

A special 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 July 11, 2018 at 4:00 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
Alison Blessing
Peter Gannon
John Kearney
Eric Phillips
Benjamin Syden

ABSENT: Gary Rinaldi

The following persons were also present:

Joseph LaCivita	Executive Director
M. Cornelia Cahill, Esq.	Barclay Damon LLP

The following resolution was offered by Carm Basile, seconded by Alison Blessing, to wit:

RESOLUTION AUTHORIZING THE EXECUTION OF AN UNDERLYING LEASE, LEASE AGREEMENT AND PROJECT AGREEMENT IN CONNECTION WITH A CERTAIN PROJECT FOR THE AYCO COMPANY, L.P. 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, The Ayco Company, L.P., on behalf of itself and entities formed on behalf of the foregoing (the "Company") has presented an application (the "Application") to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the construction of tenant buildout and fit-up improvements (the "Tenant Improvements") in an approximately 149,005 square foot building (the "Facility") being constructed by Starlite Associates, LLC on certain real property located at 629 Columbia Street Extension in the Town of Colonie, Albany County, New York (the "Land"), and (2) the acquisition and installation therein and thereon of various machinery and equipment (the "Equipment") (the Land and the Facility being collectively referred to as the "Project Facility" and the Tenant Improvements and the Equipment being collectively referred to as the "Tenant Project Facility"), such Project Facility to constitute a new office complex and corporate headquarters; (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 sales and uses taxes (the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Tenant 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 October 16, 2017 (the "Public Hearing Resolution") authorizing a public hearing in compliance with the provisions of Section 859-a of the Act; 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 on April 2, 2018 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 April 4, April 11 and April 18, 2018 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 April 23, 2018 at 6:00 p.m. at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, New York; 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 (collectively, the "Agency Documents"): (A) an underlying lease agreement (and a

memorandum thereof) (the “Underlying Lease”) dated as of July 1, 2018 by and between the Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Tenant 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 July 1, 2018 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 Tenant 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 July 1, 2018 that complies with the requirements of Section 859-a(6) of the Act; and (D) 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, 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 Town of Colonie Planning Board by resolution dated April 24, 2018;

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) Although the completion of the Project Facility will 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 the Project is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State of New York and is reasonably necessary to preserve the competitive position of the Company in its respective industry; and

(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.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire a leasehold interest in the Tenant Improvements 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 Tenant Project Facility to the Company pursuant to the Lease Agreement; (E) acquire, construct and install the Tenant Project Facility, or cause the Tenant 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 Tenant 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 Tenant 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 5. 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 6. (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 7. 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 8. 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 9. 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		
Alison Blessing	X		
Peter Gannon	X		
John Kearney	X		
Eric Phillips	X		
Gary Rinaldi			X
Benjamin Syden	X		

The Resolution was thereupon declared duly adopted.

