
CLOSING MEMORANDUM

LEASE/LEASEBACK TRANSACTION TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY UNITED NATURAL FOODS, INC. PROJECT

Date of Closing: July 18, 2013

Place of Closing: Via Mail

I. DESCRIPTION OF THE TRANSACTION:

In March, 2013, United Natural Foods, Inc. (the “Company”), a foreign business corporation duly organized and validly existing under the laws of the State of Delaware, presented an application (the “Application”) to Town of Montgomery Industrial Development Agency (the “Agency”), a public benefit corporation duly established under Chapter 1030 of 1969 Laws of New York, constituting Title 1 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 527 of the 1971 Laws of New York, as amended, constituting Section 911-c of said General Municipal Law of the State of New York (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in an approximately 113 acre parcel of land located at the intersection of Neelytown Road and Beaver Dam Road (being a portion of tax map no.’s 36-1-42, 36-1-43 and 36-1-9.122) in the Town of Montgomery, Orange County, New York (the “Land”), (2) the construction on the Land of (i) an approximately 480,000 square foot distribution facility (the “Distribution Facility”), (ii) an approximately 25,000 square foot office facility (the “Office Facility”), and (iii) an approximately 8,000 square foot truck maintenance facility (the “Maintenance Facility” and together with the Distribution Facility and the Office Facility, being collectively referred to as the “Facility”) and (3) the acquisition and installation therein and thereon of machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as 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 from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

Pursuant to the authorization contained in a resolution adopted by the members of the Agency on April 8, 2013 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board located at Town Hall of the Town of Montgomery, New York, (C) caused notice of the Public Hearing to be published in the Wallkill Valley Times, a newspaper of general circulation available to the residents of the Town of Montgomery, New York, (D) conducted the Public Hearing on May 13, 2013 at 5:30 o’clock p.m., local time at offices of the Agency located at 110 Bracken Road, Town of Montgomery, Orange County, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency.

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, being 6NYCRR Part 617, as amended (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on July 18, 2013 (the “SEQR Resolution”), the Agency (A) ratified the determination by the Planning Board of the Town of Montgomery (the “Planning Board”) to act as “lead agency” with respect to the Project, (B) acknowledged receipt of a copy of a negative declaration issued by the Planning Board on July 16, 2013 (the “Negative Declaration”), and (C) indicated that the Agency had no information to suggest that the Planning Board was incorrect in authorizing the issuance of the Negative Declaration.

By further resolution adopted by the members of the Agency on July 18, 2013 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of July 1, 2013 (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2029 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency.

Simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of July 1, 2013 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”) for a lease term ending on December 31, 2029; and (2) a bill of sale dated as of July 1, 2013 (the “Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of July 1, 2013 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to

the Project Facility and the Payment in Lieu of Tax Agreement, (C) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (D) the Agency will file with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”).

Among the actions taken by the Agency with respect to the Project prior to the Closing Date were the following:

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| March, 2013 | The Company filed an application (the “Application”) relating to the Project with the Agency. |
| April 8, 2013 | The Agency adopted the Public Hearing Resolution. |
| May 13, 2013 | The Agency conducted the Public Hearing. |
| July 18, 2013 | The Agency adopted the SEQR Resolution. |
| July 18, 2013 | The Agency adopted the Approving Resolution. |

II. PARTIES REPRESENTED AT THE CLOSING:

AGENCY: (A)
Edwin F. Williams, Jr., First Chairperson
Richard Lomazzo, Secretary
Town of Montgomery Industrial Development Agency

AGENCY COUNSEL: (AC)
George W. Clegg, Jr., Esq.
Christopher M. Martell, Esq.
Hodgson Russ LLP

COMPANY: (C)
Mark Shamber
United Natural Foods, Inc.

