the Company certain options to acquire the Project Facility from the Agency; and

(E) a project benefits agreement dated as of [DocumentDate] (the “Project Benefits Agreement”) by and between the Agency and the Company, pursuant to which, among other things, (1) the Agency will agree to provide the Company with certain Financial Assistance related to the Project, and (2) the Agency and the Company agree that (a) such agreement by the Agency to grant Financial Assistance related to the Project is contingent upon the success or lack of success of the Project in achieving certain described public benefits (the “Public Benefits”) and

(b) that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits; and

WHEREAS, to effectuate a sales and use tax exemption with respect to the Project Facility by reason of the involvement of the Agency with the Project, the Agency will enter into (or accept) various documents with respect to such sales and use tax exemption (collectively, the “Sales Tax Documents”), including but not limited to the following:

(A) the Lease Agreement, pursuant to which (1) the Agency will agree (a) to name the Company as agent of the Agency to undertake and complete the Project and (b) to file (with the New York State Department of Taxation and Finance) a New York State Department of Taxation and Finance Form ST-60 (the form required to be filed by the Agency pursuant to Section 874(9) of the Act) (the “Thirty Day Sales Tax Report”) and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”) and (2) the Company will agree (a) to cause the Project to be undertaken and completed, (b) as agent of the Agency, to undertake and complete the Project, and (c) to annually file (and cause any sublessee or other operator of the Project Facility to annually file), with the New York State Department of Taxation and Finance, a New York State Department of Taxation and Finance Form ST-340 (the form required to be filed by any agent of the Agency pursuant to Section 874(8) of the Act) (the “Annual Sales Tax Report”), indicating the value of all sales tax exemptions claimed by the Company (and all contractors, subcontractors, consultants and other agents of the Company) under the authority granted by the Agency to the Company pursuant to the Lease Agreement;

(B) a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; and

(C) a certain termination and recapture agreement dated as of [DocumentDate] (the “Sales Tax Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes constituting a part of the Financial Assistance; and

WHEREAS, to effectuate a real property tax exemption with respect to the Project Facility by reason of the involvement of the Agency with the Project, the Agency will enter into (or accept) various documents with respect to such real property tax exemption (collectively, the “Pilot Documents”), including but not limited to the following:

(A) a payment in lieu of tax agreement dated as of [DocumentDate] (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which (1) the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility to

the [PilotPayee] for distribution to each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) (each, an “Affected Tax Jurisdiction”), and (2) the Agency will agree to (a) execute a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a “Real Property Tax Exemption Form”) relating to the Project Facility,(b) file a copy of said Real Property Tax Exemption Form with the assessor of each Affected Tax Jurisdiction and (c) mail a copy of said Real Property Tax Exemption Form to the chief executive officer of each Affected Tax Jurisdiction; and

(B) a mortgage dated as of [DocumentDate] (the “Pilot Mortgage”) from the Company and the Agency to [PilotMortgagee] for the benefit of the Affected Tax Jurisdictions, securing (1) all past due and unpaid payments due to the Affected Tax Jurisdictions pursuant to the Payment in Lieu of Tax Agreement; and

WHEREAS, if the Company intends to finance the Project with borrowed money (a “Loan”), the Agency will enter into (or accept) various documents with respect to such Loan (collectively, the “Loan Documents”) (the Lease Documents, the Sales Tax Documents, the Pilot Documents and the Loan Documents are sometimes collectively referred to as the “Basic Documents”) (the Basic Documents and various certificates and opinions relating to the Project are sometimes collectively referred to as the “Closing Documents”), including but not limited to the following:

(A) a mortgage and any other security documents and related documents from the Agency and/or the Company to the Company’s lender with respect to the Project (“the “Lender”), which documents may grant a lien on and security interest in the Project Facility to secure such Loan from the Lender to the Company with respect to the Project; and

(B) any building loan and other agreements reasonably requested by the Lender in connection with the Loan; and

WHEREAS, (A) the Agency has established certain policies allowing denial of Financial Assistance to any project which does not deliver the public benefits promised at the time said project was approved by the Agency (the “Public Benefits”), (B) the Agency is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Agency has created this Project Benefits Agreement in order to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance that has been granted to the Company under the Basic Documents if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the Company desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Project Benefits Agreement in order to secure such Financial Assistance from the Agency: and

WHEREAS, all things necessary to constitute this Project Benefits Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Project Benefits Agreement have in all respects been duly authorized by the Agency and the Company;

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 TO WIT:

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. The following words and terms used in this Project Benefits Agreement shall have the respective meanings set forth below, or the definitions set forth in the Lease Agreement, unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the Company to the Agency in [ApplicationMonthYear] with respect to the Project, in which the Company (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Basic Documents” means the Conveyance Documents, the Lease Agreement, the Payment in Lieu of Tax Agreement, the Project Benefits Agreement, the Loan Documents and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

“Completion Date” means the earlier to occur of (A) _____ or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Contract Employee” means (A) a full-time, private-sector employee (or self employed individual) that is not on the Company’s payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self employed individuals) that are not on the Company’s payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

“Conveyance Documents” means, collectively, the Lease to Agency, the License to Agency and the Bill of Sale to Agency.

“Equipment” shall have the meaning set forth in the Lease Agreement.

“Facility” shall have the meaning set forth in the Lease Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the Company’s payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company’s payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.

“Land” means an approximately [LandSizeShort] parcel of land located at [ProjectAddress] in [ProjectCity], [ProjectCounty] New York.

“Lease Agreement” means the lease agreement dated as of [DocumentDate] by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of [DocumentDate] by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

“Project” shall have the meaning set forth in the Lease Agreement.

“Project Benefits Agreement” means the project benefit agreement dated as of [DocumentDate] by and between the Agency and the Company, pursuant to which among other things, the Agency and the Company have agreed to certain conditions relating to the granting of Financial Assistance, as said Project Benefit Agreement may be amended or supplemented from time to time.

“Project Facility” means, collectively, the Land, the Facility and the Equipment.

“Recapture Events” shall mean the following:

- (1) failure to complete the acquisition, construction and installation of the Project Facility;
- (2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) hereof;
- (3) liquidation of substantially all of the Company’s operating assets and/or cessation of substantially all of the Company’s operations;
- (4) relocation of all or substantially all of Company’s operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (5) transfer of jobs equal to at least fifteen percent (15%) of the Company’s Employment Level out of the Town of Bethlehem, New York;
- (6) failure by the Company to comply with the annual reporting requirements or to provide the Agency with requested information;
- (7) sublease of all or part of the Project Facility in violation of the Basic Documents;
- (8) a change in the use of the Project Facility, other than as a [ProjectUse] and other directly and indirectly related uses, or

(9) failure by the Company to make an actual investment in the Project by the Project's construction completion date equal to or exceeding 80% of the Total Project Costs as set forth in the Company's application for Financial Assistance.

“Recapture Period” means a period of [RecapturePeriod].

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into this Project Benefits Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Project Benefits Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Project Benefits Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is [BorrowerType] duly organized and validly existing under the laws of the [BorrowerJurisdiction], is duly authorized to do business in the State of New York and has the power under the laws of the [BorrowerJurisdiction] to enter into this Project Benefits Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement, and by proper action of its board of directors has been duly authorized to execute, deliver and perform this Project Benefits Agreement.

(B) Authorization. The Company is authorized and has the power under its [BorrowerOrganizationDocument], [BorrowerOperatingDocument] and the laws of the [BorrowerJurisdiction] to enter into this Project Benefits Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement. By proper action of its [BorrowerGoverningBody], the Company has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Project Benefits Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement by (and the execution, delivery and performance of this Project Benefits Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Project Benefits Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its [BorrowerOrganizationDocument], [BorrowerOperatingDocument] or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Project Benefits Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) 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 Company under the terms of any of the foregoing, and this Project Benefits Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Project Benefits Agreement by the Company or as a condition to the validity of this Project Benefits Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In the Application, the Company certified to the Agency employment information with respect to the Project Facility and the operations of the Company. In reliance on the certifications provided by the Company in the Application, the Agency has agreed to provide the Company with the following Financial Assistance related to the Project:

(1) sales and use tax exemptions: \$ _____

(2) a mortgage recording tax exemption: \$ _____

(3) a real property tax exemption: \$ _____

(B) Description of Project and Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the Company and the Agency with respect to the Company's request for Financial Assistance from the Agency with respect to the Project, the Company has represented to the Agency as follows:

(1) That the Project is described as follows: [ProjectDescription]

(2) That the Project will furnish the following benefits to the residents of [Sponsor], New York (the "Public Benefits"): [PublicBenefits].

