

Victoria Storrs
Chair
Vacant
Vice Chair/ Assistant Secretary

Tim Maniccia
Secretary

Richard Kotlow
Treasurer

David Kidera
Member

Vacant
Member

Christopher Bub
Member

TOWN OF BETHLEHEM
Albany County - New York
INDUSTRIAL DEVELOPMENT AGENCY

445 DELAWARE AVENUE
DELMAR, NEW YORK 12054
Telephone: (518) 439-4955
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518-439-4955*

Allen F. Maikels
*Chief Financial Officer and
Contracting Officer
518-487-4679*

John Taylor
*Senior Economic Developer
518-439-4955Ext. 1189*

Regular Meeting Agenda
Wednesday, June 22, 2022
8:30 AM
Town Hall Room 101

I. Call to Order/Roll Call/Quorum Approval

II. Minutes Approval Regular Meeting

1. Bethlehem Industrial Development Agency - Annual Meeting - March 25, 2022
8:00 AM

III. Reports of Committees

1. Report of the Finance Committee 6/16/2022 (Storrs)- new date
2. Composition of committees (Storrs)
3. Governance committee meeting needed

IV. Communications

1. ABO Audit of Agency Website (Hedgeman)

V. Old Business

1. Housekeeping – Room 101
2. Project Updates (Hedgeman)
 - Burt Crane
 - Port of Albany
3. Report of Senior Economic Developer (Taylor)

VI. New Business

1. Financial Statements (Maikels)
2. RESOLUTION AUTHORIZING NEW MORTGAGE – JUNE 2022
FINKE ENTERPRISES, LLC PROJECT
3. RESOLUTION AUTHORIZING NEW MORTGAGE – JUNE 2022 PSEG
POWER NEW YORK, INC. PROJECT

VIII. Adjourn

Attachments

Victoria Storrs
Chair

Vacant
Vice Chair/ Assistant Secretary

Tim Maniccia
Secretary

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Jared Finke
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John Taylor
*Economic Development
 Coordinator
 Ext. 1189*

Robin Nagengast
*Assistant Director
 Ext. 1164*

Regular Meeting Minutes
Friday, March 25, 2022
8:00 AM
Town Hall Auditorium

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 8:05 AM with the presence of a quorum noted.

Attendee Name	Title	Status	Arrived
Victoria Storrs	Chair	Present	
Tim Maniccia	Secretary	Present	
Richard Kotlow	Treasurer	Present	
David Kidera	Board Member	Present	
Jared Finke	Board Member	Absent	
Christopher Bub	Board Member	Present	
Catherine Hedgeman	Executive Director/Agency Counsel/Asst Secretary	Present	
Allen F. Maikels	CFO and Contracting Officer	Present	
Robin Nagengast	Assistant Executive Director	Present	
John Taylor	Senior Economic Developer	Present	
Joe Scott	Bond Counsel	Remote	

II. Minutes Approval Annual Meeting

1. Friday, February 25, 2022

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Richard Kotlow, Treasurer
SECONDER: Tim Maniccia, Secretary
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

III. Minutes Approval Regular Meeting

1. Friday, February 25, 2022

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Richard Kotlow, Treasurer
SECONDER: Christopher Bub, Board Member
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

IV. Reports of Committees

- **REPORT OF THE GOVERNANCE COMMITTEE 3/18/2022 (KIDERA)**

Governance Committee Chair David Kidera reported on the March 18, 2022 meeting.

Summary of board assessment for 2022: There were some lower scores for availability of information and time for decision making.

Review of Agency By-Laws: changes needed to include a vice chair description, update language to be gender neutral, proposed revision to Section 7 order of business, reading of the minutes.

Executive Director Evaluation approved by the Agency in 2021: procedure for conducting evaluation to be determined by Committee.

A Projects Committee has been proposed to assist the full Board with an early review of applications and by monitoring ongoing projects.

V. Communications

- **ABO AUDIT OF AGENCY WEBSITE**

The Authorities Budget Office has provided notice of an audit of the Agency website. Changes, where needed, will be made accordingly.

VI. Old Business

- **PROJECT UPDATES (HEDGEMAN)**

Plug Power is moving forward. The SEQRA review for the Albany Port District Commission project has been completed and the Agency is now in a position to consider the project.

- **REPORT OF SENIOR ECONOMIC DEVELOPER (TAYLOR)**

Mr. Taylor reported that besides the Port SEQRA review completion there are no other Planning Board/Development Planning Committee updates affecting BIDA.

The Microenterprise Grant Program received 5 applications that are currently under review and he is expecting possibly 5 more.

VII. New Business

- **FINANCIAL STATEMENTS 2/28/22 (MAIKELS)**

Mr. Maikels reported on the financial statement as February 28, 2022. The Agency is ahead on fee income. PSEG reimbursement to date is slightly behind as it is booked quarterly.

- **REVIEW/APPROVAL OF 2021 AUDITED FINANCIAL STATEMENT AND SAS 114 LETTER/INDEPENDENT ACCOUNTANT REPORT INVESTMENT COMPLIANCE/RESOLUTION (KIDERA)**

RESULT: APPROVED [UNANIMOUS]
MOVER: David Kidera, Board Member
SECONDER: Richard Kotlow, Treasurer
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **REVIEW/APPROVAL OF 2021 ASSESSMENT OF INTERNAL CONTROL STRUCTURE & PROCEDURE/RESOLUTION (KIDERA)**

RESULT: APPROVED [UNANIMOUS]
MOVER: Richard Kotlow, Treasurer
SECONDER: Christopher Bub, Board Member
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **REVIEW/ACCEPT 2021 OPERATIONS AND ACCOMPLISHMENTS/RESOLUTION (MAIKELS)**

RESULT: APPROVED AS AMENDED [UNANIMOUS]
MOVER: Richard Kotlow, Treasurer
SECONDER: David Kidera, Board Member
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **REVIEW/APPROVAL 2021 PARIS REPORT/RESOLUTION (MAIKELS)**

RESULT: APPROVED AS AMENDED [UNANIMOUS]
MOVER: Richard Kotlow, Treasurer
SECONDER: David Kidera, Board Member
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **REVIEW/APPROVAL 2021 PERFORMANCE MEASURES/RESOLUTION (MAIKELS)**

RESULT: APPROVED [UNANIMOUS]
MOVER: Tim Maniccia, Secretary
SECONDER: Richard Kotlow, Treasurer
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **REVIEW/APPROVAL 2021 ANNUAL INVESTMENT REPORT, 2021 PROCUREMENT REPORT, 2021 REAL PROPERTY OWNED/RESOLUTION (MAIKELS)**

For the purpose of conserving time, approval of three annual reports was combined: 2021 Investment, 2021 Procurement, and 2021 Real Property Owned

RESULT: APPROVED [UNANIMOUS]
MOVER: Tim Maniccia, Secretary
SECONDER: Victoria Storrs, Chair
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **ALBANY PORT DISTRICT COMMISSION SEQR RESOLUTION (SCOTT)**

From Hodgson Russ, Chris Canada attended in person and Joe Scott reviewed the resolution over the phone, noting the Planning Board is the lead agency.

