

## **Lunar Module Amendment Resolution**

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 1550 Franklin Avenue, Suite 235, Mineola, County of Nassau, New York on December 19, 2012, at 5:30 p.m., local time.

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

### **PRESENT:**

Timothy Williams	Chairman
John Coumatos	Vice Chairman
Gary Weiss	Secretary
Christopher Fusco	Asst. Secretary

### **ABSENT:**

### **THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:**

Joseph J. Kearney	Executive Director
Joseph Foarile	Chief Financial Officer
Colleen Pereira	Administrative Director
Nicholas Terzulli	Director of Business Development
Mary Dolan Grippo	Chief Marketing Officer
Edward Ambrosino, Esq.	General Counsel
Paul O'Brien, Esq.	Bond/Transaction Counsel
Milan Tyler, Esq.	Bond/Transaction Counsel

The attached resolution no. 2012-38 was offered by J. Coumatos seconded by G. Weiss:

Resolution No. 2012-38

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING  
THE CONTINUED STRAIGHT LEASING OF AND THE GRANTING OF  
CERTAIN ADDITIONAL FINANCIAL ASSISTANCE FOR A CERTAIN  
PROJECT FOR LUNAR MODULE PARK, LLC, AND OTHER MATTERS IN  
CONNECTION THEREWITH

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I 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 674 of the 1975 Laws of New York, as amended, constituting Section 922 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 manufacturing, industrial and commercial 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 and Lunar Module Park, LLC (the "Company") entered into a "straight lease" transaction in connection with a project and the Agency provided Financial Assistance (as such term is defined below) in connection therewith that, as authorized by the Agency's Resolution 2007-40 and Resolution 2009-14, consisted of the following: (A) (1) acquisition of an interest in an approximately 29 acre parcel of land located at 500 Grumman Road West, Bethpage, Town of Oyster Bay, County of Nassau, New York (the "Land"), (2) the renovation of an approximately 660,000 square foot building on the Land (the "Building"), together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment" and together with the Land and the Building, but excluding the LIFT Unit, as such term is hereafter defined, collectively, the "Project Facility"); (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 or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (collectively, the "Financial Assistance"); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company, or such other entity as may be designated by the Company and agreed upon by the Agency; and (D) the

sublease of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the LIFT Unit, as such term is defined in that certain Project Conversion Agreement between the Company and the Agency, dated July 1, 2007 (the "Conversion Agreement"), comprising a portion of the Building and being a separate condominium unit, has been sold by the Company to Long Island Forum for Technology; and

WHEREAS, in connection with the Project Facility, the following documents, among others, were entered into:

(a) Lease Agreement between the Agency and the Company, as amended by that certain First Amendment to Lease Agreement, dated April 7, 2008, and as further amended by that certain Second Amendment to Lease Agreement, dated as of August 26, 2009 (collectively, the "Lease Agreement");

(b) Amended and Restated Payment in Lieu of Taxes Agreement, by and between the Agency and the Company, dated April 7, 2008, as further amended and restated by that certain Amended and Restated Payment in Lieu of Taxes Agreement, dated as of August 26, 2009 (collectively, the "PILOT Agreement");

(c) Mortgage and Assignment of Leases and Rents, from the Agency and the Company to the County of Nassau dated July 1, 2007, as modified by that certain Partial Release of Mortgage and Assignment of Leases and Rents, dated April 7, 2008 (collectively, the "PILOT Mortgage");

(d) Guaranty from the Guarantor to the Agency, dated July 1, 2007, as ratified pursuant to that certain Ratification and Reaffirmation Agreement dated April 7, 2008, and as further ratified pursuant to that certain Ratification and Reaffirmation Agreement dated as of August 26, 2009; and

(e) Environmental Compliance and Indemnification Agreement from the Company and the Guarantor to the Agency dated July 1, 2007, as ratified pursuant to that certain Ratification and Reaffirmation Agreement dated April 7, 2008, and as further ratified pursuant to that certain Ratification and Reaffirmation Agreement dated as of August 26, 2009;

(which documents, together with all other documents, instruments and agreements executed and/or delivered in connection therewith, as all of such documents, instruments and agreements have been amended, modified or supplemented from time to time, are collectively referred to herein as the "Project Documents"); and

WHEREAS, pursuant to an application for financial assistance dated March 14, 2012 made by the Company to the Agency (the "Application"), the Company has requested the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act), including potential additional exemptions or partial exemptions from real property taxes and an exemption from sales and uses taxes (collectively, the "Additional Financial Assistance") in

connection with further improvements of the Project Facility to enhance the use and sustainability of the Project Facility as a film studio facility (collectively, the "Project"); and

