

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
Peter Gannon
John Kearney
Eric Phillips
David DeLuca
Benjamin Syden

ABSENT: Gary Rinaldi

The following persons were also present:

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

The following resolution was offered by Peter Gannon, seconded by Benjamin Syden 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 STARLITE ASSOCIATES, LLC 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, Starlite Associates, LLC, 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 acquisition of an interest in approximately 20 acres of land located at 629 Columbia Street Extension in the Town of Colonie, Albany County, New York (the "Land"), (2) the construction of an approximately 149,005 square foot building (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 be leased to The Ayco Company, L.P. ("Ayco"), for use by Ayco as 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 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 October 16, 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 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, 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 (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 July 11, 2018, 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 "Proposal"); 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 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 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 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 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; (D) a payment in lieu of tax agreement dated as of July 1, 2018 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 A; 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, as security for the Loan (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to a lender or lenders to be determined (the "Lender"), one or more mortgages, assignments of leases and rents and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined (collectively, the "Loan Documents") in connection with the financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping of the 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 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 Ayco 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 Ayco in its respective industry;

(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 will create nearly 150,000 square feet of commercial office space in a new, LEED-certified office building for use by Ayco as its new corporate headquarters. Once fully operational, the Project will retain and/or create at least 786 well-paying jobs in the Town of Colonie (the "Town"). As part of the Project, the Company will construct a road consistent with the Boght Road GEIS Study recommendations; upon completion, the road will be turned over to the Town.

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

The property has been vacant land for approximately twenty years.

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

This Project will revitalize vacant and underutilized land in a central and desirable area of the Town. The area currently includes strip malls, a car dealership and other commercial and retail facilities.

4. **The extent to which the proposed Project will create or retain permanent, private sector jobs:**

As new corporate headquarters for Ayco, the Project will retain approximately 626 full-time equivalent jobs within the Town and will create an additional 160 full-time equivalent jobs, with 87 jobs created by December 2020 and an additional 73 jobs by December 2021. Of the 786 jobs to be created or retained by December 2021, for the estimated 565 professional jobs the approximate average salary will be \$109,000, with an additional approximately \$18,800 in benefits, for the estimated 218 skilled jobs the averages will be approximately \$50,900 and \$13,000, respectively, and for the estimated three semi-skilled or unskilled jobs, the averages will be approximately \$42,200 and \$13,000, respectively.

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

The estimated value of the real property tax exemptions are estimated to be approximately \$4.15 million over the term of the Proposed PILOT Agreement, 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 generate significant additional real estate taxes for the affected tax jurisdictions due to the significantly increased value of the property. The affected tax jurisdictions will receive higher payments under the Proposed PILOT Agreement than are currently received on the vacant land. The current annual property taxes on the property are approximately \$27,000. PILOT Payments are estimated to be approximately \$100,000 in the first tax year after completion of construction, based on estimated real estate taxes of approximately \$1 million, and with PILOT payments gradually phasing in, as shown on Exhibit A.

The Project Facility also is expected to result in increased sales and use taxes generated by local purchases by the employees located at the Project Facility.

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

The Project will retain and/or create at least 786 well-paying jobs, while redeveloping land that has been vacant for 20 years. Despite the real estate tax abatements, the amounts due under the proposed PILOT Agreement will result in significantly increased taxes compared to what the affected

tax jurisdictions are currently receiving from the property. While the real estate taxes would be higher were the Project to go forward without the proposed tax exemptions, the Company has indicated that without the proposed tax exemptions the Project will not go forward in the Town. In addition, representatives of Ayco told the members of the Agency at a public meeting of the Agency that it would not go forward with moving its corporate headquarters to the Town unless the Company receives the requested PILOT Agreement.

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

The Project will develop a longtime vacant parcel of land in a prime location within the Town. It is likely that the Project Facility will have a positive effect on existing and proposed businesses in the Town and will be a draw for additional economic development in the vicinity. The large number of employees working at the Project Facility will likely increase demand for retail and restaurant facilities in the surrounding area.

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

The Company estimates that it will expend in excess of \$35 million on the acquisition, construction and installation of the Project Facility.

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

The Company anticipates that this Project will be completed by the end of 2019 and the Agency believes there is a strong likelihood of meeting this anticipated completion date because the Company is run by an experienced and established developer in the community with a strong reputation for timely completing projects.

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:**

Minimal demand for police, fire and emergency medical services (EMT) services is anticipated. The building will be fully sprinkled and security services will be provided by Ayco. The Company expects that most employees at the Project Facility will use their own cars but there may be

some increased demand in public transportation to the Project Facility. The Project does not create housing so it will not create a direct demand for educational services.

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 Town departments including Planning and Economic Development, Building, Public Works and Engineering.

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

The Project will provide a significant economic benefit by redeveloping and revitalizing property that has been vacant for 20 years in a central area of the Town, while creating and/or retaining over 750 well-paying jobs.

15. The extent to which the Company or Ayco 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 proposed Project:

The Agency will encourage the Company and Ayco 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; (F) grant to the Lender such mortgage lien on and security interest in its interest in the Facility and assign to the Lender all leases and rents with respect to the Facility, in each case as required by the Lender and the Loan Documents; and (G) 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 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 the Loan 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. The Loan Documents shall be in substantially similar form to the documents used in connection with prior Agency projects.

(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			
Alison Blessing			
Peter Gannon			
John Kearney			
Eric Phillips			
Gary Rinaldi			
Benjamin Syden			

The Resolution was thereupon declared duly adopted.

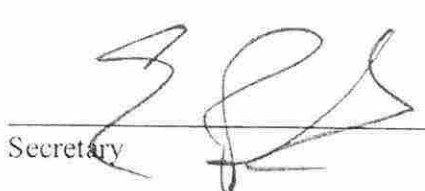
STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

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 July 11, 2018, 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 11 day of July, 2018.



Secretary

EXHIBIT A
PILOT PAYMENT SCHEDULE

<u>Tax Year</u> <u>following</u> <u>completion</u> <u>of</u> <u>construction</u>	<u>Percentage of Normal</u> <u>Tax Exemption</u>
1	90%
2	80%
3	70%
4	60%
5	45%
6	30%
7	15%
8	0%