

**APPLICATION FOR
APPROVAL OF
SERVISTAR REALTIES LLC
TO UNDERTAKE A PROJECT IN
WESTFIELD, MASSACHUSETTS
UNDER MASS. G.L. C. 121A, AS
AMENDED**

**May 20, 2021, as
amended on July 29, 2021
and August 4, 2021**

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APPLICATION FOR APPROVAL OF SERVISTAR REALTIES LLC TO UNDERTAKE A
PROJECT IN WESTFIELD, MASSACHUSETTS UNDER MASS. G.L. C. 121A

Submitted on May 20, 2021, as amended on July 29, 2021 and August 4, 2021

Servistar Realities LLC, a Massachusetts limited liability company (the “Applicant”) hereby applies to the Department of Housing and Community Development of the Commonwealth of Massachusetts (the “Department”) pursuant to Chapter 121A of the Massachusetts General Laws (“M.G.L. c. 121A”) and the rules and regulations governing M.G.L. c. 121A projects at 760 CMR 25.01 et seq. (the “Regulations”) for the approval by the Department for the Applicant to undertake and carry out the Project (as hereinafter defined) within the area defined in Section 2 below (the “Project Area”).

1. Description of Applicants

(a) The name and address of the Applicant is:

<u>Name</u>	<u>Address</u>
Servistar Realities LLC	Attn: Erik J. Bartone One Boston Place Suite 2600 Boston, MA 02108

All notices and requests of the Applicant should be sent to Erik J. Bartone at the address set forth above with a copy to its attorneys identified below, or to such other address as Applicant hereinafter may designate in writing to the Department.

(b) The names, addresses and telephone numbers of the attorneys representing the Applicant are:

Fitzgerald Attorneys At Law, P.C.
Attn: Jane L. Mantolesky, Esq.
46 Center Square
East Longmeadow, MA 01028
(413)-486-1110
jlm@fitzgeraldatlaw.com

(c) The existing entity for which approval of the Department is sought to undertake the Project is the Applicant. Approval is sought under Section 18C of M.G.L. c. 121A for the Project Developers (as defined below) to undertake the Project.

The Certificate of Organization of the Applicant is attached hereto as Exhibit A. Upon receipt of notification of approval of the Project, the Applicant will amend its Certificate of Organization to reflect the 121A status of the Applicant.

(d) The Applicant is unaware of any legal judgment or pending action which concerns the Project which might reasonably impair the ability of the Project to be implemented as set forth in this Application.

(e) The Applicant has not previously entered into any agreement with the Department concerning M.G.L. c. 121A.

(f) The Applicant will enter into a ground lease with Servistar DC LLC, a Massachusetts limited liability company (“Servistar DC”) for the Project (the “Lease”). Pursuant to the Lease, Servistar DC will develop and construct the Project within the Project Area and thereafter operate the Project. It is contemplated that Servistar DC may, in turn, enter into various third party tenant leases for space at the Project. Any party under an operating, space, master or ground lease, management agreement or other similar agreement will not be subject to the provisions of M.G.L. c. 121A or require the approval of the Department. Lessees, sublessees, occupants and users of the Project or portions thereof, may pay rents, expenses and other payments related to the use and occupancy of the Project, or portions thereof, directly to Servistar DC, which payments would not be included in the gross income of the Applicant. The Applicant and Servistar DC are sometimes collectively referred to herein as (the “Project Developers”).

2. Location and Owners of Project

The Project Area primarily consists of vacant land and three commercial buildings located in North Side of Westfield, Massachusetts along the Route 10/202 corridor near the Westfield-Barnes Regional Airport and in the Industrial Zoning Districts which are surrounded primarily by industrial warehouse distribution centers and commercial buildings. It is bordered (i) to the north by undeveloped land, the Home Depot Distribution Center, the AGNL Grocery Distribution Center and the Preferred Freezer Warehouse and Distribution Center, (ii) to the east by industrial and commercial uses, a residential neighborhood and the Westfield-Barnes Regional Airport, (iii) to the south by vacant land and the Lowes Distribution Center, and (iv) to the west by vacant land, the Duie Pyle Distribution Center, the Pioneer Valley rail service, commercial and industrial buildings, a residential neighborhood and the new Westfield Turnpike Industrial Park being developed by the City of Westfield (the “City”). The Project Area contains approximately 155.49 acres of real property as set forth on the Project plan attached hereto as Exhibit B. The Project data center campus layout and the identification of surrounding properties such as the Westfield-Barnes Regional Airport and the Home Depot Distribution Center is included in Exhibit B-1. Additional details of the data center campus layout and parking for each data center building is included in

Exhibit B-2. The Applicant has entered into purchase and sale agreements with the current owners of the parcels composing the Project Area and the names of the current owners are attached hereto as Exhibit C. The metes and bounds description of the Project Area is attached hereto as Exhibit D.

