

SUB-AGENT APPOINTMENT AGREEMENT

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "Agreement"), dated as of April 1, 2019, is by and between THE AYCO COMPANY, L.P., a limited partnership organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 25 British American Boulevard, Latham, New York 12110 (the "Company"), and THE GOLDMAN SACHS GROUP, INC., a corporation organized and existing under the laws of the State of Delaware, having an office for the transaction of business at 30 Hudson Avenue, Jersey City, New Jersey 07302 (the "Sub-Agent").

WITNESSETH:

WHEREAS, the Town of Colonie Industrial Development Agency (the "Agency") was created by Chapter 232 of the Laws of 1977, as amended by Chapter 594 of the Laws of 1980 of the State of New York, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, by resolution of its members adopted on July 11, 2018 (the "Approving Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking a project for the benefit of the Company (the "Project") consisting of: (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 and Tenant Project Facility to constitute a new office complex and corporate headquarters for the Company; (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 sales and use 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, by the Project Agreement, the Agency delegated to the Company the authority to appoint sub-agents subject to compliance with the terms set forth therein; and

WHEREAS, the Company and the Agency entered into a Project Agreement by and between the Company and the Agency dated as of April 1, 2019 (the "Project Agreement");

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in

furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Tenant Project Facility.

2. The Sub-Agent covenants, agrees and acknowledges:

a. To make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance's "Annual Report of Sales and Use Tax Exemptions" (Form ST-340).

b. To be bound by and comply with the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein. Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act, the Agency shall recover, recapture, receive or otherwise obtain from the Sub-Agent the portion of the Financial Assistance (the "Recapture Amount") consisting of: (1) (a) that portion of the State sales and use tax exemption claimed by the Sub-Agent to which the Sub-Agent was not entitled, which is in excess of the amount of the State sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State sales and use tax exemption claimed by the Sub-Agent, if the Sub-Agent fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in the application to the Agency in regard to the Project or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

c. That the failure of the Sub-Agent to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

d. That all purchases made by the Sub-Agent in connection with the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached hereto as Exhibit A), and it shall be the responsibility of the Sub-Agent (and not the Agency) to complete Form ST-123. The Sub-Agent acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services necessary for the completion of, to be incorporated or installed in or for use

in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the Town of Colonie Industrial Development Agency and that I am purchasing the tangible personal property or services necessary for the completion of, to be incorporated or installed in or for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: The Ayco Company, L.P. Project; 629 Columbia Street Extension, Town of Colonie, Albany County, New York; IDA Project No.: 0105-19-01-A.

e. That the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent's work on or for the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

f. That as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

g. That Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession which are in the nature of trade

secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

3. During the construction period, if any (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Sub-Agent shall carry liability insurance of the type and providing the minimum limits set forth below:

i. Workers' compensation and employer's liability with limits in accordance with applicable law.

ii. Comprehensive general liability providing coverage for:

- Premises and Operations
- Products and Completed Operations
- Owners Protective
- Company's Protective
- Contractual Liability
- Personal Injury Liability
- Broad Form Property Damage (including completed operations)
- Explosion Hazard Collapse Hazard
- Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iii. Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iv. Excess "umbrella" liability providing liability insurance in excess of the coverages in (ii) and (iii) above with a limit of not less than \$4,000,000.

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A policy or policies of flood insurance in an amount not less than the greater of \$500,000 or the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Tenant Project Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE SUB-AGENT'S BUSINESS OR INTEREST.

4. (A) All insurance required pursuant to paragraph 3 hereof, shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Sub-Agent and authorized to write such insurance in the State and satisfactory and having a Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Sub-Agent is engaged. All policies evidencing such insurance shall name the Sub-Agent as insured and the Agency as additional insured, as their interests may appear, and provide for at least thirty (30) days' written notice to the Sub-Agent and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. The policies evidencing the insurance required by paragraph 3 hereof shall name the Agency as an additional insured on a primary and noncontributory basis with any coverage held by the Agency, if any. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates and policies satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency as of the date hereof. The Sub-Agent shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by paragraphs 3 and 4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Sub-Agent shall furnish to the Agency evidence that the policy has been renewed or replaced, or is no longer required by this Agreement.

(B) All premiums with respect to the insurance required by paragraph 3 hereof shall be paid by the Sub-Agent; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Sub-Agent shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the rate of interest equal to ten percent (10%) per annum or the maximum rate permitted by law, whichever is less.

5. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Sub-Agent's or the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

6. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Approving Resolution, the Lease Agreement by and between the Company and the Agency dated as of April 1, 2019, the Project Agreement or of any other agreement entered into by the Company in connection with the Project.

7. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

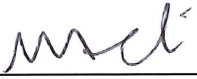
8. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c) and 2(e) shall survive the termination of this Agreement.

9. The Sub-Agent acknowledges and agrees that, as between it and the Company, the obligations imposed on it pursuant to this Agreement are in addition to and not a limitation on, or modification of, any agreements between it and the Company.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

THE AYCO COMPANY, L.P.

By: 
Name: Mae A. Casali
Title: evp + COO

THE GOLDMAN SACHS GROUP, INC.

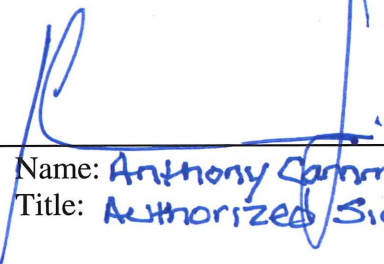
By: 
Name: Anthony Cammarata
Title: Authorized Signatory

Exhibit A to Sub-Agent Appointment Agreement

Form ST-123 (see attached)

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082