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January 13, 2020

VIA ELECTRONIC MAIL

Mr. Jeffrey D. Crist, Chairman
Town of Montgomery Industrial Development Agency
110 Bracken Road
Montgomery, New York 12549

Re: Assignment from BLUEWATER I LLC to USEF SAILFISH, LLC

Dear Chairman Crist and Members of the Agency:

On behalf of Bluewater I LLC, thank you for your dedicated public service to the Town of Montgomery that we have experienced since the submission of our client's original application on December 13th, 2018. The original application, as the Agency knows, presents the development of an approximately 1,010,880 square foot distribution center facility within the Town at an estimated cost of \$75,000,000.00 and creation of an estimated 800 permanent jobs and over 300 construction jobs (hereinafter referred to as the "Project"). The purpose of this letter is to respectfully request that the Agency proceed with assignment of the Project and the related Financial Assistance to USEF Sailfish, LLC. Preliminarily, however, we would like to address several public comments made at the public hearing on January 6th, 2020 in order to provide some clarity for the Agency.

Responses to Public Comments

At the second public hearing held on January 6th, 2020, project opponents criticized the Project's entry-level wages of \$15.00 per hour or approximately \$31,000.00 per year plus paid leave, retirement savings and medical benefits as inconsistent with the income levels in the Town of Montgomery. Project opponents overlooked the opportunities for employees' career and educational advancement through a program that pre-pays college and industry certification course tuition up to \$3,000.00 per year for a total of \$12,000.00 for four years as detailed in Exhibit D of the application.

Furthermore the \$15.00 per hour wage is a *minimum*, and is more than double the National minimum wage and is 20% higher than the New York State minimum wage (as of 12/31/2020). Actual hourly wages for entry level workers are highly dependent on many factors including local market conditions, shift worked, hours worked and job description. It should be noted that multiple advertised open positions for entry level “warehouse” jobs within Montgomery show wages up to \$19.00 per hour. In order to attract employees and fill the prospective job openings, Amazon, of course, will have to provide wages comparable to or exceeding these opportunities in addition to the aforementioned benefits.

Project opponents selectively chose press articles to suggest that the working conditions at the project facility would be unfavorable and unsafe; the Project, certainly, will comply with all federal and state labor and health laws and regulations to protect employees’ well-being and safety.

The annual property tax payment for the project site currently is approximately \$46,000.00. Under the Payment In Lieu of Tax Agreement in year 1, the combined PILOT payment, existing land tax and ad valorem tax would provide approximately \$515,000.00 to the taxing jurisdictions collectively, an increase of approximately \$470,000.00. Over the 15-year PILOT Agreement, the taxing jurisdictions will receive approximately \$25,000,000.00 in payments compared to approximately \$690,000.00 over the same 15 years, if the Project does not proceed. Project opponents neglected to mention these payments totaling approximately \$25,000,000.00 over the next 15 years. They instead diverted attention to the speculative prospect of another \$23,422,467.00 in taxes “given away” to the Project.

To withdraw the Financial Assistance, the Agency would have to, in a complete reversal, ignore its own Cost Benefit Analysis that reports the initial investment of approximately \$75,000,000.00 will result in total net benefits conservatively of \$611,117,000.00 over the next 15 years and rely instead upon opinions and hearsay. This meets the definition of an arbitrary and capricious determination.

Public comments presented at the second public hearing raised concerns with the statement in the original application (which was not changed in the assignment application to avoid wholesale changes) that the Town will acquire the wastewater treatment plant constructed on the Project site. Subsequent to the original application and over the course of many months of site planning and SEQRA reviews, the Town determined that it did not want to be forced to take over the wastewater treatment plant, and instead preferred to maintain only an option to acquire the plant in the future. This option was incorporated within the Agency’s SEQR Findings Statement through adoption of the Planning Board’s Findings Statement and is well documented in the Project approvals. Certainly, nothing in the assignment application to the Agency compels the Town to accept dedication of the wastewater treatment plant.

Concerns were expressed that traffic to and from the project facility may result in deteriorated road conditions. The Project will provide several roadway improvements in the Coldenham area to facilitate improvements in traffic flow. The Project shall comply with any Town road use protection laws.

Finally, concerns were expressed as to whether the Project will comply with the State Environmental Quality Review Act Findings Statement specifically with regard to the treatment of the vacant house currently located on the project site; the Project will comply with the Findings Statement which requires the house to be saved and moved to a different location on the site. Nothing in the assignment application to the Agency was intended to or does contradict the SEQRA Findings that the house currently located on the project site will be relocated. The Planning Board, as Lead Agency under SEQRA, has taken great care to provide for the safety of the Town's residents, mitigate the environmental impacts of the project to the community where practicable, and to set conditions of Site Plan and SEUP approval which ensure that the development and long-term operation of the Project will have minimal impact. In fact, these findings are included in the Agency's own adopted SEQRA findings.

Assignment to USEF Sailfish, LLC

The applicable standard of review by a court for any Agency determination is whether the determination is arbitrary and capricious. To rely, at this stage of the proceedings, upon selective public and political opinions unsubstantiated and not related to the issue of assignment qualifies as arbitrary and capricious. On November 12th, 2019, the Agency approved the Project with certain Financial Assistance by resolution (hereinafter referred to as the "Approving Resolution"). The approved Financial Assistance is less than the limits under the Town of Montgomery Industrial Development Agency's Uniform Tax Exemption Policy, and therefore, is more favorable to the taxing jurisdictions. The remaining issue pending before the Agency is the assignment of the Project to USEF Sailfish, LLC and its members USAA Eagle Real Estate Multi-Sector Operating Partnership, L.P. and USAA Eagle OP GP LLC. We respectfully request that the Agency proceed with this assignment.

Pursuant to New York State General Municipal Law Section 858, the Agency's purposes are to "advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living." The Agency's Approving Resolution advanced for the estimated 24,000 residents of the Town creation of 800 permanent jobs and over 300 construction jobs. Pursuant to the Town of Montgomery Industrial Development Agency's Local Labor Policy, applicable to any project approved by the Agency for Financial Assistance, eighty-five percent (85%) of the labor force shall be engaged or hired from the "local labor" market as defined within the Town's Local Labor Policy.

Unlike the Business Investment Exemption under Section 485-b of the New York State Real Property Tax Law that would not require a commitment to job creation, nor compliance with a local labor policy, the Agency's Financial Assistance contractually secures the job creation commitment and compliance with the Town's Local Labor Policy. If the job commitments are not upheld or the Local Labor Policy is not followed, any and all Financial Assistance provided by the Agency may be recaptured.

On February 12th, 2019, the public hearing on the Project was duly held, followed by continuous opportunity for submission of public comments including spoken public comments at

the Agency's monthly meetings. Section 859-a of the New York State General Municipal Law requires a public hearing prior to the Agency adopting an approving resolution "describing the project and the financial assistance that the agency is contemplating with respect to such project". There is no statutory requirement that this approving resolution name the project owner, operator or manager of a project.

Under New York State General Municipal Law Section 859-a, the public hearing notice must specify the "*initial* owner, operator or manager of the project" (emphasis added with italics). Article 18-a of the New York State General Municipal Law, throughout and specifically with respect to the required public hearing, recognizes that projects which have the potential to lift economic conditions require flexibility in corporate ownership and operations that cannot, without bringing such economic engines to a grinding halt, be subject to repetitive review by politically appointed boards and shifting public opinion.

This recognition is evidenced by emphasis of the statute on the project, not the project owner, operator or manager of the project, which understandably for any project of economic significance will be subject to change. Consequently, the public hearing notice under Section 859-a(3) only must specify the "initial" owner, operator or manager of the project. Consistent with this interpretation of Article 18-a of the New York State General Municipal Law, the New York State Supreme Court, Appellate Division, Third Department in Singer v. Boychuk, 194 A.D.2d 1049 (1993) recognized as proper and legally enforceable the assignment of project ownership without the prior approval, nor involvement of the Industrial Development Agency.

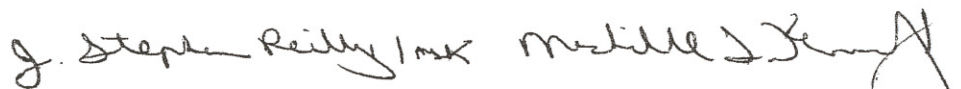
The remaining issue pending before the Agency is the assignment of the Project and related Financial Assistance from Bluewater I LLC to USEF Sailfish, LLC. Notwithstanding the legal precedents set out above, this assignment was known to the Agency from the initial Bluewater I LLC application. The transfer of the property to a special purpose entity such as (i.e. USEF Sailfish LLC in this case) is a routine transaction for virtually every significant commercial real estate transaction and should not have been unanticipated. The original December 2018 application specifically stated on the first page in the response to the first question under "Applicant": "Bluewater I LLC (current land purchase contract vendee/applicant; land contract and application will be assigned to related entity to include financial partner prior to closing)."

Neither statutory law, nor case law provides any requirement for Agency approval of assignment of a project. The Town of Montgomery Industrial Development Agency has suggested that the Agency customarily reviews assignments for approval. Thus, Bluewater I LLC and USEF Sailfish, LLC, in an effort to operate in accordance with the Agency's customary and usual practices, without any legal requirement to do so, has submitted the assignment application for another round of public hearing comments and review of the assignment by the Agency. We respectfully request that the Agency approve the assignment as there are no reasonable grounds upon which to deny assignment or rescind the previously approved financial assistance.

As always, thank you for the diligence and commitment to service of your community that you have demonstrated throughout these proceedings.

Very truly yours,

WHITEMAN OSTERMAN & HANNA LLP

Handwritten signatures of J. Stephen Reilly and Michelle L. Kennedy in black ink.

J. Stephen Reilly, Senior Counsel and Michelle L. Kennedy, Of Counsel

Cc: Robert McLaughlin, Esq., Counsel for the Agency (via email)
William Frank, Esq., Counsel for the Town of Montgomery (via email)
Richard Hoyt, Esq., Counsel for the Planning Board (via email)

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