
IN THE MATTER OF TAXATION

OF

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

The undersigned, being duly sworn, deposes and says that :

1. He resides in Town of Bethlehem, New York, and is the (Vice) Chairman of Town of Bethlehem Industrial Development Agency (the "Agency") a public benefit corporation of the State of New York, established by Title 1 of Article 18-A of the General Municipal Law of the State of New York and Chapter 582 of the Laws of 1973 of the State of New York (collectively, the "Act").

2. On or about March 20, 2013, the Agency will acquire an interest in a parcel of land located at 1565 & 1569 Route 9W in the Town of Bethlehem and the Hamlet of Selkirk, Albany County, New York, (the "Land"), pursuant to a license to Agency dated as of March 1, 2013 (the "License to Agency") from Finke Enterprises, LLC (the "Company"), to the Agency and a certain lease dated as of March 1, 2013 (the "Underlying Lease") between the Agency and the Company, said Land being more particularly described in Exhibit A attached hereto.

3. Pursuant to Section 874 of the Act and Section 1405(b)(1) of the Tax Law of the State of New York, no real estate transfer tax is due upon the instruments conveying the Land to the Agency.

4. On or about March 20, 2013, the Agency will grant certain "financial assistance" within the meaning of the Act (the "Financial Assistance") in connection with a project (the "Project") being undertaken by the Agency consisting of the following: (A)(1) the acquisition of an interest in a parcel of land containing approximately 17.0 acres consisting of 2 parcels located at 1565 & 1569 Route 9W (Tax ID # 133.00-1-38 and 133.00-1-39.15) in the Town of Bethlehem and the Hamlet of Selkirk, Albany County, New York (the "Land"), (2) the demolition of two existing buildings located on the Land and containing approximately 11,000 and 11,750 square feet of space respectively (collectively, the "Existing Facility"), (3) the construction on the Land of a building to contain approximately 56,000 square feet of space (the "Facility"), (4) the further construction on the Land of related parking and other infrastructure improvements (collectively, the "Improvements") and (5) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Land, the Existing Facility, the Facility, the Improvements and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and leased to Robert H. Finke & Sons, Inc. (the "Tenant") for use as a commercial facility for the sale, rental and repair of construction equipment and other directly and indirectly related uses; (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 and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of March 1, 2013 (the “Lease Agreement”) by and between the Company and the Agency, pursuant to which the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (D) the Agency will lease the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2024 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency.

5. In order to finance a portion of the costs of the Project, the Company will obtain a loan in the principal sum of up to \$6,080,000 (the “Loan”) from Pioneer Savings Bank (the “Lender”), which Loan will be secured by a building loan mortgage and security agreement dated as of the date of Closing (the “Mortgage”) from the Agency and the Company to the Lender.

6. Pursuant to the terms of the Lease Agreement, the Underlying Lease, the License to Agency, and the Mortgage, the Agency has agreed to record the Mortgage, the Underlying Lease (or a memorandum thereof), the License to Agency, the Lease Agreement (or memorandum thereof) and the Assignment of Rents in the office of the County Clerk of Albany County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

7. Pursuant to Article 18-A of the General Municipal Law, the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision or upon its activities, and any bonds or notes issued by the Agency, together with the income therefrom, as well as the property of the Agency, together with the income therefrom, as well as the property of the Agency, pursuant to such legislation, are exempt from taxation, except for transfer and estate taxes.

8. Deponent submits that no mortgage tax should be imposed upon the Underlying Lease (or a memorandum thereof), the License to Agency, the Lease Agreement (or a memorandum thereof) or the Mortgage (collectively, the “Recording Documents”) because (A) said Recording Documents are being executed and delivered under the state authority creating the Agency, (B) the use by the Agency of its powers to assist in the acquisition, construction and installation of the Project Facility is deemed by Article 18-A of the General Municipal Law to be a public purpose essential to the public interest and (C) both the New York State Department of Taxation and Finance (the “Department”) and the Counsel to the Department have expressed their opinion that the recording of similar documents by similar agencies are operations of said agencies entitled to exemption from the mortgage recording tax.

IN WITNESS WHEREOF, the Agency has caused this affidavit to be executed in its name by its duly authorized officer described below and dated as of the 19th day of March, 2013.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: 
(Vice) Chairman

Sworn to before me this
19th day of March, 2013.

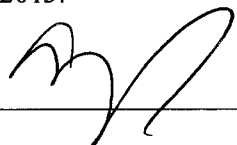

Notary Public
A. Joseph Scott III
Notary Public, State of New York
Qualified in Albany County
No. 02SC4811591
Commission Expires December 31, 2014

EXHIBIT A

The Land consists of the Leased Land (as described below) and the Licensed Land (as described below).