**RESOLUTION AUTHORIZING THE ISSUANCE OF A FINDINGS STATEMENT
RELATIVE TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT FOR
THE ALBANY PORT DISTRICT COMMISSION PROJECT**

WHEREAS, 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 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”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting 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 acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in September, 2021, the Albany Port District Commission, a New York State public benefit corporation (the “APDC”), submitted an application (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of APDC, said Project consisting of the following: (A) (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (collectively, the “Land”), (2) the construction on the Land of four (4) buildings containing in the aggregate approximately 560,000 square feet of space, a bridge, related parking and various infrastructure improvements (collectively, the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Facility, and the Equipment being collectively hereinafter referred to as the “Project Facility”), all of the foregoing to constitute an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture

third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities; (B) the granting of certain potential “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the APDC or such other person as may be designated by the APDC and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on September 24, 2021 (the “Public Hearing Resolution”), the Executive Director 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 September 30, 2021 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 on September 28, 2021 at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, (C) caused notice of the Public Hearing to be published on October 1, 2021 in the Albany Times Union, a newspaper of general circulation available to the residents of Town of Bethlehem, New York, (D) conducted the Public Hearing on October 13, 2021 at 4:30 p.m., local time at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York 12054, 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, by resolution adopted by the members of the Agency on December 17, 2021 (the “Preliminary Term Sheet Resolution”), the Agency approved an IDA Term Sheet (the “IDA Term Sheet”) outlining the Financial Assistance the Agency would provide, which assistance was contingent upon (A) the completion of the SEQRA (as hereinafter defined) review by the Town of Bethlehem Planning Board (the “Planning Board”), (B) the preparation, review and finalization of the documents providing for an IDA straight lease transaction (the “APDC Documents”) outlined below, such documents to be subject to review and approval by the Agency Counsel, and (C) adoption by the Agency of an “approving resolution” which approves the APDC Documents; 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, being 6NYCRR Part 617, as amended (collectively with the SEQR Act, “SEQRA”), the Executive Director of the Agency has reported to the members of the Agency, as follows: (A) that all state and local governmental agencies identified as “involved agencies” with respect to the Project have agreed that the Town of Bethlehem Planning Board should act as the “lead agency” (the “Lead Agency”) pursuant to SEQRA with respect to the Project; (B) the Lead Agency on May 5, 2020, accepted a final generic environmental impact statement (the “FGEIS”) prepared with respect to the Project, which analyzed and evaluated potential environmental impacts equally with social and economic factors associated with the conceptual development of the Project; (C) on June 2, 2020, the Lead Agency adopted the FGEIS Findings Statement, which established thresholds pursuant to SEQRA to be followed during the design, construction and operations phase of a

future specific Project; (D) a supplemental draft environmental impact statement (the “SDEIS”) was submitted to the Lead Agency on November 16, 2021; (E) the Lead Agency accepted the supplemental final environmental impact statement (the “SFEIS”) on March 1, 2022; (F) the staff of the Agency have received a copy of the FGEIS, the SDEIS and the SFEIS; (G) the staff of the Agency have reviewed the FGEIS, the SDEIS and the SFEIS; (H) the staff of the Agency have also received a copy of a Planning Board’s Findings Statement relative to the FGEIS, the SDEIS and the SFEIS (the “Findings Statement”), which Findings Statement was adopted by the Lead Agency on March 15, 2022; and (I) the staff of the Agency have reviewed the Findings Statement; and

WHEREAS, at this meeting, (A) the staff of the Agency have discussed with the members of the Agency the results of their review of the FGEIS, the SDEIS and the SFEIS conducted by the staff of the Agency; (B) a copy of the Findings Statement was presented to the members of the Agency; (C) the staff of the Agency have discussed the Findings Statement with the members of the Agency; and (D) the members of the Agency have reviewed and considered the Findings Statement; and

WHEREAS, the Agency now desires to adopt the Findings Statement as the Agency’s written findings statement relative to the Project, as required by Section 617.11(c) of the Regulations;

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

Section 1. Based upon (A) the discussions held by the members of the Agency at this meeting respecting the FGEIS, the SDEIS, the SFEIS and the Findings Statement (collectively, the “SEQR Documents”) and (B) the review of the Findings Statement conducted by the members of the Agency at this meeting, the Agency hereby (I) ratifies and concurs in the designation of the Planning Board as the “lead agency” with respect to the Project (as such quoted term is defined in SEQRA), (ii) makes the findings and provides the rationale for such findings as set forth in the Findings Statement, which Findings Statement is hereby incorporated into and made a part of this Resolution, and (iii) adopts the Findings Statement as the Agency’s written findings statement relative to the Project, as required by Section 617.11(c) of the Regulations.

Section 2. Based upon the foregoing, the Agency hereby finds and determines that:

A. The Agency has reviewed the FGEIS, the SDEIS and the SFEIS and has considered the relevant environmental impacts, facts and conclusions disclosed in the FGEIS, the SDEIS and the SFEIS;

B. The Agency has weighed and balanced the relevant environmental impacts identified in the FGEIS, the SDEIS and the SFEIS with social, economic and other considerations;

C. The Agency has reviewed the Act, the FGEIS, the SDEIS, the SFEIS and the Findings Statement, and based on said materials, the Agency finds no compelling reason not to proceed with the Project;

D. The requirements of SEQRA have been met with respect to the Project; and

E. As set forth in the Findings Statement, consistent with social, economic and other essential considerations, from among the reasonable alternatives available, (1) the Project minimizes adverse environmental impacts to the maximum extent practicable and (2) adverse environmental effects revealed in the FGEIS, the SDEIS and the SFEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable in the FGEIS, the SDEIS and the SFEIS.

Section 3. In consequence of the foregoing, the Agency hereby makes a determination to proceed with the Project.

Section 4. The Executive Director of the Agency is hereby directed to (A) send a copy of this Resolution to the chief executive officer of the Town of Bethlehem, New York; (B) send a copy of this Resolution to the Lead Agency; (C) send a copy of this Resolution to each entity identified by the Agency as an “involved agency” with respect to the Project (as such quoted term is used in SEQRA), (D) send a copy of this Resolution to APDC; (E) send a copy of this Resolution to each other person who has requested a copy of same, and (F) place a copy of this Resolution in the files of the Agency that are readily accessible to the public and made available on request.

Section 5. This Resolution shall take effect immediately.

