

Resolution inducing the financing of a warehousing facility for Best Choice Trading Corporation as an Industrial Incentive Program (Straight-Lease) Transaction and authorizing the execution and delivery of agreements and other documents

WHEREAS, New York City Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, civic, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Best Choice Trading Corporation, a New York corporation (the "Applicant"), has entered into negotiations with officials of the Agency for the acquisition, construction and renovation of a warehousing facility (the "Facility"), consisting of the expansion of an approximately 19,840 square foot existing building at 146 Stewart Avenue, Brooklyn, New York ("Facility A") with the acquisition, construction and renovation of an approximately 8,749 square foot facility located on an approximately 9,284 square foot parcel of land adjacent to the exiting building at 150 Stewart Avenue, Brooklyn, New York ("Facility B"), all for use in the refrigeration and warehousing of wholesale seafood by the Applicant, and having a total project cost of approximately \$2,625,000 (the "Project"); and

WHEREAS, Facility A will be owned by Lucky Sons LLC, a limited liability company affiliated with the Applicant ("Lucky Sons"), and Facility B will be owned by LGF Realty LLC, a limited liability company affiliated with the Applicant ("LGF Realty"; together with Lucky Sons, the "Companies"); and Facility A and Facility B will be leased to the Agency for sublease by the Agency to the Companies for subsequent sub-sublease in whole to the Applicant; and

WHEREAS, the Applicant has submitted a Project Application (the "Application") to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant is currently located in the East Williamsburg section of Brooklyn and employs approximately 20 full-time employees within The City of New York (the "City"); that the present facility of the Applicant is inadequate to permit the Applicant to expand its operations; that the Applicant must look to expand its operations to remain competitive; that the Applicant has investigated alternative facilities located in New Jersey but would prefer to remain within the City; that the Applicant expects to employ approximately 20 additional full-time equivalent employees within the three years following the completion of the Project; that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project and thereby remain and expand its operations in the City; and that, based upon the financial assistance

provided through the Agency, the Applicant desires to proceed with the Project and remain and expand its operations in the City; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of an Industrial Incentive Program (Straight-Lease) transaction between the Agency and the Applicant and the Companies are necessary to induce the Applicant to remain and expand its operations within the City; and

WHEREAS, in order to finance a portion of the costs of the Project, (i) HSBC Bank USA, National Association (such financial institution, or any other financial institution as may be approved by a certificate of determination of an Agency officer, the "Lender") has agreed to enter into a loan arrangement with LGF Realty pursuant to which the Lender will lend approximately \$962,500 to LGF Realty, and the Agency and LGF Realty will grant a mortgage on Facility B to the Lender (the "Lender Mortgage"), (ii) Empire State Certified Development Corporation ("ESCDC") has agreed to enter into a loan arrangement with LGF Realty pursuant to which ESCDC will lend approximately \$691,000 to LGF Realty, and the Agency and the LGF Realty will grant a second mortgage on Facility B to ESCDC (the "ESCDC Mortgage"), and (iii) the Lender will provide bridge financing to LGF Realty with respect to the loan to be made to LGF Realty by ESCDC, and the Agency and LGF Realty will grant a subordinate mortgage on Facility B to the Lender (the "Bridge Mortgage"); and

WHEREAS, in order to provide financial assistance to the Applicant and the Companies for the acquisition, construction and renovation of the Facility, the Agency intends to grant the Applicant and the Companies financial assistance through an Industrial Incentive Program (Straight-Lease) transaction in the form of real property tax abatements, mortgage recording tax exemptions and sales tax exemptions in connection with Facility B all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and renovation of the Facility and the provision by the Agency of financial assistance to the Applicant and the Companies pursuant to the Act in the form of an Industrial Incentive Program (Straight-Lease) transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant and the Companies to proceed with the Project. The Agency further determines that

(a) the Project shall not result in the removal of any facility or plant of the Applicant or the Companies or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or the Companies or any other occupant or user of the Facility located within the State of New York (but outside of the City);

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing

plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York; and

(c) not more than one-third of the total Project cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of Section 862 of the New York General Municipal Law.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant and the Companies for the Project, an Industrial Incentive Program (Straight-Lease) transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant and the Companies to assist in the Project.

Section 4. The execution and delivery of one or more Company Lease Agreements leasing Facility A and/or Facility B from Lucky Sons and/or LGF Realty to the Agency, one or more Lease Agreements from the Agency subleasing Facility A and/or Facility B to Lucky Sons and/or LGF Realty (collectively, the "Lease Agreement") (for sub-sublease to the Applicant), a Sales Tax Letter from the Agency to the Companies and the Applicant, the Lender Mortgage, the ESCDC Mortgage, the Bridge Mortgage and a Guaranty Agreement from the Companies, the Applicant and such of the Applicant's and each Company's owners and/or principals as shall be designated by certificate of determination of an Agency officer in favor of the Agency (the "Guaranty Agreement") (each document referenced in this Section 4 being, collectively, the "Agency Documents"), each being substantially in the form approved by the Agency for prior transactions, are hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel and Vice President for Legal Affairs of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 5. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 6. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the financing it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer.

Section 7. The Agency hereby authorizes the Applicant and the Companies to proceed with the Project as herein authorized. The Applicant and the Companies are authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Applicant and the Companies that (i) nominal leasehold title to or other interest of the Agency in the Facility shall be in the Agency for purposes of granting financial assistance, and (ii) the Applicant and the Companies are hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Applicant or the Companies for such purpose.

Section 8. Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

Section 9. This Resolution is subject to approval based on an investigative report with respect to the Applicant and the Companies. The provisions of this Resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 8 hereof).

Section 10. The Agency, as lead agency, is issuing this determination pursuant to the State Environmental Quality Review Act ("SEQRA") (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R. Part 617. This

determination is based upon the Agency's review of information provided by the Applicant and such other information as the Agency has deemed necessary and appropriate to make this determination.

The Agency has determined that the Project, an unlisted action, pursuant to SEQRA and the implementing regulations, will not have a significant effect on the environment and that a Draft Final Environmental Impact Statement will not be prepared for the Project. The reasons supporting this determination with respect to the Project are as follows:

- (1) the Project will not result in a substantial adverse change in existing air quality, traffic or noise levels;
- (2) the Project will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or character of existing community or neighborhood;
- (3) the Project will not result in the creation of a hazard to human health; and
- (4) no other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 11. In connection with the Project, the Agency intends to grant (i) the Applicant and Lucky Sons sales tax exemptions in connection with Facility A; and (ii) the Applicant and LGF Realty real property tax abatements, mortgage recording tax exemptions and sales tax exemptions in connection with Facility B.

Section 12. This Resolution shall take effect immediately

ADOPTED: September 9, 2008

Accepted: _____

BEST CHOICE TRADING CORPORATION

By: _____
Name:
Title: