

A regular meeting of the Town of Colonie Industrial Development Agency (the "Agency") was convened in public session at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, Albany County, New York on October 16, 2017 at 6:00 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: Carm Basile
Peter Gannon
John Kearney
Eric Phillips
Gary Rinaldi
Benjamin Syden

ABSENT: David DeLuca

The following persons were also present:

Joseph LaCivita	Executive Director
Christopher Kelsey	Chief Financial Officer
M. Cornelia Cahill, Esq.	Barclay Damon LLP
Melissa Bennett, Esq.	Barclay Damon LLP

The following resolution was offered by Benjamin Syden, seconded by Carm Basile, to wit:

RESOLUTION AUTHORIZING THE EXECUTION OF AN UNDERLYING LEASE, LEASE AGREEMENT, PROJECT AGREEMENT AND PAYMENT IN LIEU OF TAX AGREEMENT IN CONNECTION WITH A CERTAIN PROJECT FOR AFRIM REALTY COMPANY, LLC ("COMPANY") AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, Town of Colonie Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 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 594 of the Laws of 1980 of New York, as amended, constituting Section 911-d 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, renovating, improving, maintaining, equipping and furnishing of 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 “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, Afrim Realty Company, LLC, on behalf of itself and entities formed or to be formed on behalf of the foregoing, including Afrim’s Sports, Inc. (the “Company”) presented an application (the “Application”) to the Agency, requesting that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in approximately 28.6 acres of land located at 969 Watervliet Shaker Road (Tax Map # 30.-2-2.21) in the Town of Colonie, Albany County, New York (the “Land”), (2) the construction of an approximately 86,400 square foot air supported dome, an approximately 12,000 square foot building and an approximately 900 square foot building (collectively, the “Facility”), and (3) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”), such Project Facility to constitute a recreation project providing facilities for sporting events, including, but not limited to, soccer and lacrosse games and tournaments; (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 mortgage recording taxes (except as limited by Section 874 of the Act), real estate transfer taxes, sales and uses taxes and real property 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; and

WHEREAS, the members of the Agency adopted a resolution on July 10, 2017 (the “Public Hearing Resolution”) authorizing a public hearing in compliance with the provisions of Section 859-a of the Act and the deviation process in compliance with the provisions of Section 874(4)(b) of the Act and the Agency’s Uniform Tax Exemption Policy (the “UTEP”); and

WHEREAS, in compliance with the provisions of Section 859-a of the Act, the public hearing resolution adopted on July 10, 2017 (the “Public Hearing Resolution”) indicated that the undertakings of the Agency contained therein are contingent upon the Agency making a determination to proceed with the Project following compliance by the Agency with the public notice and public hearing requirements set forth in Section 859-a of the Act; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Agency (A) caused notice of public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, 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, the town and the school district in which the Project Facility is, or is to be located (each an “Affected Tax Jurisdiction” and collectively, the “Affected Tax Jurisdictions”), (B) caused notice of the Public Hearing to be published on August 4, 2017 in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York, and

(C) conducted the Public Hearing on August 14, 2017 at 6:00 p.m. at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, New York; and

WHEREAS, the Company has requested that the terms of the payment in lieu of tax agreement to be entered into in connection with the Project contain terms that deviate from the UTEP; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution and in compliance with the provisions of Section 874(4)(b) of the Act and the UTEP, the Agency caused a letter dated August 3, 2017 (the "PILOT Deviation Letter") to be mailed to the chief executive officers of each Affected Tax Jurisdiction, informing said individuals that the Agency would, at its meeting to be held on August 14, 2017, consider a proposed deviation from the UTEP with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility based upon the schedule of payments in lieu of taxes set forth in Exhibit A (the "Initial Proposal") or Exhibit B (the "Alternate Proposal") attached hereto or some combination or variation thereof; and

WHEREAS, prior to the date hereof, the Agency responded to all communications and correspondence received from the Affected Tax Jurisdictions regarding the proposed deviation from the UTEP; and

WHEREAS, the Agency allowed representatives from the Affected Tax Jurisdictions present at this meeting to address the Agency regarding such proposed deviation; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents: (A) an underlying lease agreement (and a memorandum thereof) (the "Underlying Lease") dated as of October 1, 2017 by and among the Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company; (B) a lease agreement (and a memorandum thereof) (the "Lease Agreement") dated as of October 1, 2017 by and between the Agency and the Company, pursuant to which, among other things, the Company will agree to undertake and complete the Project as agent of the Agency and the Company will further agree to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) a project agreement (the "Project Agreement") dated as of October 1, 2017 that complies with the requirements of Section 859-a(6) of the Act; (D) a payment in lieu of tax agreement dated as of October 1, 2017 by and between the Agency and the Company, pursuant to which the Company will agree to make payments in lieu of taxes in accordance with the terms set forth in Exhibit C; and (E) various certificates relating to the Project; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, the Company will execute and deliver to the Agency one or more bills of sale to agency (the "Bill of Sale") from the Company to the Agency pursuant to which the Company will sell to the Agency the Equipment; and

WHEREAS, in order to secure the performance by the Company of its obligations under the PILOT Agreement, the Company will execute a mortgage and assignment of leases and rents (the “PILOT Mortgage”) in favor of the Agency granting to the Agency a mortgage lien on the Company’s leasehold interest in the Project Facility; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers 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 RP-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) (a “Real Property Tax Exemption Form”) relating to the Project; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, the Agency will file with the 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 file pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) and provide a copy of the Thirty-Day Sales Tax Report to the Company; and

WHEREAS, for purposes of exemption from New York State (the “State”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight; 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 Project had been subject to an environmental review pursuant to the requirements of the State Environmental Quality Review Act and the regulations thereunder, resulting in the issuance of a Negative Declaration by the Agency by resolution dated July 10, 2017;

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application and at this meeting, hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The undertaking of the Project pursuant to the Lease Agreement is for a proper purpose, to wit, to preserve and/or create permanent private sector jobs and to advance

the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Colonie and the State of New York;

(C) The completion of the Project Facility will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of a plant or facility of the Company or of any proposed occupant of the Project Facility located in the State;

(D) This Project does not constitute a project where the facilities or property comprising the Project will be primarily used in making retail sales of goods or services to customers who personally visit such facilities and constitute more than one-third (1/3) of the total Project cost; and

(E) The Agency, based upon its review of the following factors, finds and determines that it is desirable and in the public interest of the Agency to deviate from its UTEP and to approve the execution and delivery of the PILOT Agreement:

1. The nature of the proposed Project (e.g., manufacturing, commercial, warehouse):

The proposed Project would be recreational in nature. The Company will develop the Land and construct an approximately 86,400 square foot air supported dome, an approximately 12,000 square foot building and an approximately 900 square foot building to be used as facilities for sporting events, including, but not limited to, soccer and lacrosse games and tournaments. The Project Facility will fill a demand within the Town for additional recreational sports facilities, providing field availability to the South Colonie Central School District (the "School District") as well as the community as a whole.

2. The nature of the property before the Project begins (e.g., vacant land, vacant buildings):

The Land was until recently owned by a private individual and has been vacant for over 20 years; it is currently subject to an agricultural district tax exemption.

3. The economic condition of the area at the time of the Application:

The Land is predominantly vacant land that is not currently being used. There is little economic development in the area, although there are plans for a large apartment complex to be built adjacent to the Land.

4. The extent to which a project will create or retain permanent, private sector jobs:

The Project will retain fifteen (15) full time equivalent positions and will create an additional fifteen (15) full time equivalent positions.

5. The estimated value of tax exemptions to be provided:

Based upon the Initial Proposal and the payment schedule set forth in Exhibit A, the estimated value of the tax exemption over the term of the PILOT Agreement is estimated to be approximately \$1,600,000. Based upon the Alternate Proposal and the payment schedule set forth in Exhibit B, the estimated value of the tax exemption over the term of the PILOT Agreement is estimated to be approximately \$1,094,814 over the term of the PILOT Agreement. However, were the Agency to authorize a lesser period or a different PILOT payment amount, the estimated value of the real property tax exemptions would correspondingly change.

The above estimates are based on an estimated taxable assessed value and current tax rates.

6. The extent to which the proposed Project will provide additional sources of revenue for municipalities and school districts in which the Project is located:

The Project will retain fifteen (15) full time equivalent positions and will create an additional fifteen (15) full time equivalent positions for the community. In addition, tournament attendance at the Project Facility will result in a significant increase in lodging, dining and transportation demands throughout the Town.

7. The impact of the Project and the proposed tax exemptions on affected tax jurisdictions:

The Project will generate increased revenue to the affected tax jurisdictions in the form of increased property tax revenues and sales and use tax revenues. Because the Land is currently subject to an agricultural district tax exemption, the School District received only \$214.31 in school taxes in 2015-16 and the Town received only \$353.09 in 2016. Even with the proposed tax exemptions, the Project will still result in significantly larger property tax revenues for the affected tax jurisdictions than those currently being received on this Land.

Moreover, the Project does not create housing and will have no impact on the utilization of the School District.

8. The impact of the proposed project on existing and proposed business and economic development projects within the vicinity:

There is demand within the Town for recreational sports facilities. The Project Facility would be the only multi-use, turf field athletic facility of its kind in the greater Capital Region and will not compete with existing businesses within the Town. The Project will support local vendors and will retain fifteen (15) full time equivalent positions and will create an additional fifteen (15) full time equivalent positions. It is expected that thousands of people will attend games and tournaments at the Project Facility and that they will patronize local hotels, restaurants and stores.

9. The amount of private sector investment generated or likely to be generated by the proposed Project:

The cost of the Project build out is in excess of \$9 million with a significant equity investment being made by the Company.

10. The likelihood of accomplishing the proposed Project in a timely fashion:

The Project has received all required zoning approvals and conditional final site plan approval has been obtained. Closing of the financing is expected to be in November 2017. Construction is expected to commence shortly after closing of the financing.

11. The effect of the proposed project on the environment:

The Town Planning Board has issued a negative declaration for the Project pursuant to the New York State Environmental Quality Review Act.

12. The extent to which the proposed Project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services:

The Project will require no provision for educational services. The Company expects that many of the users of the Project Facility will use their own cars but there may be some increased demand in public transportation to the Project Facility. Buildings will be fully sprinkled. Minimal demand for police, fire and emergency medical services (EMT) services is anticipated.

13. The extent to which the proposed Project will follow local input from local planning agencies:

The Town was heavily involved in and influenced the Project planning, with extensive review by the Town Planning Board and all other Town

departments such as Building and Town Public Works, Engineering, and the Town Board.

14. The extent to which the proposed Project will provide needed benefit (economic or otherwise) not otherwise available within the Town:

The Project provides athletic facilities for year-round use. The Project Facility will be the only multi-use, turf field athletic facility of its kind in the greater Capital Region and will not compete with existing businesses within the Town. It will provide availability to the School District as well as the community as a whole.

The Project will provide economic benefit to the Town from increased property tax revenues and sales and use tax revenues.

15. The extent to which the Company or occupant will enter into apprenticeship agreements within the meaning of Section 816 of the Labor Law of the State of New York with respect to the construction, reconstruction or operation of the Project:

The Agency will encourage the Company to enter into apprenticeship agreements.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire a leasehold interest in the Land and all improvements now or hereafter located on the Land from the Company; (C) acquire title to the Equipment pursuant to one or more bills of sale (the "Bill of Sale to Agency") from the Company to the Agency; (D) lease the Project Facility to the Company pursuant to the Lease Agreement; (E) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, constructed and installed, as provided in the Lease Agreement; and (F) grant to the Company the Financial Assistance with respect to the Project.

Section 3. The Agency is hereby authorized to acquire a leasehold interest in the Project Facility pursuant to the Underlying Lease and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 4. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 6. The form and substance of the Agency Documents (in substantially the forms presented to this meeting and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 7. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The Agency Documents shall be in substantially the forms thereof presented to this meeting with such changes, variation, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 8. The Agency shall maintain records of the amount of State and local sales and use tax exemption benefits provided to the Project and each agent or Project operator and shall make such records available to the State Commissioner of Taxation and Finance (the "Commissioner") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits available to the Agency upon request. The provisions of Section 875 of the Act are hereby incorporated herein as if set forth herein and the Agency agrees that it shall comply with the requirements of such Section 875.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. This resolution shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Carm Basile	X		
David DeLuca			X
Peter Gannon	X		
John Kearney	X		
Eric Phillips	X		
Gary Rinaldi	X		
Benjamin Syden	X		

The Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of the Town of Colonie Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing copy of the minutes of the meeting of the Agency, including the Resolution contained therein, held on October 16, 2017, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 2017.



Secretary