EXHIBIT A

FINDINGS STATEMENT

In accordance with Article 8 (State Environmental Quality Review) of the Environmental Conservation Law (the “Act”), and the statewide regulations under the Act (6 NYCRR Part 617) (the “Regulations”), Town of Bethlehem Industrial Development Agency (the “Agency”) has received an application (the “Application”) from Albany Port District Commission (the “APDC”), which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of APDC, said Project consisting of the following: (A) (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (collectively, the “Land”), (2) the construction on the Land of four (4) buildings containing in

the aggregate approximately 560,000 square feet of space, a bridge, related parking and various infrastructure improvements (collectively, the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Facility, and the Equipment being collectively hereinafter referred to as the “Project Facility”), all of the foregoing to constitute an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities; (B) the granting of certain potential “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the APDC or such other person as may be designated by the APDC and agreed upon by the Agency.

The Executive Director has informed the Agency that all state and local governmental agencies which were identified as “involved agencies” with respect to the Project have agreed that the Town of Bethlehem Planning Board should act as lead agency (the “Lead Agency”) pursuant to SEQRA with respect to the Project, and, further, that the Agency has ratified and concurred in the such designation.

On March 15, 2022, the Lead Agency adopted the attached findings statement (the “Findings Statement”) as the findings of the Lead Agency pursuant to 6 NYCRR 617.11(a).

On March 25, 2022, by resolution adopted by the members of the Agency, the Agency adopted the Findings Statement as the Agency’s written findings statement relative to the Project, as required by 6 NYCRR 617.11(c). This written findings statement has been prepared in accordance with Article 8 of the Environmental Conservation Law.

Additional information may be obtained from the following: Catherine Hedgeman, Esq., Executive Director, Town of Bethlehem Industrial Development Agency, 445 Delaware Avenue, Town Hall, Delmar, New York 12054; Telephone No. (518) 439-4955 ext. 1189.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Tim Maniccia, Secretary
SECONDER:	Richard Kotlow, Treasurer
AYES:	Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT:	Jared Finke

- **EXECUTIVE SESSION**

Upon motion by Mr. Kotlow, seconded by Mr. Bub, the Agency went into executive session at 8:59am for an attorney-client privileged discussion regarding the Albany Port District Commission Approving Resolution.

The Agency returned to regular session at 9:20am with no action taken.

- **ALBANY PORT DISTRICT COMMISSION APPROVING RESOLUTION (SCOTT)**

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A

PROJECT FOR ALBANY PORT DISTRICT COMMISSION (THE “APDC”).

WHEREAS, 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 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”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting 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 acquire, construct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in September, 2021, the Albany Port District Commission, a New York State public benefit corporation (the “APDC”), submitted an application (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the APDC, said Project consisting of the following: (A) (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (collectively, the “Land”), (2) the construction on the Land of four (4) buildings containing in the aggregate approximately 560,000 square feet of space, a bridge, related parking and various infrastructure improvements (collectively, the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Facility, and the Equipment being collectively hereinafter referred to as the “Project Facility”), all of the foregoing to constitute an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities; (B) the granting of certain potential “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the APDC or such other person as may be designated by the APDC and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on September 24, 2021 (the “Public Hearing Resolution”), the Executive Director 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 September 30, 2021 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 on September 28, 2021 at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, (C) caused notice of the Public Hearing to be published on October 1, 2021 in the Albany Times Union, a newspaper of general circulation available to the residents of Town of Bethlehem, New York, (D) conducted the Public Hearing on October 13, 2021 at 4:30 p.m., local time at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York 12054, 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, by resolution adopted by the members of the Agency on December 17, 2021 (the “Preliminary Term Sheet Resolution”), the Agency approved an IDA Term Sheet (the “IDA Term Sheet”) outlining the Financial Assistance the Agency would provide, which assistance was contingent upon (A) the completion of the SEQRA (as hereinafter defined) review by the Town of Bethlehem Planning Board (the “Planning Board”), (B) the preparation, review and finalization of the documents providing for an IDA straight lease transaction (the “APDC Documents”) outlined below, such documents to be subject to review and approval by the Agency Counsel, and (C) adoption by the Agency of an “approving resolution” which approves the APDC Documents; 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”), (A) the Executive Director of the Agency has reported to the members of the Agency, as follows: (1) that all state and local governmental agencies identified as “involved agencies” with respect to the Project have agreed that the Town of Bethlehem Planning Board should act as the “lead agency” (the “Lead Agency”) pursuant to SEQRA with respect to the Project; (2) the Lead Agency on May 5, 2020, accepted a final generic environmental impact statement (the “FGEIS”) prepared with respect to the Project, which analyzed and evaluated potential environmental impacts equally with social and economic factors associated with the conceptual development of the Project; (3) on June 2, 2020, the Lead Agency adopted the FGEIS Findings Statement, which established thresholds pursuant to SEQRA to be followed during the design, construction and operations phase of a future specific Project; (4) a supplemental draft environmental impact statement (the “SDEIS”) was submitted to the Lead Agency on November 16, 2021; (5) the Lead Agency accepted the supplemental final environmental impact statement (the “SFEIS”) on March 1, 2022; (6) the staff of the Agency received a copy of the FGEIS, the SDEIS and the SFEIS; (7) the staff of the Agency reviewed the FGEIS, the SDEIS and the SFEIS; (8) the staff of the Agency also received a copy of a Planning Board’s Findings Statement relative to the FGEIS, the SDEIS and the SFEIS (the “Findings Statement”), which Findings Statement was adopted by the Lead Agency on March 15, 2022; and (9) the staff of the Agency reviewed the Findings Statement and (B) by resolution adopted by the members of the Agency on March 25, 2022 (the “SEQR Resolution”), the members of the Agency (1) concurred in the determination by the Town of Bethlehem Planning Board should act as the “lead agency” pursuant to SEQRA with respect to the Project; (2) adopted the Findings Statement as the Agency’s written findings statement relative to the Project, as required by Section 617.11(c) of the Regulations and (3) determined

to proceed with the Project; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the APDC that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the APDC to undertake the Project in the Town of Bethlehem, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the APDC to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Bethlehem, New York by undertaking the Project in the Town of Bethlehem, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the APDC, as landlord, and the Agency, as tenant, pursuant to which the APDC will lease to the Agency the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (B) a certain license agreement (the “License to Agency” or the “License Agreement”) by and between the APDC, as licensor, and the Agency, as licensee, pursuant to which the APDC will grant to the Agency (1) a license to enter upon 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 APDC, 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 lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the APDC, pursuant to which, among other things, the APDC agrees to undertake the Project as agent of the Agency and the APDC further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a uniform agency project agreement (the “Uniform Agency Project Agreement”) by and between the Agency and the APDC regarding the granting of the financial assistance and the potential recapture of such assistance; (E) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the APDC and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (F) 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; (G) a New York State Department of Taxation and Finance form entitled “IDA Appointment of Project Operator or Agency for Sales Tax Purposes” (the form required to be filed 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 (H) various certificates relating to the Project (the “Closing Documents”);