COMPANY’S COUNSEL: (CC)
Joseph A. Anesta, Esq.
Cameron & Mittleman LLP

III. ACTION TO BE TAKEN AT THE CLOSING:

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency, Agency's Counsel, Special Counsel, the Company and the Company's Counsel as follows:

	<u>Production Response.</u>	<u>Execution Response.</u>
A. <u>Basic Documents:</u>		
1. Underlying Lease.	HR	C,A
2. Memorandum of Underlying Lease, together with a combined real estate transfer tax return and credit line mortgage certificate (TP-584).	HR	C,A
3. Bill of Sale to Agency.	HR	C
4. Lease Agreement.	HR	C,A
5. Memorandum of the Lease Agreement, together with a combined real estate transfer tax return and a credit line mortgage certificate (TP-584).	HR	C,A
6. Payment in Lieu of Tax Agreement.	HR	C,A
7. Certificates (and policies, if available) of casualty, liability, workers' compensation and other insurance required pursuant to the Lease Agreement.	CC	--
8. Closing Receipt.	HR	C,A
B. <u>Items to be delivered by the Agency:</u>		
1. General Certificate of the Agency regarding incumbency and signatures of officers, execution of the Basic Documents and the other documents to be executed by the Agency in connection therewith (the "Agency Documents"), no litigation and continued existence, with the following items included as exhibits:	HR	A
Exhibit A - Chapter 527 of the Laws of 1971;	HR	--
Exhibit B - Certificate of Establishment and Certificates of Appointment of the current members of the Agency, certified by the New York State Department of State, Miscellaneous Records Unit;	HR	--
Exhibit C - By-Laws of the Agency;	HR	--
Exhibit D - Public Hearing Resolution;	HR	A
Exhibit E - Proof of the mailing of notice of the Public Hearing to the chief executive officers of the affected tax jurisdictions;	A	A

		<u>Production Response.</u>	<u>Execution Response.</u>
Exhibit F -	Proof of publication of notice of the Public Hearing;	HR	A
Exhibit G -	Report of the Public Hearing;	A	--
Exhibit H -	SEQR Resolution; and	HR	A
Exhibit I -	Approving Resolution.	HR	A
2.	Certificate Regarding No Conflicts of Interest.	HR	A
3.	Sales Tax Exemption Letter.	HR	A
4.	Real Property Tax Exemption Form.	HR	A
5.	Proof of (A) Mailing and (B) filing of Real Property Tax Exemption Form to the Chief executive officer of the tax assessor of the affected tax jurisdiction.	HR	HR
6.	Thirty-Day Sales Tax Report.	HR,CC	A
7.	Proof of Mailing of Thirty-Day Sales Tax Report to the New York State Department of Taxation and Finance.	HR,CC	A
8.	Special Counsel Disclosure.	HR	HR
C.	<u>Items to be delivered by the Company:</u>		
1.	General Certificate of the Company regarding incumbency and signatures of officers, execution of the Lease Agreement and other Basic Documents to which the Company is a party (the “Company Documents”), no litigation and continued existence, with the following items included as exhibits:	HR,CC	C,CC
Exhibit A -	Certificate of Incorporation of the Company, certified by the Delaware Department of State, Corporations Unit;	CC	--
Exhibit B -	By-laws of the Company;	CC	--
Exhibit C -	Certificate of Good Standing relating to the Company, certified by the Delaware Department of State, Corporations Unit;	CC	--
Exhibit D -	Resolution of the board of directors of the Company approving and authorizing the execution and delivery by the Company of the Company Documents; and	CC	--
Exhibit E -	Pending Litigation.	CC	--
2.	Affidavit of the Company.	HR	C

	<u>Production Response.</u>	<u>Execution Response.</u>
3. Section 875 GML Recapture Agreement.	HR	C,A
D. <u>Opinion of Counsel:</u>		
1. Opinion of Hodgson Russ LLP, counsel to the Agency, addressed to the Agency and the Company.	HR	AC
2. Opinion of Cameron & Mittleman LLP, counsel to the Company, addressed to the Agency and the Company.	HR	CC

**IV. ACTION TO BE TAKEN CONCURRENTLY WITH
OR AFTER THE CLOSING:**

1. The Underlying Lease (or a memorandum thereof), and the Lease Agreement (or a memorandum thereof) are to be recorded by the Company in the office of the County Clerk of Orange County, New York.
2. The Real Property Tax Exemption Form, with a copy of the Payment in Lieu of Tax Agreement attached thereto is to be mailed to the assessor and the chief executive officers of each affected tax jurisdiction.
3. The Thirty-Day Sales Tax Report is to be mailed to the New York State Department of Taxation and Finance.