

PRELIMINARY RESOLUTION
(USEF Tioranda, LLC/Amazon.com Services LLC 2020 Project)

A regular meeting of the Dutchess County Industrial Development Agency, having offices at Three Neptune Road, Poughkeepsie, New York, was convened in public session on November 12, 2020 at 8:00 a.m., local time. Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1, as extended, suspending certain requirements of the Open Meetings Law, the meeting was held electronically via webinar with teleconference access made available to the public, instead of a public meeting open for the public to attend in person.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Kathleen M. Bauer, Secretary/Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Ronald J. Piccone, II
Amy L. Bombardieri

ABSENT:

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

On motion duly made by Kathleen M. Bauer and seconded by Alfred D. Torreggiani, the following resolution (the "**Resolution**") was placed before the members of the Dutchess County Industrial Development Agency:

Resolution (i) Taking official action toward the issuance of financial assistance to USEF Tioranda, LLC and Amazon.com Services LLC (USEF Tioranda, LLC/Amazon.com Services LLC 2020 Project) in the form of potential exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes and exemption from real estate property taxes; and (ii) authorizing the execution and delivery of an agreement by and among the Agency, USEF Tioranda, LLC and Amazon.com Services LLC with respect to such financial assistance.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the "**Act**"), the Dutchess County Industrial Development Agency (the "**Agency**") was

created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, USEF Tioranda, LLC, a Delaware limited liability company authorized to transact business in New York having offices at 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230 (the “**Company**”) and Amazon.com Services, LLC, a Delaware limited liability company authorized to transact business in New York having offices at 410 Terry Avenue North, Seattle, Washington 98109 (the “**Sub-subslessee**”), have submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) with respect to the Facility (hereinafter defined), including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “**Financial Assistance**”) for the following project (the “**Project**”) in connection with the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing and equipping of a certain facility to be used by the Sub-subslessee as a warehouse and fulfillment center (the “**Facility**”) consisting of the following:

- (A) the demolition of existing structures on the Land (hereinafter defined);
- (B) the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the “**Improvements**”) located on three (3) parcels of land located on Route 52 in the Town of East Fishkill, County of Dutchess, State of New York and more particularly described as follows:
 - a. an approximately 105-acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028;
 - b. an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905;
 - an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904 (collectively, the “**Land**”); and
- (C) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Equipment**”) to be owned by the Agency and leased to the Company and/or the Sub-subslessee to be used as part of the Facility; and

WHEREAS, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, construction, improvement, reconstruction, repair, and renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquisition, construction, improvement, reconstruction, repair and renovation of the Facility and installation of the equipment; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Agency is required

to determine whether the Project may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, the Company has submitted a Full Environmental Assessment Form dated October 2, 2020 to the Town of East Fishkill Town Board (the “**Town Board**”) for a coordinated review under SEQRA and the Town Board has thereupon circulated a Notice of Intent to Act as Lead Agency in the SEQRA review and the Agency hereby consents to the Town Board acting as Lead Agency and will be bound by the Lead Agency’s determination of environmental significance; and

WHEREAS, the proposed Financial Assistance sought by the Company from the Agency includes exemption from real estate property taxes which deviates from the Agency’s Uniform Tax Exemption and Criteria Policy (the “**UTEP**”); and

WHEREAS, the Agency has not yet held hearings pursuant to §859-a of the Act (the “**Hearing**”); and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Industrial Development Agency, as follows:

1. Based upon the representations made by the Company and Sub-sublessee to the Agency, the Agency hereby finds and determines that for the Project:

- (a) the Project constitutes a “project” within the meaning of the Act;
- (b) The Financial Assistance will not result in the abandonment of a facility of the Company or Sub-sublessee located elsewhere in the State of New York;
- (c) The Financial Assistance for the Project deviates from the Agency’s Uniform Tax Exemption and Criteria Policy;
- (d) The Financial Assistance will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living, and thereby serve the public purposes of the Act; and
- (e) It is desirable and in the public interest for the Agency to assist the Company and Sub-sublessee by granting the Financial Assistance.

2. Subject to the conditions set forth in ¶3 of this Resolution, the Agency will:

- (a) acquire a leasehold interest in the Facility;
- (b) sublease the Facility to the Company pursuant to agreements by and between the Agency and the Company;

3. The provision of Financial Assistance herein, as contemplated by ¶2 of this Resolution, shall be subject to:

- (a) the execution and delivery by the Company and Sub-sublessee of the Preliminary Agreement attached hereto as Exhibit "A" setting forth certain conditions for the provision of the Financial Assistance;
- (b) the agreement between the Agency and the Company on mutually acceptable terms regarding payments in lieu of taxes;
- (c) the Agency's determination that there is satisfactory support from the Town of East Fishkill and Wappingers Central School District for the Project;
- (d) compliance with SEQRA;
- (e) the holding of Hearing pursuant to §859-a of Article 18-A of the General Municipal Law of the State of New York; and
- (f) the adoption of an authorizing resolution by the Agency.

4. The form and substance of a proposed Preliminary Agreement (in substantially the form presented to this meeting) by and among the Agency, Company and the Sub-sublessee setting forth the undertakings of the Agency, Company and the Sub-sublessee with respect to the provision of Financial Assistance is hereby approved. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency hereto and to attest to this meeting, with such changes in terms and conditions as the Executive Director shall constitute conclusive evidence of such approval.

5. Pursuant to §875(3) of the Act and under the Agency policy concerning Maintaining Performance Based Incentives (the "MPBI"), the Agency may recover, recapture or receive from the Company and/or Sub-sublessee, their agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company and/or Sub-sublessee, their agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company and/or Sub-sublessee, their agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company and/or

Sub-sublessee, their agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; and/or (iv) the sales and use tax exemption benefits are taken in cases where the Company and/or Sub-sublessee, their agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fail to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (iv) hereby defined as a “**Recapture Event**”). The MPBI Policy provides for the return of other incentives as set forth therein.

6. As a condition precedent of receiving sales and use tax exemption benefits, the Company and/or Sub-sublessee, their agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

7. The law firm of Nixon Peabody LLP, Rochester, New York, is hereby appointed Transaction Counsel to the Agency in relation to the provisions of Financial Assistance.

8. Counsel to the Agency and Transaction Counsel are hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency all documents necessary to effect the authorization and provision of Financial Assistance. The Company shall be responsible for the fees of Agency, Agency’s Counsel and Transaction Counsel in relation to this Project and the provision of Financial Assistance.

9. The Agency hereby approves and authorizes the following actions by the Chairman of the Agency, prior to the granting of any Financial Assistance with respect to the Project, after consultation with Agency Counsel: (i) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the proposed Financial Assistance being contemplated by the Agency with respect to the Project, said public hearing to be held in the Town of East Fishkill, Dutchess County, New York; (ii) to cause notice of such public hearing to be given to the public by publishing a notice in accordance with the applicable provisions of the Act, as well as, at the same time, provide notice of the hearing to the chief executive officer of each affected tax jurisdiction; (iii) to conduct such public hearing or cause such hearing to be conducted by his designee; and (iv) to cause a stenographic transcript of said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

10. The Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and Sub-sublessee, and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. The Agency hereby appoints each Member of the Agency, Agency Counsel and Transaction Counsel to serve as an Assistant Secretary of the Agency for purposes of this project.

11. This Resolution shall take effect immediately.

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

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| Timothy Dean, Chairman | VOTING | "Aye" |
| Mark Doyle, Vice Chairman | VOTING | "Aye" |
| Kathleen M. Bauer, Secretary/Treasurer | VOTING | "Aye" |
| Alfred D. Torreggiani | VOTING | "Aye" |
| Donald R. Sagliano | VOTING | "Aye" |
| Ronald J. Piccone, II | VOTING | "Aye" |
| Amy L. Bombardieri | VOTING | "Aye" |

The Resolution was thereupon declared duly adopted.

Adopted: November 12, 2020

PRELIMINARY AGREEMENT
(USEF Tioranda, LLC/Amazon.com Services LLC 2020 Project)

THIS PRELIMINARY AGREEMENT (the “Preliminary Agreement”), made as of November 12, 2020, among the **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation, organized and existing under the General Municipal Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “**Agency**”), **USEF TIROANDA, LLC**, a Delaware limited liability company authorized to transact business in New York having offices at 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230 (the “**Company**”) and **AMAZON.COM SERVICES, LLC**, a Delaware limited liability company authorized to transact business in New York having offices at 410 Terry Avenue North, Seattle, Washington 98109 (the “**Sub-slessee**”).

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “**Act**”), the Agency was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, the Company and the Sub-slessee have submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) with respect to the Facility (hereinafter defined), including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “**Financial Assistance**”) for the following project (the “**Project**”) in connection with the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing and equipping of a certain facility to be used by the Sub-slessee as a warehouse and fulfillment center (the “**Facility**”) consisting of the following:

- (A) the demolition of existing structures on the Land (hereinafter defined);
- (B) the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the “**Improvements**”) located on three (3) parcels of land located on Route 52 in the Town of East Fishkill, County of Dutchess, State of New York and more particularly described as follows:
 - a. an approximately 105-acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028;
 - b. an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No.132800-6355-00-501905;
an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904 (collectively, the “**Land**”); and
- (C) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Equipment**”) to be owned by the Agency and leased to the Company and/or Sub-slessee to be used as part of the Facility; and

WHEREAS, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, construction, improvement, reconstruction, repair, and renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquisition, construction, improvement, reconstruction, repair and renovation of the Facility and installation of the equipment; and

WHEREAS, the Agency has determined that the financing of the Project will promote and further the purposes of the Act; and

WHEREAS, on November 12, 2020, the Agency adopted a Preliminary Resolution (the “**Preliminary Resolution**”) accepting the Project and authorizing the execution of this Preliminary Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Company agree as follows:

1. Undertakings of the Agency. Based upon the statements, representations, and undertakings of the Company and Sub-sublessee, and subject to the conditions set forth herein and in the Preliminary Resolution, the Agency agrees as follows:

(a) The Agency shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) construction, installation, furnishing and equipping of the Facility and the financing of such costs; and (ii) the subleasing of the Facility to the Company and leasing the equipment to the Company and/or Sub-sublessee, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company and Sub-sublessee.

(b) The Agency shall acquire a leasehold interest in the Facility and enter into an agreement to sublease the Facility to the Company (the “**Lease Agreement**”). The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

(c) Reserved.

(d) The Agency shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the Company and Sub-sublessee. The Company and Sub-sublessee hereby represents to the Agency that:

- (a) The Facility is located in the Dutchess County, New York;
- (b) The proposed financing of the Project will contribute to increased employment opportunities in Dutchess County, New York; and
- (c) The Project will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the Company and/or Sub-sublessee shall obtain all necessary approvals and permits required thereunder.

3. Undertakings of the Company. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the Company agrees as follows:

(a) The Company shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the Facility (to the extent not heretofore acquired) and on the terms and conditions set forth in the Lease Agreement, transfer to the Agency, or cause to be transferred to the Agency, title to or a leasehold interest in, the Facility.

(b) (i) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Company, and subject to any subrogation waivers contained in the Lease Agreement, the Company shall defend and indemnify the Agency and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of the Facility and installation of equipment in the Facility (including any expense incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing) except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency, its employees, agents, or representatives; or (2) any untrue statement or alleged untrue statement of a material fact necessary in order to make the statements herein, in the light of the circumstances under which they were made, not misleading.

(ii) The Company shall not permit to stand, and shall at its own expense take all steps reasonably necessary to remove, any mechanic's or other liens against the Facility for labor for the construction, renovation, installation, furnishing and equipping of the Facility.

(iii) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Company, and subject to any subrogation waivers contained in the Lease Agreement, the Company shall indemnify and hold the Agency 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 to the Project, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing, except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency, its employees, agents, or representatives.

(c) Reserved.

(d) The Company shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Lease Agreement becomes effective. It is the intent of the Agency and the Company that this Preliminary Agreement be superseded in its entirety by the Lease Agreement.

(b) It is understood and agreed by the Agency and the Company that the execution of the Lease Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals; and (ii) approval of the members of the Agency.

(c) The Company agrees that they will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses which the Agency may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Project to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Agency Counsel and Transaction Counsel in connection with their representation of the Agency in this matter and their preparation of any documents pertaining to the provisions of Financial Assistance.

(d) All commitments of the Agency under ¶1 hereof and of the Company under ¶¶2 and 3 hereof (excepting the obligations of the Company set forth in subparagraphs 3(b) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Lease Agreement shall have been executed no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Company).

[Remainder of Page Intentionally Left Blank. Signature Page Follows].

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 12th day of November, 2020

DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Sarah Lee, Executive Director

USEF TIROANDA, LLC

By: _____
[Name, Title]

AMAZON.COM SERVICES, LLC

By: _____
[Name, Title]