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

Section 1. All action taken by the Executive Director of the Agency, Agency Counsel and Agency Special Counsel with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Whiteman Osterman & Hanna LLP is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Project. Special Counsel for the Agency is hereby authorized, at the expense of the APDC, to work with the APDC, counsel to the APDC, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Special Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a “project,” as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of the Town of Bethlehem, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction and installation of the Project Facility (collectively, the “Project Costs”) will be approximately \$235,213,646;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act;

(G) The Project should receive financial assistance in the form of an exemption from sales tax based on the following factors contained in Section 1703 of the Agency’s Uniform Tax Exemption Policy (“UTEPP”):

- (1) the nature of the Project Facility is industrial/manufacturing (Factor #1);
- (2) the nature of the real property before the Project is undertaken is vacant land (Factor #2);
- (3) the general economic condition of the area where the Project Facility will be located is generally under-developed (Factor #3);
- (4) the Project will create a significant number of permanent private sector jobs (Factor #4);
- (5) the estimated value the tax exemptions (i.e., exemption from sales tax) to be provided is approximately \$853,000 (Factor #5);
- (6) the impact of the Project on affected tax jurisdictions is beneficial as the Project will stimulate development and growth in the Capital District (Factor #6);
- (7) the impact of the Project will be beneficial to existing and proposed businesses (the Project reflects a significant NYS initiative of stimulating and assisting renewable energy projects in NYS in general and the Capital District in particular) (Factor #7);
- (8) the amount of private sector investment is approximately \$235,213,646 (Factor #8);
- (9) it is likely that the Project Facility will be completed on time (Factor #9);
- (10) the Town Planning Board has been the lead agency with respect to the Project and has issued a EIS and a Findings Statement with respect to the Project (Factor #10);
- (11) due to the increased development relating to the Project, it is expected that the Project will provide additional sources of revenue to the municipalities and school district in which the Project Facility is located (Factor #11);
- (12) it is expected that the undertaking of the Project will provide economic benefits not otherwise available in the Town of Bethlehem (Factor #12);

(13) the affected tax jurisdictions will be reimbursed if the Project is not completed (i.e., the Agency will enter into a Uniform Agency Project Agreement providing for claw-backs (see Exhibit A attached)) (Factor #13);

(14) at the public hearing held by the Agency with respect to the Project, all persons who spoke supported the Project (Factor #14);

(15) it is expected that the Project Facility will have a minimal impact on the need for additional services and such issues were (Factor #15);

(16) the Financial Assistance and the involvement of the Agency are significant components in the ability of the APDC to undertake and complete the Project (Factor #16), and

(17) the Project is designed to provide for renewable energy facilities, and will utilize, to the fullest extent practicable and feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures (Factor #17).

(H) The provisions regarding potential claw-backs of the Financial Assistance are described in Exhibit A attached to this Resolution;

(I) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Town of Bethlehem, Albany County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(J) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein; and

(K) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) lease the Project Facility to the APDC pursuant to the Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) enter into the Uniform Agency Project Agreement; (E) enter into the Section 875 GML Recapture Agreement; and (F) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a

bill of sale (the “Bill of Sale to Agency”) from the APDC to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chair of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. The Agency has been informed that Hodgson Russ LLP is acting as counsel to the APDC with respect to the Project. As described in Section 2 above, the Agency has retained Whiteman Osterman & Hanna LLP to act as Agency Special Counsel with respect to the Project. The Agency hereby waives any potential conflict resulting from Hodgson Russ LLP acting as counsel to the APDC with respect to the Project, and on any other related or unrelated matters, and authorizes the Chief Executive Officer and/or the Chair to execute any document or documents evidencing such waiver.

Section 9. (A) The Chair of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chair shall approve, the execution thereof by the Chair to constitute conclusive evidence of such approval.

(B) The Chair of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. This Resolution shall take effect immediately.

EXHIBIT A

DESCRIPTION OF THE RECAPTURE EVENTS

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary agree that the following shall constitute recapture events with respect to the Project and the granting of the Financial Assistance:

(1) failure to complete the acquisition, construction and installation of the Project Facility by the Completion Date;

(2) liquidation of substantially all of the APDC's operating assets and/or cessation of substantially all of the APDC's operations;

(3) relocation of all or substantially all of the APDC'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;

(4) failure by the APDC to comply in all material respects with the annual reporting requirements or to provide the Agency with requested information;

(5) sublease of all or part of the Project Facility in violation of the Basic Documents;

(6) a change in the use of the Project Facility, other than as an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities and other directly and indirectly related uses; or

(7) failure by the APDC to make an actual investment in the Project by the Project's Completion Date equal to or exceeding 80% of the Total Project Costs as set forth in the APDC's application for Financial Assistance.

RESULT: APPROVED [UNANIMOUS]
MOVER: David Kidera, Board Member
SECONDER: Richard Kotlow, Treasurer
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **VISTA REAL ESTATE DEVELOPMENT LLC/15 VISTA RESOLUTION AUTHORIZING SPLIT OF CERTAIN PARCEL (SCOTT)**

Debra Lambek, PLLC noted the parcel at 15 Vista will transfer to an unrelated party.

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE SPLIT OF A CERTAIN PARCEL OF LAND LOCATED IN THE TOWN OF BETHLEHEM, ALBANY COUNTY, NEW YORK FROM THE VISTA PUBLIC INFRASTRUCTURE PROJECT.

WHEREAS, 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 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”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting 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 acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in December, 2011 (the “Vista Public Infrastructure Project Closing”), the Agency issued its Pilot Revenue Bond (Vista Public Infrastructure Project), Series 2011A in the principal amount of not to exceed \$6,750,000 (the “Bond”) for the benefit of Vista Development Group LLC (“Vista”) to provide for the cost of the development of the approximately 250 acre parcel of land located in the Town of Bethlehem, Albany County, New York and known as the Vista Technology Campus (the “Vista Project”); and

WHEREAS, Vista is requesting the Agency pursuant to the request attached hereto as Exhibit A (the “Request”), to sell the parcel located at 15 Vista Boulevard (the “15 Vista Parcel”) to Vista Partners LLC (the “Purchaser”) and in connection with the Request to split the 15 Vista Parcel from the Vista Public Infrastructure Project pursuant to certain splitter documents (collectively, the “Splitter Documents”); and

WHEREAS, pursuant to Section 9.3 of the master lease agreement dated as of December 1, 2011 (the “Master Lease Agreement”) by and between the Agency and Vista, the consent of the Agency is required prior to the sale of the 15 Vista Parcel (the “Split”); 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 adopted pursuant thereto by the Department of Environmental Conservation of

the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations”, and collectively with the SEQRA Act, “SEQRA”), it appears that the Split is not an “Action” under SEQRA and therefore is not subject to a SEQRA review by the Agency;

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

Section 1. Pursuant to SEQRA, the Split is not an “Action” under SEQRA and therefore is not subject to SEQRA review by the Agency.

Section 2. At the request of Vista, the Agency hereby consents to the Split and the execution of the Splitter Documents; provided, however, that such consent is contingent upon (A) approval by Special Agency Counsel to the forms of the Splitter Documents, (B) compliance with the terms and conditions contained in the Basic Documents (as defined in the Master Lease Agreement), (C) evidence satisfactory to the Agency that all taxes and other local fees and assessments relating to the 15 Vista Parcel, if any, have been paid by the Vista, (D) consent of the current holder of the Bond, and (E) the payment by Vista of the administrative fee of the Agency, if any, and all other fees and expenses of the Agency in connection with the delivery of the Splitter Documents, including the fees of Agency and Special Counsel.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair (or Vice Chair) of the Agency is hereby authorized to execute and deliver the Splitter Documents and the modified Basic Documents to reflect the Split, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Split, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Split.

Section 5. This Resolution shall take effect immediately.

RESULT: APPROVED [UNANIMOUS]
MOVER: Tim Maniccia, Secretary
SECONDER: David Kidera, Board Member
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

- **VISTA REAL ESTATE DEVELOPMENT LLC/91 VISTA AND 126 VISTA RESOLUTION AUTHORIZING SPLIT OF CERTAIN PARCELS (SCOTT)**

The parcels at 91 and 126 Vista are being split from the public infrastructure bond in anticipation of further development.

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE SPLIT OF CERTAIN PARCELS OF LAND LOCATED IN THE TOWN OF BETHLEHEM, ALBANY COUNTY, NEW YORK FROM THE VISTA PUBLIC INFRASTRUCTURE PROJECT.

WHEREAS, 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 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”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting 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 acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in December, 2011 (the “Vista Public Infrastructure Project Closing”), the Agency issued its Pilot Revenue Bond (Vista Public Infrastructure Project), Series 2011A in the principal amount of not to exceed \$6,750,000 (the “Bond”) for the benefit of Vista Development Group LLC (“Vista”) to provide for the cost of the development of the approximately 250 acre parcel of land located in the Town of Bethlehem, Albany County, New York and known as the Vista Technology Campus (the “Vista Project”); and

WHEREAS, Vista is requesting the Agency pursuant to the request attached hereto as Exhibit A (the “Request”), to split the parcels located at 91 and 126 Vista Boulevard (collectively, the “Vista Parcel”) from the Vista Public Infrastructure Project pursuant to certain splitter documents (collectively, the “Splitter Documents”); and

WHEREAS, pursuant to Section 9.3 of the master lease agreement dated as of December 1, 2011 (the “Master Lease Agreement”) by and between the Agency and Vista, the consent of the Agency is required prior to the split of the Vista Parcel (the “Split”); 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), it appears that the Split is not an “Action” under SEQRA and therefore is not subject to a SEQRA review by the Agency;

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

Section 1. Pursuant to SEQRA, the Split is not an “Action” under SEQRA and therefore is not subject to SEQRA review by the Agency.

Section 2. At the request of Vista, the Agency hereby consents to the Split and the execution of the Splitter Documents; provided, however, that such consent is contingent upon (A) approval by Special Agency Counsel to the forms of the Splitter Documents, (B) compliance with the terms and conditions contained in the Basic Documents (as defined in the Master Lease Agreement), (C) evidence satisfactory to the Agency that all taxes and other local fees and assessments relating to the Vista Parcel, if any, have been paid by the Vista, (D) consent of the current holder of the Bond, and (E) the payment by Vista of the administrative fee of the Agency, if any, and all other fees and expenses of the Agency in connection with the delivery of the Splitter Documents, including the fees of Agency and Special Counsel.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair (or Vice Chair) of the Agency is hereby authorized to execute and deliver the Splitter Documents and the modified Basic Documents to reflect the Split, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Split, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Split.

Section 5. This Resolution shall take effect immediately.

RESULT: APPROVED [UNANIMOUS]
MOVER: Victoria Storrs, Chair
SECONDER: Richard Kotlow, Treasurer
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

VIII. Future Meetings

- **REGULAR MEETING - FRIDAY, APRIL 22, 2022 8:00 A.M. AUDITORIUM**

The April meeting, originally set for 4/22/22, might be rescheduled due to conflicts.

IX. Adjournment

Motion To: Adjourn

RESULT: ADJOURN [UNANIMOUS]
MOVER: Christopher Bub, Board Member
SECONDER: David Kidera, Board Member
AYES: Storrs, Maniccia, Kotlow, Kidera, Bub
ABSENT: Jared Finke

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
STATEMENT OF NET ASSETS
May 31, 2022

ASSETS	<u>May 31, 2022</u>
Current Assets	
Checking/Savings	
200.04 Cash-M&T Bank Agency Account	427,876.74
Total Checking/Savings	427,876.74
Other Current Assets	
380 Fee Receivable	22,915.24
480 Prepaid Expense	1,615.84
Total Other Current Assets	<u>24,531.08</u>
Total Current Assets	<u>452,407.82</u>
 TOTAL ASSETS	 <u><u>452,407.82</u></u>
 LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
601 Accrued Expenses	22,332.35
Total Current Liabilites	<u>22,332.35</u>
Total Liabilities	<u>22,332.35</u>
Equity	
924 Net Assets	
924.3 Net Assets-Unassigned	430,075.47
Total 924 Net Assets	<u>430,075.47</u>
Total Equity	<u>430,075.47</u>
 TOTAL LIABILITIES & EQUITY	 <u><u>452,407.82</u></u>

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
STATEMENT OF REVENUE AND EXPENSES
May 31, 2022

ORDINARY INCOME/EXPENSE

Income

2116 FEE INCOME	16,743.35
2116.1 PSEG ENERGY REIMB	<u>31,204.74</u>

Total Income	<u>47,948.09</u>
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Expenses

6460.4 Contractual Expenses	53,438.98
6460.5 Business & Economic Development	<u>4,000.00</u>

Total Expenses	<u>57,438.98</u>
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NET ORDINARY INCOME	<u>-9,490.89</u>
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Other Income/Expense

Other Income

2401 Interest Income	17.87
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Total Other Income	<u>17.87</u>
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NET INCOME	<u><u>-9,473.02</u></u>
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BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
 BUDGET VS ACTUAL
 May 31, 2022

Ordinary Income/Expense Income	May-22	YTD Budget	Variance	Annual Budget
2116 Fee Income	16,743.35	21,976.66	-5,233.31	52,744.00
2106.1 PSEG Energy Reimb	31,204.74	29,166.66	2,038.08	70,000.00
Total Income	47,948.09	51,143.32	-3,195.23	122,744.00
Expenses				
6460.4 Contractual Expenses	53,438.98	49,191.66	4,247.32	118,060.00
6460.5 Business and Economic Dev	4,000.00	833.34	3,166.66	2,000.00
Total Expenses	57,438.98	50,025.00	7,413.98	120,060.00
Net Ordinary Income	-9,490.89	1,118.32	-10,609.21	2,684.00
Other Income/Expense				
2401 Interest Income	17.87	125.00	-107.13	300.00
Total Other Income	17.87	125.00	-107.13	300.00
Net Income	-9,473.02	1,243.32	-10,716.34	2,984.00

**RESOLUTION AUTHORIZING NEW MORTGAGE – JUNE 2022
FINKE ENTERPRISES, LLC PROJECT**

A regular meeting of Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on June 22, 2022, at 8:00 o’clock, a.m., local time.

The meeting was called to order by the Chair and, upon roll being called, the following members of the Agency were:

PRESENT:

Victoria Storrs	Chair
Tim Maniccia	Secretary
Richard Kotlow	Treasurer
Chris Bub	Member
David Kidera	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Catherine Hedgeman, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
Robert Leslie	Director, Department of Economic Development & Planning
John Taylor	Senior Economic Developer
A. Joseph Scott, III, Esq.	Agency Bond/Special Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0622-__

RESOLUTION AUTHORIZING THE EXECUTION BY TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MORTGAGE AND RELATED DOCUMENTS IN CONNECTION WITH THE FINKE ENTERPRISES, LLC PROJECT.

WHEREAS, 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 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”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting 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 acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Finke Enterprises, LLC (the “Company”) has previously submitted an application to the Agency requesting financial assistance in connection with a project (“Project”) consisting of: (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 meaning of Section 854(14) of the Act) with respect to the foregoing, consisting of potential exemptions from certain sales taxes and mortgage recording taxes and real property taxes (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. The Project Facility has been leased by the Agency to the Company pursuant to the provisions of a certain lease agreement dated as of March 1, 2013 (the “Lease Agreement”); and

WHEREAS, the Agency, by resolution adopted on December 21, 2012 (the “Approving Resolution”), determined to enter into certain documents to provide for the undertaking of the Project, including, but not limited to, the Lease Agreement and a payment in lieu of tax agreement dated as of March 1, 2013 (the “Payment in Lieu of Tax Agreement”); and

WHEREAS, by letter dated June 9, 2022 (the “Request”), which Request is attached hereto as Exhibit A, the Agency has now been informed that the Company plans on modifying and extending the existing financing (the “Restated Loan”) relating to the Project with Pioneer Bank (the “Lender”), which Restated Loan will be secured by a mortgage, assignment of leases and rents and a security agreement on the Project Facility; and

WHEREAS, pursuant to the Request, as the Agency has a leasehold and license interest in the Land and the Facility, the Agency is being asked to enter into a mortgage, an assignment of leases and rents, a security agreement and any related documents (collectively, the “Restated Loan Documents”); and

WHEREAS, in connection with the execution and delivery of the Restated Loan Documents, the Agency will not be providing any benefits to the Company via an exemption from the mortgage recording tax; 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR

Part 617, as amended (the “Regulations” and collectively with the SEQRA Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

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

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c)(29), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) The Agency will **not** be granting any mortgage recording tax exemption relating to the Request.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) approval of the form of the Restated Loan Documents, by Agency Counsel and Agency Special Counsel, (B) completion by Agency staff of the internal review of the Project, (C) receipt by the Executive Director of (1) the Agency’s administrative fee relating to the Request, if any, and (2) counsel’s fees relating to the Request, and (D) satisfaction of the following additional conditions: _____, the Agency hereby approves the Request and authorizes the execution by the Agency of the Restated Loan Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair of the Agency is hereby authorized to execute and deliver the Restated Loan Documents to the Company, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair shall approve, the execution thereof by the Chair to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Restated Loan Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Restated Loan Documents binding upon the Agency.

Section 5. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Victoria Storrs	VOTING	_____
Tim Maniccia	VOTING	_____
Richard Kotlow	VOTING	_____
Chris Bub	VOTING	_____
David Kidera	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of Town of Bethlehem Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 22, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) 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, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this _____ day of June, 2022.

Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

MICHAEL J. BISCONE, ESQ.
ATTORNEY AND COUNSELOR AT LAW
151 MAIN STREET
RAVENA, NEW YORK 12143
(518) 756-2002

MICHAEL J. BISCONE, ESQ.
Admitted to NY Bar 1975

JOHN J. BISCONE, ESQ.
(1937-2001)

June 9, 2022

Victoria Storrs, Chairman
Bethlehem IDA
445 Delaware Avenue
Delmar, NY 12054

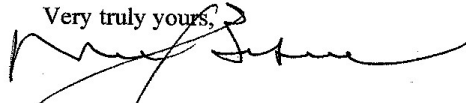
Re: Finke Enterprises, LLC – Bethlehem IDA
1569 US Route 9W, Selkirk, NY

Dear Ms. Storrs:

I am forwarding this correspondence to you as a follow-up to my telephone conference of this day with A. Joseph Scott, Esq. relative to the above-referenced matter. I am enclosing herein a copy of my client's refinancing Mortgage Commitment as discussed. There is no new money in connection with this refinancing, and Mr. Finke is simply extending the term of his initial Mortgage and lowering the rate. Attorney Mathew P. Barry, Esq. represents Pioneer Bank on this matter and is preparing a Modification and Extension Agreement, which requires the necessary wording for the IDA to consent to this Mortgage extension. I am herein requesting that the Bethlehem IDA consent to the above at its upcoming Board meeting, **which I see from your website will take place on June 22nd, 2022**; and, that the necessary document have affixed thereto on that date the Bethlehem IDA's consent, so that we can close this matter and preserve Mr. Finke's rate prior to the end of this month.

Thank you for your courtesy and consideration on this request. I look forward to hearing from the IDA as above-referenced.

Very truly yours,



Michael J. Biscone, Esq.

MJB:rjj
Enclosure

cc: A. Joseph Scott, Esq., Hodgson Russ LLP via: ascott@hodgsonruss.com
Mathew P. Barry, Esq., Harris Beach PLLC via: mbarry@harrisbeach.com
Mr. John R. Finke

PIONEER™

Headquarters
652 Albany Shaker Rd.
Albany, NY 12211

P. 518.730.3000
F. 518.730.3981

pioneemy.com

April 27, 2022

John R. Finke
Finke Enterprises LLC
1569 Route 9W
Selkirk, NY 12158

5/2/22 Personal
Renewal &
Successes w/ case
- 1/2 hr TOTAL

Re: Commitment Letter for a Pioneer Bank Loan

Dear Mr. Finke:

I am pleased to inform you that Pioneer Bank (the "Bank") has approved the following loan facility subject to the hereinafter described conditions (the "Commitment"):

Borrower: **Finke Enterprises LLC**

Guarantors: **John R. Finke & Robert H. Finke & Sons Inc., joint and several unconditional guarantors.**

Loan: **\$4,468,045.00 ("Loan").**

Purpose: **Modification and extension of an existing Bank loan (#911219812) collateralized in part by the premises located at 1569 Route 9W, Selkirk New York ("Premises").**

Interest Rate: **Fixed for at 4.00% (absent an event of default).**

Interest Rate Floor: **N.A.**

Payments: **Monthly payments of principal and interest shall be due and owing.**

Loan Term: **10 Years.**

Amortization: **10 Years.**

Prepayment Penalty: **Should Borrower refinance this Loan with another lender before its maturity any prepayment of the principal balance of the Loan shall be subject to a prepayment premium in the amounts shown below for the loan year in question:**

Member FDIC | Equal Housing Lender 

<u>Loan Year</u>	<u>Premium as a Percentage of Amount of Prepayment</u>
1 and 6	5.00%
2 and 7	4.00%
3 and 8	3.00%
4 and 9	2.00%
5 and 10	1.00%

All prepayments shall be applied to the reduction and payment of principal in the inverse order of maturity.

Collateral:

- (a) First mortgage and security interest on the Premises.
- (b) An assignment of leases and rents assigning to the Bank all of the Borrower's right, title and interest in and to all present and future leases and guarantees thereof, of all or any portion of the Premises and all rents, security deposits, issues and profits there from.
- (c) First security interest in all assets of Borrower.

Commitment Fee:

None

Covenants:

A minimum Debt Service Coverage Ratio ("DSCR") of 1.20 to 1.00 will be required. The debt service coverage is calculated as net operating income at the Premises divided by the total debt service requirements. Net operating income is defined as gross rents net of all operating expenses (and capital expenditures) not including depreciation and amortization expenses and any other non-cash items (and non-recurring expense) and after debt service from other indebtedness associated with specific properties. Total debt service requirements is defined as interest expense plus principal payments on long term debt paid over the previous twelve month period.

Robert H. Finke & Sons, Inc. shall maintain a DSCR of 1.00 to 1.00 annually, measured at fiscal year end commencing with fiscal year end 2021. DSCR is defined as profit before taxes plus depreciation, amortization and interest expense less unfunded capital expenditures divided by current portions of long-term debt plus interest expense as reflected in Robert H. Finke & Sons, Inc. tax return.

Robert H. Finke & Sons, Inc. shall maintain a maximum debt to tangible net worth ratio of 2.50 to 1.00 annually measured at fiscal year-end. Debt to tangible net worth is defined as total liabilities divided by net worth minus intangible assets as those terms are defined by GAAP.

**Non-Assignability
Of Commitment:**

This Commitment is made exclusively to the Borrower and is not assignable nor transferable voluntarily or involuntarily by the Borrower and any such assignment or transfer shall be null and void and shall result in this Commitment being automatically and simultaneously terminated.

Commitment Expiration:

This Commitment is open for acceptance until 5:00 P.M. eastern time on May 6, 2022. If it is not accepted and returned to the Bank by that date, the Commitment shall immediately become null and void without further notice.

Date of Closing:

The closing shall occur on or before June 6, 2022 or this Commitment shall immediately become null and void without further notice unless extended in writing by the Bank.

Late Charges:

Six percent (6%) of each dollar of any delinquent payment not paid within fourteen (14) days after its due date.

Default Rate:

In the event of any default, at the option of the Bank, the rate of interest shall be adjusted to the default rate of interest which shall be equal to four (4%) percentage points above then applicable interest rate.

Expenses:

The Borrower shall pay all costs and expenses associated with the Loan, including (by way of illustration and not limitation): legal fees, mortgage recording taxes and fees, title insurance costs, survey fees, appraisal fees, environmental audit and site inspection fees, and any and all other costs of the Bank in connection with this Commitment and the closing of the Loan regardless of whether the Loan closes.

*WILL'S
RECEIVED
7/12/22*

Closing Conditions:

1. Receipt of items requested by Bank's counsel (under separate cover).
2. Subject to receipt, review and Bank approval of an appraisal report on the subject property reflecting an As Is market value such that the maximum LTV of 65% is achieved. *CONTE \$ 6.5M*
— NEED COPY
3. Subject to receipt, review and Bank approval of an ASTM Transaction Screen.
4. Survey of the Premises certified by a licensed surveyor to "Pioneer Bank, its successors and assigns", the title insurance company and Borrower. This requirement will be waived as long as the Bank's title policy does not have a survey exception and the title company provides Survey and TIRSA 9 endorsements. The Bank's title policy cannot have a survey exception.
5. Receipt of an opinion of Borrower and Guarantors counsel sufficient to the Bank.
6. Other items that the Bank may request in its discretion.

Other Conditions: None

On-Going Conditions:

- Annual submission of personal financial statements for John R. Finke.
- Annual submission of personal tax returns (including schedules) within 120 days of calendar year end or extension thereof for John R. Finke.
- Annual submission of tax returns (including all schedules) within 120 days of calendar year end or extension thereof for Robert H. Finke & Sons, Inc. and Finke Enterprises, LLC.
- Annual submission of review quality financial statements within 120 days of calendar year end or extension thereof for Robert H. Finke & Sons, Inc. (including statement of cash flows).
- Production of such further information and documentation that the Lender may require.
- Until the Loan is paid in full, the Borrower shall not, without the prior written consent of the Bank, create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation of the Premises or its assets.

Member FDIC | Equal Housing Lender 

- There being no material adverse change in Borrower's and/or Guarantors financial condition.

In the event of the occurrence and continuance on or after the date hereof, of any event or condition which the Bank reasonably believes would or might (1) have any material adverse effect on a Borrower, any of guarantor, any of the collateral, or the business, assets and/or financial condition of a Borrower or a guarantor; (2) render the collateral less valuable than the Bank had determined it to be; or (3) cause to the Bank to deem itself insecure in making any credit facility available hereunder, the Bank shall be free to unilaterally terminate this Commitment without further obligation to the Borrower.

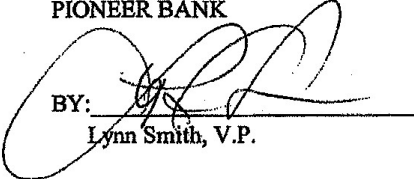
No statements, agreements or representations, oral or written, that may have been made either by the Bank or by an employee, agent or broker acting on behalf of the Bank with respect to this Commitment or the loan described herein, shall be of any force or effect except to the extent stated in this letter, and all prior agreements and representations with respect to this letter and the loan are merged herein so that this letter shall contain the entire agreement with respect to the loan. This letter may not be changed, except by written agreement signed by the Borrower, any guarantor and the Bank.