3. The Project

The Project Area is within the Industrial A and Industrial Park Districts in the City and consists of vacant lots and three commercial buildings and there are two 115 kV high-voltage transmission lines owned by Eversource Energy (“Eversource”) located on the property that runs through the center of the Project Area. The Project is the Westfield Data Center Campus with an address at 199 Servistar Industrial Way, Westfield, MA 01085 that is located on approximately 155.49 acres with an expected ten (10) data center buildings totaling approximately 2.74 million square feet of data center space, two (2) accessory buildings and additional site improvements (the “Project”).

The Project is expected to be built out over a twelve (12) to eighteen (18) year period and consists of the construction of the data center buildings, accessory buildings and site improvements as follows:

- i. Data Center Building 1 (closest to Ampad Road on the westerly side of the site) is expected to be a three-story building with approximately 120,000 square feet per floor for a total of approximately 360,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- ii. Data Center Building 2 (adjacent to Building 1 to the south on the westerly side of the site next to Ampad Road) is expected to be a three-story building with approximately 60,000 square feet per floor for a total of approximately 180,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- iii. Data Center Building 3 (closest to the intersection of Ampad Road and Servistar Industrial Way) is expected to be a three-story building with approximately 73,400 square feet per floor for a total of approximately 220,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- iv. Data Center Building 4 (adjacent to Building 3 to the northeast on Servistar Industrial Way) is expected to be a three-story building with approximately 80,000 square feet per floor for a total of approximately 240,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- v. Data Center Building 5 (northwest of Building 4 in the center of the property) is expected to be a three-story building with approximately 60,000 square feet per floor for a total of approximately 180,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- vi. Data Center Building 6 (adjacent to Building 5 to the north in the center of the property) is expected to be a three-story building with approximately 100,000 square feet per floor for a total of approximately 300,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating,

cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- vii. Data Center Building 7 (adjacent to Building 6 to the north in the center of the property) is expected to be a three-story building with approximately 120,000 square feet per floor for a total of approximately 360,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- viii. Data Center Building 8 (adjacent to Building 7 to the north on Campanelli Drive) is expected to be a three-story building with approximately 60,000 square feet per floor for a total of approximately 180,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- ix. Data Center Building 9 (adjacent to Building 8 to the east on Campanelli Drive) is expected to be a three-story building with approximately 100,000 square feet per floor for a total of approximately 300,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- x. Data Center Building 10 (northeast of Building 9 across the street on Campanelli Drive) is expected to be a three-story building with approximately

140,000 square feet per floor for a total of approximately 420,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- xi. Accessory Building 1 (in the center of the site between Building 1 and Building 5) is expected to be a two-story building with approximately 144,000 square feet consisting of: slab-on-grade structural steel metal frame with metal wall panels, natural gas emergency generation resources, battery storage and load balancing system components.
- xii. Accessory Building 2 (adjacent to Building 9) is expected to be a two-story building with approximately 30,000 square feet consisting of: slab-on-grade structural steel metal frame with metal wall panels for substation electrical equipment and utilities.
- xiii. Additional Project Site improvements include the construction of an electrical substation and interconnection with the high-voltage electric transmission grid, the installation of natural gas utilities, telecommunications and fiber, water and sewer service infrastructure, stormwater drainage systems, emergency generators, battery storage units, on-site solar photovoltaic systems and integrated carports, asphalt paved driveways, landscape walkways, landscaping and perimeter fencing.

Drawing details of the Project are included in the attached Exhibit E.

4. Relationship of Project to City's Economic Development and Open Space Plans

The Project consists of ten (10) data center buildings totaling approximately 2.74 million square feet of data center space in the greater New England region. The City is centrally located in New England just northwest of Springfield between Boston, Providence, Albany, New York City and Connecticut. The central location of the City in New England, only 99 miles from Boston and 134 miles from New York City and the greater New York / New Jersey metropolitan area, gives the Project access to a population of over 23 million people in the greater region.

The Project Area is located in North Side of the City along the Route 10/202 corridor in the two industrial districts in the City, Industrial A and Industrial Park, where industrial development has been concentrated over the last decade. The Project Area is surrounded primarily by industrial warehouse distribution centers and commercial buildings and is centrally located less than a half mile to the west of the Westfield-Barnes Regional Airport and approximately a half mile to the east of the new Westfield Turnpike Industrial Park that is being developed by the City.

The Westfield Turnpike Industrial Park development is a mixed-use commercial/industrial project (the “Turnpike Industrial Project”) comprising up to approximately 988,000 gross square feet of warehouse and distribution, manufacturing, office, and research and development space in multiple buildings. The Turnpike Industrial Project is located on an approximately 74-acres site in close proximity to the Project Area. The Turnpike Industrial Project will additionally include the construction of new utility service connections, construction of a stormwater management system, installation of landscaping, the construction of site improvements and parking facilities, and site access improvements. The full-buildout of the Turnpike Industrial Project is expected to happen in a phased manner over an estimated eight- to ten-year term, which will be managed by the City.

