

CLOSING ITEM NO.: A-8

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

AND

FINKE ENTERPRISES, LLC

AND

ROBERT H. FINKE & SONS, INC.

PROJECT BENEFITS AGREEMENT

DATED AS OF MARCH 1, 2013

RELATING TO A LEASEHOLD INTEREST HELD BY THE
LANDLORD IN A CERTAIN PARCEL OF LAND LOCATED AT
1565 & 1569 ROUTE 9W IN THE TOWN OF BETHLEHEM AND
THE HAMLET OF SELKIRK, ALBANY COUNTY, NEW YORK.

TABLE OF CONTENTS

(This Table of Contents is not part of the Project Benefits Agreement
and is for convenience of reference only.)

PARTIES	1
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ARTICLE I

SCHEDULE OF DEFINITIONS

Section 1.01. Definitions	4
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ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of and Warranties by the Agency	7
Section 2.02. Representations of and Warranties by the Company	7

ARTICLE III

COVENANTS AND AGREEMENTS

Section 3.01. Financial Assistance	9
Section 3.02. Company Agreements	9
Section 3.03. Tenant Agreements	10

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default Defined	11
Section 4.02. Remedies on Default	11
Section 4.03. Recapture of Financial Assistance	11
Section 4.04. Late Payments	12
Section 4.05. Payment of Attorney's Fees and Expenses	13
Section 4.06. Remedies; Waiver and Notice	13

ARTICLE V

MISCELLANEOUS

Section 5.01. Term	14
Section 5.02. Form of Payments	14
Section 5.03. Company Acts	14
Section 5.04. Amendments	14
Section 5.05. Notices	14
Section 5.06. Binding Effect	15
Section 5.07. Severability	15

Section 5.08. Counterparts..... 15

Section 5.09. Applicable Law..... 15

TESTIMONIUM..... 16

SIGNATURES..... 16

ACKNOWLEDGEMENTS 17

EXHIBIT A - Form of Annual Employment Affidavit.....A-1

PROJECT BENEFITS AGREEMENT

THIS PROJECT BENEFITS AGREEMENT dated as of March 1, 2013 (the "Project Benefits Agreement") by and among TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the "Agency"), FINKE ENTERPRISES, LLC, a domestic limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 1569 Route 9W, Selkirk, New York (the "Company") and ROBERT H. FINKE & SONS, INC., a business corporation organized and existing under the laws of the State having an office for the transaction of business located at 1569 Route 9W, Selkirk, New York (the "Tenant"), is being entered into by the Agency, the Company and the Tenant to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance (as such term is defined herein) that has been granted to the Company and the Tenant under the Basic Documents (as such term is defined herein).

WITNESSETH:

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

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

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

WHEREAS, in November, 2012, Finke Enterprises, LLC (the "Company"), a domestic limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 17.0 acres consisting of 2 parcels located at 1565 & 1569 Route 9W (Tax ID # 133.00-1-38 and 133.00-1-39.15) in the Town of Bethlehem and the Hamlet of Selkirk, Albany County, New York (the "Land"), (2) the demolition of two existing buildings located on the Land and containing approximately 11,000 and 11,750 square feet of space respectively (collectively, the "Existing Facility"), (3) the construction on the Land of a building to

contain approximately 56,000 square feet of space (the "Facility"), (4) the further construction on the Land of related parking and other infrastructure improvements (collectively, the "Improvements") and (5) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Land, the Existing Facility, the Facility, the Improvements and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and leased to Robert H. Finke & Sons, Inc. (the "Tenant") for use as a commercial facility for the sale, rental and repair of construction equipment and other directly and indirectly related uses; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 28, 2012 (the "Public Hearing Resolution"), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") 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 November 29, 2012 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on December 1, 2012 in Albany Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem, Albany County, New York, (C) conducted the Public Hearing on December 12, 2012, at 5:30 o'clock p.m., local time at the Auditorium in the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on December 12, 2012 (the "SEQR Resolution"), the Agency determined (A) to conduct an uncoordinated review of the Project, (B) that the Project is an "Unlisted action" which will not have a significant effect on the environment and, therefore, that an environmental impact statement is not required to be prepared with respect to the Project, and (C) as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, in order to preserve the sales tax exemption which forms a major portion of the Financial Assistance, the members of the Agency adopted a further resolution on December 12, 2012 (the "Agent Resolution"), subject to certain conditions, determining to temporarily appoint the Company to act as agent of the Agency to undertake and complete the Project and subsequent to the adoption of the Agent Resolution, the Agency issued a tentative sales tax exemption letter to the Company (the "Tentative Sales Tax Exemption Letter"); and