The Bank's obligation under this Commitment shall be subject to the satisfactory compliance by the Borrower and any guarantor with all of the conditions contained herein. The issuance of this Commitment shall not prejudice the Bank's rights of review and approval, including without limitation, with respect to leases, documents and materials heretofore delivered to the Bank by or on behalf of the Borrower. This Commitment shall not be binding upon the Bank unless it is accepted in writing and returned to the Bank before the Commitment Expiration.

Bank Attorney: All documents and other matters relating to or arising out of this commitment will be subject to the approval of the Bank attorney:

Mathew P. Barry
Harris Beach PLLC
677 Broadway
Albany, New York 12207
518-701-2768
mbarry@harrisbeach.com

Very truly yours,
PIONEER BANK

BY: 
Lynn Smith, V.P.

Member FDIC | Equal Housing Lender 

AGREED, ACCEPTED AND ACKNOWLEDGED

this ___ day of _____ 2022.

BORROWER : Finke Enterprises LLC

✓

By: John R. Finke, Member

GUARANTOR: Robert H. Finke & Sons, Inc.

✓

By: John R. Finke, President

✓

John R. Finke, Individually

Please provide your email address: _____

Please provide your attorney's contact information:

~~*~~

Name: _____

Phone: _____

Email: _____

**RESOLUTION AUTHORIZING NEW MORTGAGE – JUNE 2022
PSEG POWER NEW YORK, INC. PROJECT**

A regular meeting of Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on June 22, 2022, at 8:00 o’clock, a.m., local time.

The meeting was called to order by the Chair and, upon roll being called, the following members of the Agency were:

PRESENT:

Victoria Storrs	Chair
Tim Maniccia	Secretary
Richard Kotlow	Treasurer
Chris Bub	Member
David Kidera	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Catherine Hedgeman, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
Robert Leslie	Director, Department of Economic Development & Planning
John Taylor	Senior Economic Developer
A. Joseph Scott, III, Esq.	Agency Bond/Special Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0622-__

RESOLUTION AUTHORIZING THE EXECUTION BY TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MORTGAGE AND RELATED DOCUMENTS IN CONNECTION WITH THE PSEG POWER NEW YORK, INC. PROJECT.

WHEREAS, 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 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”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting 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 acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Agency has previously provided assistance in connection with the development of the Bethlehem Energy Facility (the “Project”); and

WHEREAS, by e-mail dated June ____, 2022 (the “Request”), which Request is attached hereto as Exhibit A, the Agency has been informed that in connection with a restructuring of the ownership interest in the Project, there will be new financing relating to the Project (the “New Financing”), which New Financing will be secured by a mortgage, assignment of leases and rents and a security agreement on the Project Facility; and

WHEREAS, pursuant to the Request, as the Agency has a leasehold interest in the Project, the Agency is being asked to enter into a mortgage, an assignment of leases and rents, a security agreement and any related documents (collectively, the “New Financing Documents”); and

WHEREAS, in connection with the execution and delivery of the New Financing Documents, the Agency will not be providing any benefits via an exemption from the mortgage recording tax; 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

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

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c)(29), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) The Agency will **not** be granting any mortgage recording tax exemption relating to the Request.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act), Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) approval of the form of the New Financing Documents, by Agency Counsel and Agency Special Counsel, (B) completion by Agency staff of the internal review of the Project, (C) receipt by the Executive Director of (1) the Agency's administrative fee relating to the Request, if any, and (2) counsel's fees relating to the Request, and (D) satisfaction of the following additional conditions: _____, the Agency hereby approves the Request and authorizes the execution by the Agency of the New Financing Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair of the Agency is hereby authorized to execute and deliver the New Financing Documents, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair shall approve, the execution thereof by the Chair to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the New Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the New Financing Documents binding upon the Agency.

Section 5. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Victoria Storrs	VOTING	_____
Tim Maniccia	VOTING	_____
Richard Kotlow	VOTING	_____
Chris Bub	VOTING	_____
David Kidera	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of Town of Bethlehem Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 22, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) 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, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this _____ day of June, 2022.

Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

Malark, Meredith L.

From: Jeffrey.Anderson@lw.com
Sent: Wednesday, June 15, 2022 10:56 AM
To: Scott III, A. Joseph
Subject: Draft Letter to Bethlehem IDA

External Email - Use Caution

Joe – thanks so much for your time on the phone earlier this week – it was very helpful. Below please find the draft letter that we discussed. Please let me know if you have any questions or comments and I can send this along with the draft mortgage.

One quick question – does the Bethlehem IDA have a preferred form of estoppel that it provides, or would it be helpful for me to forward the simple form that we have prepared? I will modify the below based on your thoughts on the best way to proceed on that front, and incorporate any other thoughts that you may have.

Many thanks again for your help and looking forward to working with you.

Best,
Jeff

Jeffrey N. Anderson

LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Direct Dial: +1.312.777.7119
Email: jeffrey.anderson@lw.com
<https://www.lw.com>

Proposed Text of Request to Bethlehem IDA

Dear Ms. Storrs:

This correspondence is submitted on behalf of GB II New York, LLC (formerly known as PSEG Power New York LLC), who is held by Arclight Capital Partners, LLC, who recently acquired an indirect ownership interest in the Bethlehem Energy Facility. Please find attached for your reference as Exhibit A a copy of the notice of such acquisition that was provided on January 24, 2022.

In connection with such acquisition, GB II New York, LLC, is party to a financing (the “Loan”) and has agreed as part of such financing to mortgage the Bethlehem Energy Facility. In connection with the mortgage process, we respectfully request that the Town of Bethlehem Industrial Development Agency (the “Bethlehem IDA”) (1) join in the mortgage of the Bethlehem Energy Facility, a draft of which is attached hereto as Exhibit B, and (2) provide an estoppel confirming certain basic matters in respect of the lease agreement in place with respect to the Bethlehem Energy Facility to facilitate the issuance of a title insurance policy for the benefit of the lenders. We understand that in order to join the

mortgage, the Bethlehem IDA will require various protections and limitations, so please let us know of the required comments and we will incorporate them. Please note that we are not requesting an opinion of authority to enter into the mortgage or estoppel, which we hope may simplify the process of these requests.

To the extent that you have any questions or if any additional information would be helpful in connection with the foregoing request, please do not hesitate to contact me. We very much appreciate your assistance in connection with this request, and the opportunity to continue working with the Bethlehem IDA.

Best regards,
Jeffrey N. Anderson

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