

RESOLUTION NO. R-2002-017

AUTHORIZING AND APPROVING THE ASSIGNMENT AND TRANSFER OF CERTAIN INTERESTS IN LEASE AGREEMENTS AND RELATED DOCUMENTS BETWEEN RICHLAND COUNTY AS LESSOR AND KOYO CORPORATION OF U.S.A. AS LESSEE FROM KOYO CORPORATION OF U.S.A. TO SMBC CAPITAL MARKETS, INC.; AUTHORIZING THE SUBLEASE OR OTHER ASSIGNMENT OF THE INTEREST IN THE LEASE AGREEMENTS AND OTHER PROPERTY AND RIGHTS ASSIGNED AND TRANSFERRED HEREUNDER BACK TO KOYO CORPORATION OF U.S.A.; AND OTHER MATTERS RELATED THERETO, INCLUDING THE CONTINUATION OF THE FEE IN LIEU OF TAX PERTAINING TO SUCH LEASE AGREEMENTS.

WHEREAS, The City of Columbia, South Carolina ("City") acquired and then conveyed certain real property to Richland County, South Carolina ("County") in order to facilitate the inducement for Koyo Corporation of U.S.A. ("Koyo") to locate and construct a plant in Richland County, and in connection with said transaction the County gave the City a note secured by a Mortgage and Security Agreement dated as of September 7, 1994 (as amended or supplemented from time to time, the "City Mortgage") covering, among other things, the real property, all improvements now or hereafter located thereon, and all personal property and fixtures then or thereafter owned by the County and located on said real property and collaterally assigned to the City all leases of the Land and the rents thereunder pursuant to an Assignment of Leases, Rents and Profits dated the same date (as amended or supplemented from time to time, the "Assignment of Leases"); and

ORIGINAL
STAMPED IN REC.

WHEREAS, with the consent of the City, the County entered into a multi-county industrial park fee-in-lieu of taxes ("MCIP FILOT") arrangement under Title 4, Chapter 1, Code of Laws of South Carolina 1976, as amended, with Koyo in connection with which the County and Koyo entered into a Lease Agreement dated as of September 7, 1994 (the "1994 Lease"); and

WHEREAS, with the consent of the City, the County entered into a negotiated fee-in-lieu of taxes ("Negotited FILOT") arrangement under Title 4, Chapter 12, Code of Laws of South Carolina 1976, as amended (the "Act"), with Koyo in connection with which the County and Koyo entered into a Lease Agreement dated as of December 17, 1997 (the "1997 Lease") concerning certain property to be used in the manufacture of bearing products for the automotive industry and any and all activities relating thereto (the "Project"); and

WHEREAS, Koyo plans to enter into a financing transaction (the "Financing") with an unaffiliated entity, SMBC Capital Markets, Inc. ("the Financing Entity") which will involve a

significant portion or all of the personal property (the "Financed Property") comprising the Project; and

WHEREAS, pursuant to the Financing, Koyo will sell, assign and transfer, to the Financing Entity, subject to the 1994 Lease and the 1997 Lease (collectively, the "Leases"), Koyo's interests in the Financed Property, including its right to exercise its options to purchase the Financed Property under the Leases (the "Purchase Options"); and

WHEREAS, the Financing Entity will then lease the Financed Property back to Koyo (the "Financing Lease"); and

WHEREAS, the Financing Entity intends to fund part of the Financing by receiving a loan (the "Loan") from an affiliated party, Sumitomo Mitsui Banking Corporation, operating through its New York Branch (the "Lender"), and to assign or pledge its interest in the Financing Lease and the Purchase Options to the Lender as security for the Loan; and

WHEREAS, at the conclusion of the term of the Financing and the Loan, which is currently contemplated to be eight (8) years but may be abridged or extended by the parties to the Financing and Loan, Koyo (or its successors and assigns) has the right, among other things, to purchase the Financed Property, in which case the Financing Entity would re-convey the Financed Property to Koyo (or its successors and assigns) (the "Retransfer"); and

WHEREAS, Koyo has requested the City to consent to the Financing and Loan by this resolution;

NOW, THEREFORE, BE IT RESOLVED by the City Council of The City of Columbia, as follows:

Section 1. The City hereby expressly confirms its prior consents and hereby expressly consents to the above-referenced transfers and assignments to be made in connection with the Financing, the Loan, the Retransfer, and to such other transfers and assignments as Koyo or the Financing Entity may determine to be necessary or appropriate in connection with the Financing, the Loan, and the Retransfer and agrees that the Financing Entity and the Lender shall have the right to exercise the Purchase Options subject to the terms of the Leases and upon the exercise of the Purchase Options by the Financing Entity or the Lender, (a) the Financed Property will be released from the City Mortgage, the Assignment of Leases and the Leases and (b) the Leases will terminate as to the Financed Property.

Section 2. The Mayor is hereby authorized and directed, in the name of the City, to execute such documents as may be necessary or appropriate to evidence the City's consent to the Financing, the Loan, the Retransfer, and to the transfers and assignments related thereto, and to execute and deliver such other documents as may be necessary or appropriate in connection with this resolution, such documents to be subject to review and approval by the

ORIGINAL
STAMPED IN BLUE

City Attorney, and the City Clerk is hereby authorized and directed to affix thereto the seal of the City and to attest the same.

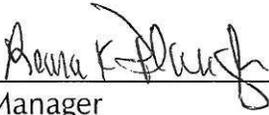
DONE IN MEETING DULY ASSEMBLED AND SIGNED, SEALED, AND DELIVERED AS OF THIS 27th DAY OF MARCH, 2002.

Requested by:



Mayor

Approved by:



City Manager

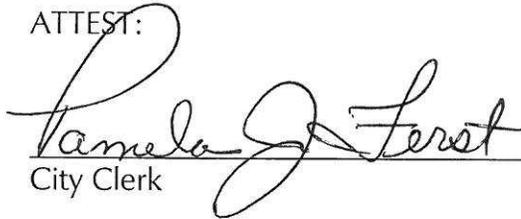
ORIGINAL
OBTAINED IN RE

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 3/27/2002

Final Reading: 3/27/2002

ACKNOWLEDGMENT AND CONSENT TO ASSIGNMENT

THIS ACKNOWLEDGMENT AND CONSENT TO ASSIGNMENT is made as of March __, 2002, by THE CITY OF COLUMBIA, SOUTH CAROLINA (the "City"),

RECITALS

A. Pursuant to a Lease Agreement dated as of September 7, 1994, between Richland County, South Carolina (the "County"), as landlord and Koyo Corporation of U.S.A (the "Lessee"), as tenant (as amended or supplemented from time to time, the "1994 Lease"), the County has leased to the Lessee certain real property located in the Northpoint Industrial Park, Richland County, South Carolina, as more particularly described therein (the "Land"), together with the buildings and other improvements located thereon. In connection with the 1994 Lease, the County acquired the Land from the City and granted the City a Mortgage and Security Agreement dated as of September 7, 1994 (as amended or supplemented from time to time, the "City Mortgage") covering, among other things, the Land, all improvements now or hereafter located thereon, and all personal property and fixtures then or thereafter owned by the County and located on the Land and collaterally assigned to the City all leases of the Land and the rents thereunder pursuant to an Assignment of Leases, Rents and Profits dated the same date (as amended or supplemented from time to time, the "Assignment of Leases").

B. Pursuant to a Lease Agreement dated as of December 1, 1997, between the County, as landlord, and the Lessee, as tenant (as amended or supplemented from time to time, the "1997 Lease"), the County has leased to the Lessee all improvements constructed on the Land after January 18, 1997 and all equipment and personal property transferred and conveyed to the County by bill of sale (the Land and all improvements and all equipment and personal property covered by the 1994 Lease and the 1997 Lease being hereinafter collectively referred to as the "Project").

C. The Lessee and SMBC Capital Markets, Inc. (the "Assignee") have agreed to enter into a financing arrangement (the "Financing") pursuant to which the Lessee will assign and transfer to the Assignee, subject to the 1994 Lease and the 1997 Lease (collectively, the "County Lease"), (i) all of the Lessee's right, title and interest in and to all of the equipment described on Exhibit A attached hereto (collectively, the "Equipment"), which Equipment constitutes part of the Project, and (ii) the options to purchase the Equipment pursuant to Article IX of the 1994 Lease and Article X of the 1997 Lease (the "Purchase Options"). Concurrently with the execution and delivery of this Assignment, the Lessee and the Assignee are entering into a Lease Agreement dated as of the date hereof (as amended, supplemented, renewed, amended and restated or otherwise modified from time to time, the "Equipment Lease"), pursuant to which the Assignee will lease to the Lessee the Equipment.

D. The Assignee intends to fund part of the Financing by receiving a loan (the "Loan") from Sumitomo Mitsui Banking Corporation (the "Lender"). As security for the Loan, the Assignee will assign all of its right, title and interest in this Assignment, the Equipment Lease and the Purchase Options to the Lender pursuant to a Loan and Security Agreement dated as of the date hereof (as amended and supplemented from time to time, the "Loan Agreement") and the other documents executed in connection therewith.

E. In connection with the transactions contemplated under the Equipment Lease and the Loan Agreement, the Lessee desires to assign, transfer and convey to the Assignee, and the Assignee desires to accept and assume from the Lessee, on the terms and subject to the conditions of this Assignment, all of the right, title and interest (but not the obligations) of the Lessee in the Equipment and the Purchase Options.

NOW, THEREFORE, the City hereby acknowledges and consents to the following:

(CONSENT)

1. Obligations under the County Lease. The City expressly acknowledges and agrees that neither the Assignee nor the Lender shall have any obligation or liability to the City by reason of or arising out of the Assignment or any subsequent assignment of the Assigned Interest to the Lender or otherwise.

2. Rights of the Lessee. The City expressly acknowledges and agrees that so long as no Agreement Default (as defined below) has occurred and is continuing, the Lessee, as the agent of the Assignee, in the name of the Lessee, in the name of the Assignee or in the name of the Lender, may exercise any rights of the "Lessee" under the County Lease. For purposes hereof, "Agreement Default" shall mean (i) an "Event of Default", as such term is defined either Section 10.01 of the 1994 Lease or in Section 11.01 of the 1997 Lease (each a "Lease Default"), (ii) an "Event of Default", as such term is defined in Section 4.02 of the Loan Agreement, and (iii) an "Equipment Lease Default", as such term is defined in Section 14 of the Equipment Lease.

3. Consent. The City hereby (a) expressly acknowledges receipt of notice of the assignment of the Assigned Interest by the Lessee to the Assignee and of the subsequent assignment by the Assignee of the Assigned Interest to the Lender, (b) consents to (i) the assignment by the Lessee to the Assignee of the Assigned Interest, and to the lease back from the Assignee by the Lessee of the Equipment, and (ii) the assignment by the Assignee to the Lender of the Assigned Interest, and (c) agrees that the Lender (so long as the Loan Agreement is in effect, and thereafter the Assignee) is entitled to exercise the rights of the Lessee under the County Lease, including, without limitation, the Purchase Options. The City agrees that upon the exercise of the Purchase Options, (i) the Equipment will be released from the City Mortgage, the Assignment of Leases and the County Lease and (ii) the County Lease will terminate as to the Equipment.

4. Representations and Warranties. The City hereby represents and warrants that (i) it has no actual knowledge that any default has occurred and is continuing under the City Mortgage or that any event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default under the City Mortgage, (ii) the City Mortgage has not been previously amended or modified in any respect (iii) the City Mortgage is now in full force and effect, is enforceable against the City in accordance with its terms and constitutes the entire agreement between the City and the County with respect to the Project and the Equipment; (iv) the City has no actual knowledge that the Lessee has sold, assigned or pledged any right, title or interest in or to the County Lease, the Project or the Equipment to any other party; and (v) no consent or approval of any other party is required in connection with the City's execution, delivery and performance of this instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized representatives as of the date first above written.

CITY OF COLUMBIA, SOUTH CAROLINA



Elizabeth R. Fisher

By: 
~~Robert Coble~~
Mayor 

EQUIPMENT

EXHIBIT B

1994 LEASE

EXHIBIT C

1997 LEASE