WHEREAS, by further resolution adopted by the members of the Agency on December 21, 2012 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of March 1, 2013 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2024 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof; and

WHEREAS, the Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of March 1, 2013 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2024; (2) a certain license agreement dated as of March 1, 2013 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a bill of sale dated as of March 1, 2013 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of March 1, 2013 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company 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, (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent 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 (F) the Agency, the Company and the Tenant will execute and deliver this project benefits agreement dated as of March 1, 2013 (the "Project Benefits Agreement") relating to the granting of the Financial Assistance by the Agency to the Company and the Tenant; and

WHEREAS, the providing of the Project Facility and the Financial Assistance to the Company and the Tenant pursuant to this Project Benefits Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

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

ARTICLE I

DEFINITIONS

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

“Application” means the application submitted by the Company to the Agency on or about November, 2012, in which the Company describes the Project, certifies the number of Full Time Equivalent Employees that will be employed at the Project Facility, and requests the Agency’s assistance with the completion of the Project.

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

“Completion Date” means the earlier to occur of (A) June 30, 2014 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

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

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

“Equipment” means various machinery and equipment, including, but not limited to, fixtures, machinery, equipment and other tangible personal property that is located on the Land and in the Facility.

“Facility” means a building to contain approximately 56,000 square feet of space to be constructed on the Land.

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

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the Company’s or the Tenant’s payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary

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

"Land" means 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.

"Lease Agreement" means the lease agreement dated as of March 1, 2013 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of March 1, 2013 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

"Project" means (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.

"Project Facility" means, collectively, the Land, the Existing Facility, the Facility, the Improvements and the Equipment.

"Recapture Period" means a period of ten (10) years, commencing on the Completion Date.

"Recapture Events" shall mean the following:

- (1) failure to complete the acquisition, construction and installation of the Project Facility;
- (2) liquidation of substantially all of the Company's operating assets and/or cessation of substantially all of the Company's operations;
- (3) relocation of all or substantially all of Company's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;

(4) transfer of jobs equal to at least fifteen percent (15%) of the Company's or Tenant's Employment Level out of the Town of Bethlehem, New York;

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

(6) a change in the use of the Project Facility, other than as a commercial facility for the sale, rental and repair of construction equipment and other directly and indirectly related uses.

"Tenant" shall mean Robert H. Finke & Sons, Inc.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

(C) Conflicts. The Company is not prohibited from entering into this Project Benefits Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement by (and the execution, delivery and performance of this Project Benefits Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Project Benefits Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its

Articles of Organization or Operating Agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Project Benefits Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Project Benefits Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

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

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In connection with the Project, and in reliance on the certifications provided by the Company in the Application, the Agency has agreed to provide the Company with (i) sales and use tax exemptions, (ii) a mortgage recording tax exemption, and (iii) a real property tax abatement on the Project Facility.

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

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

(A) Filing – Closing Date. To file with the Agency, prior to the Closing Date, an employment plan, in substantially the form attached as Exhibit G to the Lease Agreement.

(B) Filing – Annual. To file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, including as required under Applicable Law, the initial said annual employment report to be in substantially the form annexed as Exhibit H to the Lease Agreement.

(C) Employment Listing. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The Company and the Tenant agree, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(D) Employment Level. (1) In the Application, the Company certified to the Agency employment information with respect to the Project Facility and the operations of the Company and the Tenant.

(2) To maintain the following employment level (the “Employment Level”) during the term of the Lease Agreement, beginning no later than two (2) years after the Completion Date:

Total Employees:	32 Full Time Equivalent Employees
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(3) To verify that the Company and the Tenant are achieving the Employment Level, the Company is required to submit, by February 1 of each year during the term of this Project Benefits Agreement, an affidavit substantially in the form of Exhibit A attached hereto (the “Annual Employment Affidavit”), indicating the average number of Full Time Equivalent

Employees employed by the Company and the Tenant at the Project Facility for the 12 month period ending as of December 31 of the prior year. Full Time Equivalent Employees for each calendar year during the term of this Project Benefits Agreement shall be determined by calculating the average number of Full Time Equivalent Employees for the prior calendar year, computed by adding the number of Full Time Equivalent Employees as of the Company's and the Tenant's last payroll date in the months of March, June, September and December and dividing that sum by 4.