WHEREAS, the Additional Financial Assistance would represent a deviation from the Agency's uniform tax exemption policy with respect to the making of payments in lieu of real property taxes; and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Project following a determination by the Agency that (i) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project have been satisfied, and (ii) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project (collectively, the "Applicable Laws"); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on September 12, 2012 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Project Facility is or is to be located, (B) caused notice of the Public Hearing to be published on September 12, 2012 in the Nassau edition of Newsday, a newspaper of general circulation available to residents of the Town of Oyster Bay and the County of Nassau, New York, (C) conducted the Public Hearing on September 28, 2012 at 10:00 a.m. local time at the Town of Oyster Bay Community Center, 59 Church Street, Oyster Bay, Town of Oyster Bay, Nassau County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on November 12, 2012 to the chief executive officer of each affected tax jurisdiction, and (B) conducted the IDA Meeting on December 19, 2012, reviewed any written comments or correspondence received from the affected tax jurisdictions at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy, and approved the proposed deviation by resolution of the members of the Agency adopted immediately prior to the adoption hereof; 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"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Company and made any necessary comments to members of the Agency, and by resolution of the members of

the Agency adopted immediately prior to the adoption hereof, the Agency decided to conduct an uncoordinated review of the Project and determined that the Project is a Type II action under SEQRA and that the Project will not have a significant effect on the environment; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and grant the Additional Financial Assistance, subject to the terms hereof; and

WHEREAS, as preconditions to the granting of Additional Financial Assistance, it is necessary to provide for reaffirmation of certain agreements, the certification of certain facts and the amendment of certain agreements; and

WHEREAS, the Agency is willing to accommodate the Company's request pursuant to the Application, subject to the terms and conditions set forth in this Resolution; and

WHEREAS, to accomplish the foregoing there has been presented to this meeting a form of Third Amendment to Lease Agreement and Third Amended and Restated Payment in Lieu of Taxes Agreement, together with certain reaffirmations, consents, certifications and amendments with respect to the Project Documents (collectively, the "Amendment Documents") for authorization, approval and, where appropriate, execution and delivery by the Agency;

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

Section 1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease Agreement.

Section 2. The Agency has reviewed the Application and the Report and, based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) the granting by the Agency of the Additional Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Nassau County;

(b) the undertaking of the Project will not result in the removal of a facility or plant of the Company or any other occupant or user of the Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other occupant or user of the Facility located within the State;

(c) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State;

(d) the granting of the Additional Financial Assistance by the Agency with respect to the Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York and the State and improve their standard of living, and prevent unemployment and economic deterioration, and thereby serve the public purposes of the Act;

(e) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, the Project will constitute a commercial facility and a recreation facility, and, therefore, the Project constitutes a "project" within the meaning of the Act; and

(f) 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, 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, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media.

Section 3. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project.

Section 4. Having considered fully all comments received at or in connection with the Public Hearing, the Agency hereby further determines to proceed with the granting of the Additional Financial Assistance, subject to the terms hereof.

Section 5. The Amendment Documents are hereby authorized and approved. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, are each hereby authorized to execute, acknowledge and deliver each Amendment Document requiring execution by the Agency, and the Secretary, Assistant Secretary, Administrative Director and Executive Director of the Agency, if required, acting individually or jointly, are each hereby authorized to affix the seal of the Agency on any such Amendment Document and attest the same. The execution and delivery of any such Amendment Document by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 6. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby designated an Authorized Representative of the Agency and each of them is hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and the transactions contemplated herein.

Section 7. The authorizations set forth in this Resolution are subject to the condition that the Company shall reimburse the Agency for all costs and expenses incurred by or payable to the Agency in connection with the transactions contemplated herein, including, without limitation, the Agency's consent and amendment fees and all reasonable attorneys' fees and disbursements incurred by the Agency, including, without limitation, the fees and expenses of Transaction Counsel, Phillips Lytle LLP.

Section 8. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and the Amendment 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 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 and the Amendment 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 any Amendment Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent (other than the Company) or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Amendment Document shall be liable personally on such Amendment Document or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 9. The Agency hereby authorizes the Chairman, Vice Chairman and Executive Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by such officers of the Amendment Documents containing such modifications.

Section 10. 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:

Timothy Williams	VOTING	Aye
John Coumatos	VOTING	Aye
Gary Weiss	VOTING	Aye
Christopher Fusco	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

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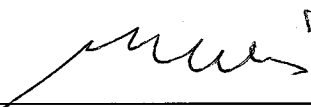
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF NASSAU            )

I, the undersigned ~~[Asst.]~~ Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 19, 2012, 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 set forth 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 19<sup>th</sup> day of December, 2012.

  
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~~[Asst.]~~ Secretary

(SEAL)