

On motion duly made and seconded, the following resolution was placed before the members of the Town of Bethlehem Industrial Development Agency, to wit:

RESOLUTION APPOINTING
_____ AS TEMPORARY
AGENT OF THE TOWN OF BETHLEHEM
INDUSTRIAL DEVELOPMENT AGENCY FOR THE
PURPOSE OF UNDERTAKING AND COMPLETING A
PROJECT TO BE LOCATED AT
_____, TOWN OF
BETHLEHEM, ALBANY COUNTY, NEW YORK.

WHEREAS, the Town of Bethlehem Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 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 Laws of 1973 Laws of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter, as amended and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, civic facilities, research and recreation facilities, among others, for the purpose of promoting, attracting, encouraging and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to enter into “straight lease transactions” to refinance the costs incurred for acquisition, construction and installation of one or more “projects” (as defined in the Act), and to convey said projects or to lease said projects (with or without an obligation to purchase); and

WHEREAS, _____, a New York limited liability company (the “Company”) has presented an application (the “Application”) to the Agency, copies of which are on file at the office of the Agency, requesting that the Agency consider providing Financial Assistance for the following project (the “Project”) consisting of: (A) (1) the acquisition of land located at _____, Town of Bethlehem in Albany County, New York (the “Land”) (2) the construction operation of an _____ facility of approximately _____ square feet (“the Facility”); and (3) the acquisition and installation therein and thereon of certain machinery and equipment related thereto (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”); (B) the financing of all or a portion of the costs of the foregoing by the issuance of revenue bonds of the Agency in one or more issues or series in an aggregate principal amount of approximately \$ _____ (the “Bonds”); (C) the granting of certain other

“financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from property taxes, real estate transfer taxes, sales tax and mortgage recording taxes (collectively with the Bonds, the “Financial Assistance”); and (D) 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.

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the financial assistance to be provided by the Agency will be an inducement to the Company to undertake the Project in the Town of Bethlehem, New York and (B) completion of the Project will not result in the removal of a commercial, industrial or manufacturing facility of the Company or any other proposed occupant of the Project Facility from one area of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency has determined that the procedural requirements of Section 859-a of the Act have been fulfilled and therefore has decided to proceed with the granting of the financial assistance described in Section 2 of the resolution adopted on October 3, 2002 (the “Inducement Resolution”) (the “Financial Assistance”); and

WHEREAS, although the documentation related to the issuance of the Bonds (as defined in the Inducement Resolution) has not yet been prepared, the Company has indicated to the Agency that the Company desires to commence the Project prior to issuance of the Bonds; and

WHEREAS, in order to preserve the sales tax exemption which forms a major portion of the Financial Assistance, the Agency now desires to formalize its understanding with the Company regarding the undertaking and completion of the Project by the Company, as agent of Agency;

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

Section 1. In order to grant the sales tax exemption which forms a major part of the Financial Assistance, and in order to facilitate the commencement of the Project, the Company is hereby temporarily appointed the true and lawful agent of the Agency (A) to undertake and complete the Project, as the stated agent for the Agency, (B) to make, execute, acknowledge and deliver all contracts, orders, receipts, writings and instruments necessary in connection therewith, and in general to do all things as may be requisite or proper for completing the Project with the same powers and the same validity as the Agency could do if acting in its own behalf, and (C) to pay all fees, costs, and expenses incurred in the undertaking and completion of the Project from its own funds, said appointment to last until six (6) months after the completion of construction, and said appointment is subject to the following conditions:

(1) The Company will, on behalf of the Agency, undertake and complete the Project in accordance with the plans (the “Plans”) of the Company described in the Inducement Resolution and the Application of the Company to the Agency.

(2) Title to all materials, equipment, machinery and other items of property intended to be incorporated in or installed as part of the Project shall vest in the Agency immediately upon delivery to the Project site, at which time such materials, machinery and other items of property shall become the sole property of the Agency. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third persons. Title to the Project shall be conveyed by the Agency to the Company pursuant to the provisions of the Inducement Agreement.

(3) All materials, equipment, machinery and other items of personal property intended to be incorporated in or installed as part of the Project shall be ordered and purchased by the Company, as agent of the Agency, and invoices therefore shall be directed to the Company, as agent of the Agency. The Agency hereby appoints the Company as agent of the Agency to make such purchases of said materials, equipment, machinery and other items of personal property, provided, however, that NO SUCH CONTRACT SHALL RESULT IN THE ASSUMPTION BY THE AGENCY OF ANY OBLIGATION TO PAY ANY COSTS AND EXPENSES, and the Company shall agree to pay all funds necessary to make all payments required under such contracts.

(4) The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for labor, services, materials and supplies, including equipment, ordered or used in connection with the undertaking and completion of the Project (including any expenses incurred by the Agency and its members, officers, agents, employees and servants, in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether or not such claims or liabilities arise as a result of the Company acting as agent for the agency pursuant to the authority conferred upon it by this Resolution.