(C) Payment in Lieu of Tax Agreement. A copy of the Payment in Lieu of Tax Agreement is attached as Exhibit C. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a [table or formula] describing the amount of payments in lieu of taxes to be made.

(D) Contingent Nature of the Financial Assistance. The Agency and the Company agree that the purpose of the Project is to create or retain permanent private sector jobs in the Town of Bethlehem, New York in the form of direct employees at the Project Facility. Accordingly, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to the success or lack of success of the Project in achieving this goal.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing - Closing Date. To file with the Agency, prior to the Closing Date, an employment plan, based on the employment projections contained in the Application, in substantially the form attached as Exhibit G to the Lease Agreement.

(B) Filing - Annual. To file with the Agency, on an annual basis, within sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the Project Facility and certain other matters, including as required under Applicable Law, the initial said annual employment report (the "Annual Report") to be in substantially the form annexed as Exhibit H to the Lease Agreement.

(C) Employment Listing. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)).

(D) Employment Consideration. Except as otherwise provided by collective bargaining agreement, to first consider, where practicable, for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(E) Employment Level. (1) To maintain the following employment level (the "Employment Level") during the term of the Lease Agreement, beginning no later than _____ (__) years after the Completion Date:

Total Employees:	[_____] Full Time Equivalent Employees
------------------	--

For purposes of determining the number of Full Time Equivalent Employees, no more than ten percent (10%) of such Full Time Equivalent Employees may consist of Contract Employees.

(2) To submit the following reports for the purpose of verifying that the Company is achieving the Employment Level: (a) by the 15th day of the first calendar month of each new quarter, a form NYS-45 (the "Quarterly Report," a copy of which is attached hereto as Exhibit A) or some other form of reporting that is explicitly approved by the Agency, and (b) by February 1 of each year during the term of this Project Benefits Agreement, a project and employment plan status report (the "Status Report," a copy of which is attached hereto as Exhibit B and, together with the Annual Report described in Section 3.02(B) above, being collectively referred to as the "Employment Affidavits") or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Project Benefits Agreement shall be determined by calculating the average number of Full Time Equivalent Employees for the prior calendar year, computed by adding the number of Full Time Equivalent Employees as of the Company's last payroll date in the months of March, June, September and December and dividing that sum by 4.

(F) Non-Discrimination. (1) To not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) To state in substance, in all solicitations or advertisements for employees placed by or on behalf of the Company during the term of this Project Benefit Agreement, that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Project Benefits Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Project Benefits Agreement, any one or more of the following events:

(1) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Project Benefits Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(2) The occurrence of an “Event of Default” under any other Basic Document.

(3) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement, and (b) all other payments due under this Project Benefits Agreement or any of the other Basic Documents; or

(2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency’s right, title and interest in and to the Project Facility (The conveyance of the Agency’s right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency and the Bill of Sale to

Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Project Benefits Agreement.

(B) No action taken pursuant to this Section 4.02 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Project Benefits Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company to provide for the recapture of the project financial assistance (the "Project Financial Assistance"), all in accordance with the terms of this Section 4.03. The Company hereby agrees if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

(B) Project Financial Assistance. The Project Financial Assistance to be recaptured, as adjusted by the provisions of Section 4.03(C) below, by the Agency from the Company upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to a percentage (as provided in subsection (C) below) multiplied by the sum of the following:

(1) the portion of the amount of New York State sales and use taxes allocable to Albany County that the Company would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency;

(2) the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project; and

(3) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.

(C) Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the Company shall pay to the Agency the following amounts as recapture:

Year	Amount of Recapture
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance
	__% of the Project Financial Assistance

(D) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of Project Financial Assistance pursuant to this Section 4.03, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Taxing Entity that would have received such amount but for the granting by the Agency of the Project Financial Assistance.

(E) Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Lease Agreement.

(F) Agency Review of Recapture Determination. If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have fourteen (14) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (iv) no action.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Project Benefits Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 5.05 of this Project Benefits Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Project Benefits Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) 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 be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Project Benefits Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Benefits Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Project Benefits Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Project Benefits Agreement.

