

Amended Resolution inducing the financing of a commercial facility for Extell GT LLC as a Straight-Lease Transaction and authorizing and approving the execution and delivery of agreements in connection therewith

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, Extell GT LLC (the "Applicant"), has entered into negotiations with officials of the Agency for the acquisition, construction, furnishing and equipping of a commercial facility (the "Facility"), consisting of an approximately 730,000 square foot new building to be known as the International Gem Tower that is expected to include up to approximately 630,000 square feet of commercial condominium facilities for use as a state-of-the art diamond and jewelry exchange to be constructed on an approximately 25,000 square foot parcel of land located on Block 1262, lots 11, 12, 13, 14, 15, 16, 59, 60, 62, 63, and 162, at and between 5th Avenue on the east, 46th Street on the south, 6th Avenue on the west and 47th Street on the north, New York, New York (the "Site"), for lease to the Agency by the Applicant, and sublease by the Agency to the Applicant, and having an approximate total project cost of approximately \$745 million (the "Project"); and

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

WHEREAS, on November 14, 2006, the Agency adopted a preliminary inducement resolution in connection with this Project; and

WHEREAS, on November 13, 2007, the Agency adopted an inducement/authorizing resolution in connection with this Project (the "Prior Resolution"); and

WHEREAS, the Applicant has indicated to the Agency that since the date of the Prior Resolution, certain changes have occurred with respect to the Project and has requested that the Agency move forward with a straight lease transaction incorporating such changes; and

WHEREAS, the Agency desires to amend and restate the Prior Resolution as set forth herein; and

WHEREAS, the Application sets forth certain information with respect to the Project, including the following: it is estimated that construction employment may reach approximately 2,590 person years during the construction period, and upon completion and

lease-up, the employment at the Facility may reach up to 2,338 jobs, of which approximately 470 to 1,170 jobs are expected to be new permanent jobs as a result of the attraction of businesses coming from outside of New York or the expansion of New York City (the "City") businesses; that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to continue to develop and complete the Project; and that, based upon the financial assistance provided through the Agency, the Applicant desires to continue to develop and complete the Project; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Applicant are necessary to induce the Applicant to continue to develop and complete the Project; and

WHEREAS, in order to finance a portion of the costs of the Project, it is contemplated that one or more financial institutions, as shall be approved by a certificate of determination of an Agency officer (the "Lender"), shall enter into one or more loan arrangements with the Applicant, and the Agency and the Applicant will grant mortgages and security interests on the Project to the Lender (collectively, the "Mortgage");

WHEREAS, in order to provide financial assistance to the Applicant for the Project, the Agency intends to grant the Applicant financial assistance through a straight-lease transaction in the form of real property tax abatements, sales tax exemptions and mortgage recording tax exemptions all pursuant to the Act;

WHEREAS, the Agency intends to grant such financial assistance to the Applicant at various times as the development of the Project progresses, including providing sales tax exemptions during the construction of the Project, providing mortgage recording tax exemptions once the Lender is identified, and providing real property tax abatements following the completion of construction of the Project, which real property tax benefits are expected to commence on July 1, 2016;

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

Section 1. The Agency hereby determines that the Project and the provision by the Agency of financial assistance to the Applicant pursuant to the Act in the form of a 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 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 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 any other occupant or user of the Facility located within the State of New York (but outside of the City); and

(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.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The Agency hereby authorizes the Applicant to proceed with the Project as herein authorized. The Applicant is 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 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 is hereby constituted the agent 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 for such purpose.

Section 4. The execution and delivery of certain documents in order to provide interim straight lease benefits to the Applicant, including for purposes of providing sales tax and mortgage recording tax benefits, including an interim Company Lease Agreement from the Applicant leasing the Facility to the Agency, an interim Agency Lease Agreement from the Agency subleasing the Facility to the Applicant, an interim Sales Tax Letter from the Agency to the Applicant, the Mortgage, the acceptance of an interim Guaranty Agreement from the Applicant and certain of the Applicant's owners and/or principals and affiliates in favor of the Agency, and related escrow agreements, as well as additional documents in order to provide straight lease real property tax benefits, including a Company Lease Agreement from the Applicant leasing the Facility to the Agency, an Agency Lease Agreement from the Agency subleasing the Facility to the Applicant, a Sales Tax Letter from the Agency to the Applicant, the Mortgage, and the acceptance of a Guaranty Agreement from the Applicant and certain of the Applicant's owners and/or principals and affiliates in favor of the Agency, and related escrow agreements (each document referenced in this Section 4 being, collectively, the "Agency Documents"), each being substantively the same as approved by the Agency for prior transactions, is 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. 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 to assist in the Project.

Section 6. 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, director, 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 7. 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 transaction 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 a certificate of determination of an Agency officer.

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. 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 proposed Project, a Type I action, pursuant to SEQRA and the implementing regulations, will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared. The reasons supporting this determination are as follows:

1. The proposed Project will not result in a significant adverse impact on land use. The proposed building would be compatible with the existing jewelry-related use nature of the surrounding neighborhood. Additionally, the proposed Project would be as-of-right, requiring no change to existing zoning.
2. The proposed Project would not result in significant adverse socio-economic impacts due to indirect business or institutional displacement. It would not result in the alteration of existing economic patterns in the surrounding area. While the Project would introduce office and retail space that is newer than the existing jewelry-related use building stock, it would not make obsolete any form of existing diamond manufacturing, wholesaling or retailing practice. By attracting new diamond and jewelry-related businesses to the City and providing additional space for existing businesses to expand, the International Gem Tower would support and help the diamond district and the City to compete with emerging diamond jewelry centers and remain an industry leader.
3. The proposed Project would not result in impacts to historic resources. There are four structures within 90 feet of the proposed project that are eligible for designation on the national and state registers of historic places. To insure that no damage would occur to these resources as a result of construction activity on the Project site, a Construction Protection Plan prepared in conformance with the Department of Buildings Technical Policy and Procedure Notice (TPPN) #10/88 which outlines procedures for the avoidance of damage to historic structures resulting from adjacent construction would be implemented.
4. The proposal will not result in the creation of a hazard to human health or the environment. The site has been excavated and foundation work has been completed. No underground storage tanks were found on the site and all excavated soils have been removed and disposed of in conformance with applicable regulations.
5. The Project will have the same type of uses as the 2007 Building (No Build) project, but would result in a reduction of the overall size of the proposed Project with less office and retail space. Therefore it is anticipated that like the No-Build project, there

would be no significant traffic impacts. However, the Applicant has agreed to undertake post-construction occupancy surveys in consultation with the New York City Department of Transportation (NYCDOT) and, if necessary, to assess the need for transportation system management improvement measures at the Project site's adjacent intersections. The Applicant has agreed to pay for the cost and expense of implementation by NYCDOT of any transportation system management improvement measures that would improve traffic conditions at these adjacent intersections.

- 6. The proposed Project would not result in any significant adverse open space impacts. In the future with the proposed Project the passive and active recreation open space ratios would remain the same as for the approved 2007 No Build project.
- 7. 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 the Applicant real property tax abatements, sales tax exemptions and mortgage recording tax exemptions.

Section 12. This Resolution shall take effect immediately

ADOPTED: January 10, 2012

Accepted: _____, 2012

EXTELL GT LLC

By: _____
Name:
Title: