

MONY 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 September 28, 2012, at 11:30 a.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:

None

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

The attached resolution no. 2012-26 was offered by G. Weiss, seconded by J. Coumatos:

Resolution No. 2012-26

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 MONY AT LAKE SUCCESS, 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, on January 31, 2003, MONY at Lake Success, LLC, a New York limited liability company (the "Company") entered into a "straight-lease transaction" with the Agency, with respect to a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 6.62 acre parcel of land located at 1999 Marcus Avenue, in Lake Success, Town of North Hempstead, County of Nassau, New York (the "Land"), (2) the construction of a commercial office building consisting of approximately 90,000 square feet above ground and an additional 18,300 square feet of below grade storage and mechanical areas, and a 420 space, three-level, partially below-grade parking structure, together with related improvements located on a portion of the Land (collectively, the "Building"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing to constitute a commercial office building (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 (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) of the Project Facility to the Company by the Agency; 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, dated as of January 1, 2003, as amended by First Amendment to Lease Agreement dated as of June 1, 2003, Second Amendment to Lease Agreement dated as of February 1, 2005, and Third Amendment to Lease Agreement dated as of September 1, 2005, each between the Company and the Agency (collectively, the “Lease Agreement”);

(b) Payment In Lieu of Taxes Agreement between the Agency and the Company, dated as of January 1, 2003, as amended by First Amendment to Payment in Lieu of Taxes Agreement dated as of June 1, 2003, Second Amendment to Payment in Lieu of Taxes Agreement dated as of September 1, 2005, and Third Amendment to Payment in Lieu of Taxes Agreement dated as of December 1, 2005, each between the Company and the Agency (collectively, the “PILOT Agreement”);

(c) Agreement Respecting PILOT Payments from the Agency and the Company in favor of the County of Nassau dated as of June 1, 2003 (as amended, the “PILOT Mortgage”);

(d) Amended and Restated Guaranty from the Guarantor to the Agency dated as of June 1, 2003 (as ratified and reaffirmed, the “Guaranty”); and

(e) Amended and Restated Environmental Compliance and Indemnification Agreement dated as of January 1, 2003 (as ratified and reaffirmed, the “Environmental Indemnification”);

(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 letters dated July 6, 2012 and September 13, 2012 from 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 (collectively, the “Additional Financial Assistance”) in connection with the extension of the term of the Lease Agreement (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, 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 applicable 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 (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 17, 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 21, 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 9:00 a.m. local time at the Town of North Hempstead Town Hall, 220 Plandome Road, Manhasset, Town of North Hempstead, County of Nassau, 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 September 18, 2012 to the chief executive officer of each affected tax jurisdiction, and (B) conducted the IDA Meeting on September 28, 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 materials submitted by the Company and made any necessary comments to members of the Agency; 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 Fourth Amendment to Lease Agreement and 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 determines that the Company's request for a previously approved and unchanged Project is a type II Action pursuant to SEQRA involving "continuing agency administration" which does not involve "new programs or major reordering of priorities that may affect the environment (6 NYCRR Section 617.5(c)(20)) and therefore no Finding or determination of significance are required under Article 8 of the New York Environmental Conservation Law.

Section 4. 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 5. 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 6. 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 7. 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, including, without limitation, the execution and delivery of one (1) or more replacement or amended and restated mortgages in replacement or amendment of the Bank Mortgage.

Section 8. 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 9. 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 10. 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 11. 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.

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 September 28, 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 28~~th~~ day of September, 2012.



[Asst.] Secretary

(SEAL)