(D) No Waiver. In the event any provision contained in this Project Benefits Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Project Benefits Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. This Project Benefits Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Project Benefits Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Project Benefits Agreement shall continue to remain in effect until [BenefitAgreementTerminationDate].

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Project Benefits Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Project Benefits Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

[Borrower]

[BorrowerStreet]

[BorrowerCityState] [BorrowerZip]

Attention: [BorrowerContact]

WITH A COPY TO:

[BorrowerCounselFirm]

[BorrowerCounselStreet]

[BorrowerCounselCityState] [BorrowerCounselZip]

Attention: [BorrowerCounsel1]

IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency

Town Hall, 445 Delaware Avenue

Delmar, New York 12054

Attention: Chairman

WITH A COPY TO:

Town of Bethlehem Industrial development Agency

Town Hall, 445 Delaware Avenue

Delmar, New York 12054

Attention: Thomas P. Connolly, Esq., Executive Director and Agency Counsel

and

Hodgson Russ LLP

677 Broadway, Suite 301

Albany, New York 12207

Attention: A. Joseph Scott, III, Esq.

(C) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Project Benefits Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Project Benefits Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Project Benefits 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 Project Benefits 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 5.08. COUNTERPARTS. This Project Benefits 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 5.09. APPLICABLE LAW. This Project Benefits Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Project Benefits Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____

(Vice) Chairman

[BORROWER]

BY: _____

Authorized Officer

SPECIAL PROJECT CERTIFICATION

As required under Section 859-a (6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

[BORROWER]

BY: _____

Authorized Officer

STATE OF NEW YORK)

) ss.:

COUNTY OF)

On the ____ day of [NotaryMonth], in the year [NotaryYear], before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF)

On the ____ day of [NotaryMonth], in the year [NotaryYear], before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A

QUARTERLY REPORT

- SEE ATTACHED -

Withholding identification number



Part D - Form NYS-1 corrections/additions

Use Part D **only** for corrections/additions for the quarter being reported in Part B of **this** return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete **only** columns c and d. Lines 12 through 15 on the front of this return **must** reflect these corrections/additions.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
▶			
▶			
▶			
▶			
▶			
▶			

Part E - Change of business information

- 22. This line is not in use for this quarter.
- 23. If you **permanently ceased paying wages**, enter the date (mmddy) of the final payroll (see Note below)
- 24. If you **sold or transferred all or part of your business**:
 - Mark an **X** to indicate whether in **whole** or in **part**
 - Enter the date of transfer (mmddy)
 - Complete the information below about the acquiring entity

Legal name	EIN
Address	

Note: For questions about other changes to your withholding tax account, call the Tax Department at (518) 485-6654; for your unemployment insurance account, call the Department of Labor at (518) 485-8589 or 1 888 899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRN	Preparer's SSN or PTIN	Mark an X if self-employed <input type="checkbox"/>
	Preparer's firm name (or yours, if self-employed)	Address		Firm's EIN	Telephone number ()
Payroll service's name				Payroll service's EIN	

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to *NYS Employment Contributions and Taxes*.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-1 if you need forms or assistance.

Mail to:

**NYS EMPLOYMENT
CONTRIBUTIONS AND TAXES
PO BOX 4119
BINGHAMTON NY 13902-4119**

NYS-45 (2/13) (back)

EXHIBIT B

ANNUAL STATUS REPORT

COMPANY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

RETAINED JOBS

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Contract Employees					

CREATED JOBS

ProfessionalS killedSemi- SkilledUn- SkilledTotal					
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Contract Employees					

Officer's Certification

I, the Undersigned, duly elected and appointed _____ (*Title*) of [Borrower], a [BorrowerType] (the "Company") do hereby certify, pursuant to the requirements of a Project Benefit Agreement dated as of [DocumentDate] by and between the Company and Town of Bethlehem Industrial Development Agency, the following:

- (A) That all information provided on this form is complete, true and accurate, and

- (B) That the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created described in the Application are still complete, true and accurate.

_____ (*Officer's Signature*)

_____ (*Printed*)

EXHIBIT C

COPY OF PAYMENT IN LIEU OF TAX AGREEMENT