DESCRIPTION OF THE LEASED LAND

A leasehold interest (the "Leased Land") created by a certain lease to agency dated as of March 1, 2013 (the "Lease to Agency") between Finke Enterprises, LLC (the "Company"), as landlord, and Town of Bethlehem Industrial Development Agency (the "Agency"), as tenant, in an approximately 17.0 acre parcel of land (the "Leased Land") located at 1565 & 1569 Route 9W in the Town of Bethlehem and the Hamlet of Selkirk, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the "Leased Premises"):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Bethlehem and Hamlet of Selkirk, Albany County, New York, bounded and described as follows:

SEE ATTACHED

DESCRIPTION OF THE LICENSED LAND

A license interest (the "Licensed Land") created by a certain license agreement dated as of March 1, 2013 (the "License to Agency") between Finke Enterprises, LLC (the "Company"), as licensor, and Town of Bethlehem Industrial Development Agency (the "Agency"), as licensee, in an approximately 17.0 acre parcel of land (the "Licensed Land") located at 1565 & 1569 Route 9W in the Town of Bethlehem and Hamlet of Selkirk, Albany County, New York, said Licensed Land being more particularly described below), together with any improvements now or hereafter located on the Licensed Land (the Licensed Land and all such improvements being sometimes collectively referred to as the "Licensed Premises"):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Bethlehem and Hamlet of Selkirk, Albany County, New York, bounded and described as follows:

SEE ATTACHED

PARCEL 1

All that certain tract, piece or parcel of land together with buildings and improvement thereon situate, lying and being in the Town of Bethlehem, County of Albany, State of New York, more particularly bounded and described as follows:

Beginning at a point located in the southeasterly corner of the premises herein described at its intersection with the westerly line of US Route 9W, said point being further located in the southerly line of the Town of Bethlehem, at its intersection of the northerly line of the Town of Coeymans, and thence turning and running from said point and along the southerly line of the premises herein described and the northerly line of the lands now or formerly of Boehlke (L. 2986 p. 622); Sadowski (L. 3020, p. 679), and Brown (L. 2967, p. 405), on a bearing of N 68 deg. 11 min. 13 sec. W a distance of 1,220.56 feet to a point in the southwesterly corner of the premises herein described; thence turning and running from said point and along the easterly line of Miller Road the following courses and distances: in a general northerly direction with a curve to the right, having a radius of 164.91 feet, a central angle of N 57 deg. 18 min. 48 sec. E; an arc length of 164.96 feet and whose chord bears N 46 deg. 04 min. 52 sec. E 158.17 feet to a point; thence N 17 deg. 25 min. 28 sec. E tangent to the last mentioned curve and continuing along said highway 70.43 feet to a point; thence N 16 deg. 14 min. 30 sec. E continuing along said highway 190.70 feet to a point; thence N 19 deg. 09 min. 07 sec. E continuing along said highway 81.49 feet to a point; thence in a general northeasterly direction continuing along said highway with a curve to the right having a radius of 41.65 feet; a central angle of 84 deg. 59 min. 20 sec.; an arc length of 61.78 feet, and whose chord bears N 61 deg. 38 min. 47 sec. E 56.27 feet to a point in the southerly line of Pictuay Road, said point being the northwesterly corner of the premises herein conveyed; thence turning and running from said point and along the southerly line of Pictuay Road the following courses and distances: S 75 deg. 51 min. 35 sec. E tangent to the last mentioned curve 363.37 feet to a point; thence S 78 deg. 44 min 26 sec. E 74.06 feet to a point; thence in a general easterly direction with a curve to the left having a radius of 241.64 feet, a central angle of 46 deg. 18 min. 14 sec., an arc length of 195.28 feet, and whose chord bears N 78 deg. 06 min. 27 sec. E 190.01 feet to a point; thence turning and running from said point and along the southerly line of the lands now or formerly of Niagara Mohawk Power Corporation, now known as National Grid, and along the northerly line of the parcel herein described on a bearing of S 62 deg. 39 min. 20 sec. E 328.14 feet to a point; thence turning and running from said point and along the westerly and then southerly line of the lands now or formerly of Hillmann (L. 2354, p. 613) the following courses and distances: S 32 deg. 36 min. 30 sec. W 155.96 feet; S 42 deg. 17 min. 52 sec. E 76.56 feet, and S 71 deg. 18 min. 14 sec. E 204.71 feet to a point in the westerly line of US Route 9W, said point being also located in the northeasterly corner of the premises herein described; thence turning and running from said point and along the westerly line of US Route 9W the following courses and distances: S 28 deg. 10 min. 57 sec. W 312.61 feet; S 17 deg. 18 min. 57 sec. W 126.50 feet, and S 29 deg. 05 min. 48 sec. W 45.04 feet to the point and place of beginning (containing 15.78 acres of land).

PARCEL 2

Beginning at a point in the northwesterly line of U.S. Route 9W at its point of intersection with the division line between lands on the southwest acquired by Niagara Mohawk Power Corporation and lands on the northeast of the herein described parcel; thence running from said point of beginning N 62 deg. 39 min. 20 sec. W along said division line 472.72 feet to a point in the southerly line of a town highway commonly known as Pictuay Road; thence in a general easterly direction along the southerly line of said highway with a curve to the right having a radius of 404.16 feet, a central angle of 40 deg. 54 min. 19 sec., an arc length of 288.55 feet and whose chord bears N 80 deg. 52 min. 38 sec. E 282.46 feet to a point; thence S 38 deg. 40 min. 33 sec. E along the northeasterly line of the herein described parcel of land 83.29 feet to a point; thence S 78 deg. 45 min. 15 sec. E along the northerly line of the herein

described parcel of land 27.70 feet to a point; thence S 70 deg. 26 min. 29 sec. E continuing along the northerly line of the herein described parcel of land 146.03 feet to a point in the first mentioned northwesterly line of U.S. Route 9W marked by a concrete monument; thence S 27 deg. 59 min. 33 sec. W along the northwesterly line of US Route 9W 161.51 feet to the point and place of beginning.