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

SECTION 3.03. TENANT AGREEMENTS. The Tenant hereby agrees to cooperate with and assist the Company in satisfying the requirements of the Company contained in Section 3.02 hereof, including, but not limited to, the filing of the reports and the maintenance of the Employment Level described in Section 3.02 hereof.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

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

(2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency’s right, title and interest in and to the Project Facility (The conveyance of the Agency’s right, title and interest in and to the Project Facility shall be effected by the recording by the Agency of the Termination of Lease to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

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

(B) No action taken pursuant to this Section 4.01 (including repossession of the Project Facility) shall relieve the Company or the Tenant from their obligations to make any payments required by this Project Benefits Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company and the Tenant to provide for the recapture of the project financial assistance (the “Project Financial Assistance”), all in accordance with the terms of this Section 4.03. The Company and the Tenant hereby agree, jointly

and severally, if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

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

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

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

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

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

Year	Amount of Recapture
1-2	90% of the Project Financial Assistance
3	80% of the Project Financial Assistance
4	70% of the Project Financial Assistance
5	60% of the Project Financial Assistance
6	50% of the Project Financial Assistance
7	40% of the Project Financial Assistance
8	30% of the Project Financial Assistance
9	20% of the Project Financial Assistance
10	10% of the Project Financial Assistance

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

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company or the Tenant shall fail to make any payment required by this Project Benefits Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company or the Tenant at the address provided in Section 4.05 of this Project Benefits Agreement, the Company or the Tenant shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company or the Tenant shall fail to make any payment required by this Project Benefits Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation, or the Tenant's obligation, as the case may be, to make the

payment so in default shall continue as an obligation of the Company or the Tenant to the Agency until such payment in default shall have been made in full, and the Company or the Tenant shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

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

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

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

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

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

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Project Benefits Agreement shall become effective and the obligations of the Company and the Tenant shall arise absolutely and unconditionally upon the execution and delivery of this Project Benefits Agreement by the Company, the Tenant and the Agency. Unless otherwise provided by amendment hereof, this Project Benefits Agreement shall continue to remain in effect until December 31, 2024.

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

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

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

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

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

IF TO THE COMPANY:

Finke Enterprises, LLC
1569 Route 9W
Selkirk, New York 12158
Attention: John Finke, President

IF TO THE TENANT:

Robert H. Finke & Sons, Inc.
1569 Route 9W
Selkirk, New York 12158
Attention: John Finke, President

WITH A COPY TO:

Hiscock & Barclay, LLP
80 State Street, 6th Floor
Albany, New York 12207
Attention: M. Cornelia Cahill, Esq.

IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency
445 Delaware Avenue
Delmar, New York 12054
Attention: Chairman

WITH COPIES TO:

Town of Bethlehem Industrial Development Agency
445 Delaware Avenue
Delmar, New York 12054
Attention: Thomas P. Connolly, Agency Counsel

and

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.

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

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

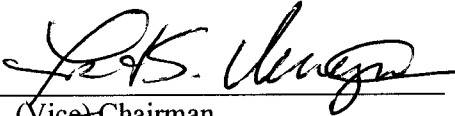
SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Project Benefits Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Project Benefits Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Project Benefits Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Project Benefits Agreement shall be governed by and construed in accordance with the laws of the State of New York.

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

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: 
(~~Vice~~) Chairman

FINKE ENTERPRISES, LLC

BY: _____
Authorized Officer

ROBERT H. FINKE & SONS, INC.

BY: _____
Authorized Officer

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

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

FINKE ENTERPRISES, LLC

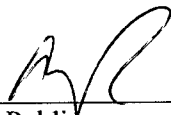
BY: _____
Authorized Officer

ROBERT H. FINKE & SONS, INC

BY: _____
Authorized Officer

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

On the 19th day of March, in the year 2013, before me, the undersigned, personally appeared FRANK S. VENEZIA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



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

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

On the 19th day of March, in the year 2013, before me, the undersigned, personally appeared JOHN R. FINKE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Melissa C. Bennett
Notary Public

MELISSA C BENNETT
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02BE6266734
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES 8/06/2016

SCHEDULE A

FORM OF ANNUAL EMPLOYMENT AFFIDAVIT

COMPANY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					

Officer's Certification

I, the Undersigned, duly elected and appointed _____ (*Title*) of Finke Enterprises, LLC, a New York limited liability company do hereby certify, pursuant to the requirements of a Project Benefit Agreement dated as of March 1, 2013 by and between the Company and the Town of Bethlehem Industrial Development Agency, that all information provided on this form is complete, true and accurate.

(Officer's Signature)

(Printed)