

CLOSING ITEM NO.: B-4

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

445 Delaware Avenue
Delmar, New York 12054

March 20, 2013

To Whom It May Concern:

Re: New York State Sales or Use Tax Exemption
Town of Bethlehem Industrial Development Agency
Finke Enterprises, LLC Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), Finke Enterprises, LLC (the "Company") has requested a letter from Town of Bethlehem Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located at 1565 & 1569 Route 9W in the Town of Bethlehem and the Hamlet of Selkirk, Albany County, New York (the "Project Site").

The Company has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes 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 Agency and the Company. Please be advised that on or about March __, 2013, the Agency executed and delivered the Lease Agreement, pursuant to which the Agency appointed the Company as agent of the Agency to acquire, construct and install the Project Facility, said appointment intending by the Agency to be retroactive to December 12, 2012.

The Company, as agent of the Agency, is authorized to make purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project, and purchases or rentals of supplies, tools, equipment, or services necessary to acquire, construct, reconstruct or install the Project.

To ensure that the above purchases or rentals are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, the vendor must identify the Project on each bill and invoice for such purchases and indicate on the bill or invoice that the Company as agent for the Agency was the purchaser (e.g., "Finke Enterprises, LLC, as agent for Town of Bethlehem Industrial Development Agency"). In addition, the following procedures should be observed:

1. Each bill and invoice should identify the date of delivery and indicate the place of delivery.
2. Payment should be made by the Company acting as agent, directly to the vendor from a requisition from a special project fund of the payor.
3. Deliveries should be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases should be billed or invoiced by the vendor to the Company as agent of the Agency, identify the date and place of delivery, the Agency's full name and address and the Project Site where the materials will ultimately be delivered for installation.

Pursuant to Section 874(8) of the Act, the Company, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

Pursuant to Section 874(9) of the Act, the Company, as agent of the Agency, must file within thirty (30) days of the date the Agency designates the Company as agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such manner as prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency.

This letter shall serve as proof of the existence of an agency contract between the Agency and the Company for the SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES AND USE TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

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Under the Policy Statement, a copy of this letter received by any vendor or seller to the Company as agent for the Agency, may be accepted by such vendor or seller as a “statement and additional documentary evidence of such exemption” as provided by New York State Tax Law Section 1132(c)(1), thereby relieving such vendor or seller from the obligation to collect sales and use tax on purchases or rentals of such materials, supplies, tools, equipment, or services by the Agency through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL JUNE 30, 2014.

TOWN OF BETHLEHEM

TO BID A

INDUSTRIAL DEVELOPMENT AGENCY

March 20, 2013

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In the event you have any questions with respect to the above, please do not hesitate to call Michael Morelli, Executive Director of the Agency, at 518-439-4955.

Very truly yours,

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

By: 
(Vice) Chairman

TOWN OF BETHLEHEM

TO BID

INDUSTRIAL DEVELOPMENT AGENCY