

RESOLUTION OF THE NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING NEW YORK CONTAINER INC., TO EQUIP A COMMERCIAL FACILITY AS A PARTICIPANT IN AN INDUSTRIAL INCENTIVE PROGRAM (STRAIGHT-LEASE) TRANSACTION, CONSISTING OF THE EQUIPPING OF AN APPROXIMATELY 393,000 SQUARE FOOT BUILDING LOCATED ON AN APPROXIMATELY 6,432,080 SQUARE FOOT PARCEL OF LAND LOCATED AT 300 WESTERN AVENUE, STATEN ISLAND, NEW YORK, ALL FOR USE AS A PORT TERMINAL, FOR LEASE TO THE AGENCY AND SUBLEASE TO NEW YORK CONTAINER INC., AND TO TAKE OTHER PRELIMINARY ACTION RELATED THERETO

WHEREAS, the 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, New York Container Terminal Inc. (the "Applicant") has entered into negotiations with officials of the Agency for the equipping of a commercial facility consisting of an approximately 393,000 square foot building located on an approximately 6,432,080 square foot parcel of land located at 300 Western Avenue, Staten Island, New York, all for use as a port terminal, for lease to the Agency and sublease to the Applicant (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, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant employs 430 persons within The City of New York (the "City"); that the Applicant intends to hire approximately 50 new employees over the next three years; 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 expand its operation in the City; and that, based upon the financial assistance provided through the Agency, the Applicant desires to proceed with the Project and expand its operation 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 are necessary to induce the Applicant to maintain and expand its operations in the City; and

WHEREAS, the Applicant expects to finance the costs of the Project with the Applicant's funds, loans from lenders to be determined at a later date and grants from the Port Authority of New York and New Jersey;

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

Section 1. The Agency hereby determines that the equipping of the Project and the provision of Agency financial assistance to the Applicant pursuant to the Act in the form of an Industrial Incentive Program (Straight-Lease) transaction will promote, 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 Project 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 Project 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. 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 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 interest in the Project shall be in the Agency for purposes of granting financial assistance, and (ii) the Applicant is hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and neither the Agency nor any of its members, directors, officers, employees or agents (other than the Applicant, as aforesaid) shall have any personal liability for any such action taken by the Applicant, or any director, officer, employee, agent or affiliate thereof, for such purpose.

Section 4. 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.

Section 5. Any expenses incurred by the Agency with respect to the Project and the financial assistance contemplated by this Resolution shall be paid by the Applicant, whether or not the Applicant proceeds with the financing of the Project as contemplated herein or financial assistance by the Agency to the Applicant, through the straight lease transaction between the Agency and the Applicant, is provided as herein authorized (other than by the sole fault of the Agency). 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, liability, 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 and the financing thereof.

Section 6. This Resolution is subject to the approval of a private investigative report with respect to the Applicant. The provisions of this Resolution shall continue to be effective until 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 5 hereof) unless prior to the expiration of such year the Agency shall by subsequent resolution extend the effective period of this Resolution.

Section 7. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project, an unlisted action pursuant to the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law 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:

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

Section 8. In connection with the Project, the Agency intends to grant the Applicant sales tax exemptions.

Section 9. This Resolution shall take effect immediately.

ADOPTED: August 10, 2004

Accepted: \_\_\_\_\_, 2004

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NEW YORK CONTAINER TERMINAL  
INC.

By: \_\_\_\_\_

Name:

Title: