

Designatronics 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, Mineola, County of Nassau, New York, on September 27, 2016, at 5:00 p.m., local time.

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

PRESENT:

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

NOT PRESENT:

Timothy Williams	Chairman
Michael Rodin	

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
Edward Ambrosino, Esq.	General Counsel
Paul O'Brien, Esq.	Bond/Transaction Counsel

The attached resolution no. 2016-55 was offered by C. Fusco, seconded by J. Coumatos:

Resolution No. 2016-55

RESOLUTION TAKING OFFICIAL ACTION TOWARD THE CONTINUED
STRAIGHT LEASING OF AND THE GRANTING OF CERTAIN
ADDITIONAL FINANCIAL ASSISTANCE WITH RESPECT TO A CERTAIN
PROJECT FOR DESIGNATRONICS INCORPORATED, 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, DESIGNATRONICS INCORPORATED, a corporation organized and existing under the laws of the State of New York (the "Applicant"), presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in a parcel of land located at 250 Duffy Avenue, Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 11; Block: G; Lot: 174) (the "Land"), (2) the renovation of the existing approximately 100,000 square foot building (collectively, the "Building") on the Land, 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"), all of the foregoing for use by the Applicant as a design, manufacturing and distribution facility in connection with its mechanical and electro-mechanical motion control business (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Agency appointed the Applicant as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Project Facility and subleased the Project Facility to the Applicant, and the Applicant agreed to act as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Project Facility and subleased the Project Facility from the Agency, all pursuant to the terms and conditions set forth in that certain Sublease Agreement dated as of December 1, 2013 (as amended to date, the "Original Lease") and in the other Transaction Documents (as defined in the Original Lease); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement, dated as of December 1, 2013, between the Applicant and the Agency (as amended, modified, supplemented and restated, collectively, the "Existing PILOT Agreement"), the Applicant agreed to make certain payments in lieu of real property taxes with respect to the Land and the improvements thereon, and such obligation is secured by a certain Mortgage and Assignment of Leases and Rents, dated as of December 1, 2013 (as amended, modified, supplemented and restated, the "PILOT Mortgage"), made by the Applicant and the Agency, as mortgagors, in favor of the County of Nassau, as mortgagee (in such capacity, the "PILOT Mortgagee"), pursuant to which the Agency and the Applicant granted a first mortgage on the Land and the improvements thereon to the PILOT Mortgagee; and

WHEREAS, the Applicant has requested that the Agency consent to the amendment of the Transaction Documents (collectively, the "Amended Project") to (i) increase the payments of the Applicant to the Agency under the Existing PILOT Agreement, (ii) amend the Minimum Employment Requirement (as defined in the Original Lease), and (iii) grant certain additional "financial assistance" in connection with the foregoing, including potential additional exemptions or partial exemptions from sales and use taxes and mortgage recording taxes (collectively, the "Additional Financial Assistance"), all pursuant to a request for consent dated August 3, 2016 (the "Consent Request"); 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 Amended Project and the granting of the Additional Financial Assistance are contingent upon, *inter alia*, a determination by the members of the Agency to proceed with the Amended 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 Amended Project have been satisfied, and (ii) the undertaking of the Amended Project by the Agency and the granting of the Additional 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 Amended 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 Amended Project and the Additional Financial Assistance contemplated by the Agency with respect to the Amended Project, to be mailed on September 8, 2016 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 8, 2016 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 23, 2016 at 10:00 a.m. local time at 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, pursuant to Section 874(4) of the Act, (A) the Executive Director of the Agency caused a letter dated September 12, 2016 (collectively, the "Pilot Deviation Notice Letter") to be mailed to the chief executive officer of each affected tax jurisdiction, informing said individuals that the Agency would, at its meeting on September 27, 2016 (the "IDA Meeting"), consider a proposed deviation from the Tax Exemption Policy with respect to the payments in lieu of real property taxes to be made pursuant to an amended and restated payment in lieu of taxes agreement to be entered into by the Agency with respect to the Project Facility; and (B) the members of the Agency conducted the IDA Meeting on the date hereof and reviewed any written comments and correspondence received with respect to the proposed deviation from the Tax Exemption Policy; 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the materials submitted by the Applicant 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 determined that the Amended Project constitutes a Type II action under SEQRA and, therefore, will not have a significant adverse environmental impact; and

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

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

WHEREAS, the Agency is willing to accommodate the Applicant's requests set forth above, subject to the terms and conditions set forth in this Resolution; and

WHEREAS, to accomplish the foregoing there has been prepared a form of Amended and Restated Payment in Lieu of Taxes Agreement, together with certain reaffirmations, consents,

certifications and amendments (collectively, the "Project 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 Original Lease.

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

(a) the granting by the Agency of the Additional Financial Assistance is reasonably necessary to cause the Applicant to undertake the Amended Project;

(b) there is a likelihood that the Amended Project would not be undertaken but for the granting of the Additional Financial Assistance by the Agency to the Applicant;

(b) the undertaking of the Amended Project will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project 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 Applicant or any other occupant or user of the Project Facility located within the State. Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Additional Financial Assistance by the Agency to the Applicant;

(c) the Amended 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 Amended 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, the economic effects of the Amended Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Amended Project, the Project Facility constitutes a commercial facility, and, therefore, the Amended Project constitutes a "project" within the meaning of the Act;

(f) no funds of the Agency shall be used in connection with the Amended 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 Amended 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; and

(g) the Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Amended Project. For purposes of this finding, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

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 Amended Project.

Section 4. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate thereto.

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 Amended Project and the granting of the Additional Financial Assistance, subject to the terms hereof.

Section 6. The Project 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 Project 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 Project Document and attest the same. The execution and delivery of any such Project 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 fee and leasehold mortgage, assignment of rents and leases, and security agreements in favor of such bank or financial

institution as the Applicant may determine (such bank or financial institution, the "Bank"), encumbering the Project Facility, solely to subject to the lien thereof its interest in the Project Facility, all to secure a loan made by such Bank to the Applicant.

Section 8. The authorizations set forth in this Resolution are subject to the condition that the Applicant 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 administrative fee and all attorneys' fees and disbursements incurred by the Agency.

Section 9. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and the Project 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 Project 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 any Project Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent (other than the Applicant) or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Project Document shall be liable personally on such Project 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, Executive Director and Administrative 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 Project Documents containing such modifications.

Section 11. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency, acting individually or jointly, are hereby authorized and directed to distribute copies of this Resolution to the Applicant and such other parties as any such officer may determine.

Section 12. 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	EXCUSED	
John Coumatos	VOTING	Aye
Gary Weiss	VOTING	Aye
Christopher Fusco	VOTING	Aye
Michael Rodin	EXCUSED	

The foregoing Resolution was thereupon declared duly adopted.

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

We, the undersigned [Vice] Chairman and [~~Assistant~~] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we 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 27, 2016 with the original thereof on file in our 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.

WE 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.

WE 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, we have hereunto set our respective hands and affixed the seal of the Agency this 27th day of September, 2016.



[Assistant] Secretary



[Vice] Chairman

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(SEAL)