(5) The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency (and its members, officer, agents, employees and servants) in defending any claims, suits or action which may result as a result of the foregoing.

(6) The Company shall give or cause to be given all notices and comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all governmental agencies and public authorities applying to or affecting the undertaking and completion of the Project (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project and as if the Company and not the Agency were deemed to be the owner of the Project), and the Company will defend and save the Agency and its officers, members, agents, employees and servants harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the under-taking and completion of the Project shall be procured promptly by the Company.

(7) The Company shall agree, and by executing this Resolution does agree, that as agent for the Agency the Company will comply with all laws applicable to the Agency in connection with the undertaking and completion of the Project by the Agency (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project and as if the Company and not the Agency were deemed to be the owner of the Project). Such laws shall include, if applicable, Article 8 of the Labor Law of the State of New York, as amended from time to time.

(8) Any costs or expenses incurred by the Agency or by the Company as agent of the Agency with respect to the Project shall, to the extent permitted by law and the Inducement Resolution, be paid by the Company.

(9) The Company shall supply the Chairman of the Agency with a general liability insurance policy naming the Company and the Agent as insureds and providing coverage in minimum amounts reasonably acceptable to the Chairman and Counsel of the Agency, including coverage for accidents or occurrences on account of personal injury, including death resulting therefrom, and damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, which insurance policies shall (a) also name the members, officers, agents, employees and servants of the Agency as additional insureds, as their interests shall appear, and (b) also provide contractual liability insurance coverage insuring the Company's obligations pursuant to paragraphs (5) and (6) hereof to indemnify, defend and save harmless the Agency and its members, officers, agents, employees and servants, as their interest shall appear.

(10) The Company shall supply the Chairman of the Agency with policies, or certificates evidencing such policies, of workmen's compensation insurance, disability benefits insurance and each other form

of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or the Agency who are located at or assigned to work on the Project.

(11) The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability of accountability based upon or in respect hereof or of any transaction contemplated hereby.

(12) The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Town of Bethlehem, New York, and neither the State of New York nor the Town of Bethlehem, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project (excepting funds payable pursuant to paragraphs (5), (6) and (14) hereof).

(13) Notwithstanding any provision of this resolution to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company and (b) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent (other than the Company), employee or servant of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

(14) Payment by the Company of the Agency's remaining portion of the administrative fee with respect to the Project.

(15) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that 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.

(16) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (a) the New York State Department of Labor Community Services Division and (b) 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 is located. The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(17) The following additional conditions: On or before _____, 2004, and _____ of each year thereafter, the Company will provide the Agency with sufficient information so that the Agency can file a statement with the New York State Department of Taxation and Finance of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(18) The Company's status as agent of the Agency with respect to the Project unless otherwise agreed to by the Agency, shall expire on June 30, 2004.

(19) All contract, purchase orders or invoices entered into by or on behalf of the Company as agent for the Agency shall contain the following language:

"This contract is made by _____ (the "Company") as agent for the Town of Bethlehem Industrial Development Agency (the "Agency"). The Agency's liability under this contract is limited to the amount, if any, advanced to the Agency by the Company pursuant to a separate agreement by and between the Agency and the Company."

Section 2. This Resolution shall take effect upon the date that all of the following shall have occurred: (a) the Company shall have accepted the provisions of this Application; (b) the Company shall have delivered two copies of this Resolution, with the acceptance clauses thereof fully executed by the Company, to the Chairman of the Agency; (c) the Company shall have obtained the insurance policies required by paragraphs (9) and (10) of Section 1 hereof and shall have delivered evidence thereof to the Chairman of the Agency, such evidence to be in such form as the Chairman of the Agency shall deem appropriate; (d) the Company shall pay one-half of the Agency's administrative fee with respect to the Project on the earlier of (i) the termination of the temporary appointment of the Company as agent of the Agency or (ii) the closing on the

proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters referred to therein.

I FURTHER CERTIFY that all members of said Agency had due notice of said meeting, that due notice of said meeting was given to the public and news media as required by Article 7 of the Public Officers Law and that the meeting was open to the public and that public notice of the time and place of said meeting was duly given in accordance with Article 7 of the Public Officers Law.

I FURTHER CERTIFY that there was a quorum of the members of the Agency present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this ____ day of _____.

Secretary

ACCEPTANCE

The Company hereby accepts the appointment to act as agent of the Agency in connection with the Project and the Company accepts the provisions of this Resolution, including the conditions contained in Section 2 of this Resolution, and agrees to comply with such provisions and conditions.

IN WITNESS WHEREOF, the Company has caused this Acceptance to be executed in its name as of this ____ day of _____, 2003.

By: _____

RECEIPT

The undersigned hereby acknowledges receipt of the items called for in Section 2 of this Resolution and acknowledges that therefore this Resolution is in full force and effect.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
F. Michael Tucker, Chairman