The Project is complimentary to the Turnpike Industrial Project being developed by the City. It is located on approximately 155.49 acres in the City’s Industrial zones in close proximity to the Turnpike Industrial Park. The Project’s ten (10) data centers consisting of approximately 2.74 million square feet of data center space will be built out in a phased approach over an estimated twelve (12) to eighteen (18) year period. The Project will additionally include construction of accessory buildings, an electrical substation and interconnection with the high-voltage electric transmission grid, the installation of natural gas utilities, telecommunications and fiber, water and sewer service infrastructure, stormwater drainage systems, site improvements, parking facilities, landscaping and perimeter fencing.

The Project will also help the City achieve its stated vision and goals of the Turnpike Industrial Project to reflect a development that will reinforce the existing mixed-use industrial and commercial character of the area, leverage the site’s proximity to existing transportation and utility infrastructure, contribute to the long-term economic growth and vitality of the City and the region in an increasingly competitive national and international economic context. The extensive jobs and economic development of the Project will also help the City realize its goals for the Turnpike Industrial Project to create up to approximately 1,100 permanent new jobs, 800 temporary construction jobs, and, at full buildout, annual property tax revenues in excess of \$1.3 million per year for the City.¹

¹ Final Environmental Impact Report, Westfield Turnpike Industrial Park, prepared by VHB in association with The Massachusetts Development and Finance Agency, dated October 15, 2019 at 1-2.

While the City recognizes that its Master Plan is dated and obsolete on many fronts, its basic tenets continue to be adhered to. That early effort has formed the basis for today's land uses and zoning districts, including the industrial and non-residential designation of the subject area. The Master Plan specifically calls for the City to attract more "new industries" and be "willing to revamp some of its industrial areas and... continue to actively solicit new industry of high caliber."² These objectives have been, and continue to be, actively pursued by the City through developments such as this Project.

Of more contemporary relevance is the City's comprehensive Open Space and Recreation Plan for years 2018 – 2025 (the "Plan"). The Plan indicates that the City is a regional commercial and industrial center with a number of major commercial and industrial businesses locating to the City since 2000. The Plan also states that "over the past 25 years, the City's economic and employment growth have outpaced the population growth, an uncommon trend in the Pioneer Valley."³ The Plan also recognizes that Project Area is the ideal location in the City for the data center development noting that industrial development over the last decade has been concentrated on the North Side of the City, generally along the Route 10/202 corridor and near the Airport. *Id.* at 25.

The Plan goes on to state that, "most job growth within the community is centered around the City's north side, which is located close to the Massachusetts Turnpike and Interstate-91. Additionally, Westfield-Barnes Regional Airport and the Pioneer Valley Railroad serve as community assets that attract business investment and activity. Significant interest in development, primarily from warehousing and manufacturing interests continues along the Route 10/202/Southampton Road corridor and there remains available land for development in the area." *Id.* at 15. The Plan also indicates the need for the developer of projects in this area to employ best management practices to mitigate any potential adverse effects which will be employed by the Project in every respect. *Id.* at 25.

Additionally, the City Zoning Ordinance for Industrial A Districts makes provisions for a wide range of industrial and business uses, and the City Zoning Ordinance for Industrial Park Districts seeks to ensure compatibility of development, both within the Industrial Park District and with adjacent uses which in the case of the Project Area includes the Industrial A District. The Project is ideally located within the City's two industrial districts, in the in North Side of the City along the Route 10/202 corridor and in close proximity between Westfield-Barnes Regional Airport and the new Westfield Turnpike Industrial Park that is being developed by the City.

The Project will promote jobs and economic growth while also facilitating the objectives and goals of the City to develop the City in a responsible manner. The Project is also expected to

² Westfield Comprehensive Master Plan Report, 1962, at F-15.

³ City of Westfield Open Space and Recreation Plan 2018 – 2025, updated August 2018, at 7.

support the Westfield Turnpike Industrial Park with ancillary businesses that are expected to locate new facilities in the area which will help the City achieve its goals for the Turnpike Industrial Park at full build out of 1,100 jobs and \$1.3 million in additional property tax per year.

5. Statement of Facts Showing Project Area to be a Blighted and Decadent Area

The Project Area is a blighted open area and a decedent area in accordance with Section 1 of MGL Chapter 121A. It consists of fifteen (15) different parcels totaling approximately 155.49 acres, most of which are vacant open land. Three (3) of the parcels consisting of approximately 52.15 acres are comprised primarily of wetlands and portions of the Project Area are located on the aquifer. These parcels totaling more than one third (1/3) of the Project Area have no planned development in order to mitigate environmental impacts. The remaining two thirds (2/3) of the Project Area is characterized by a diversity of ownership of plots, three (3) of which are subdivided portions of parcels, and irregular lot sizes that also contain wetlands in various areas making it very difficult and costly to develop.

Vegetation indicative of suspected wetland areas were observed throughout the subject property. According to a review of the U.S. Fish and Wildlife Service, *National Wetlands Inventory Interactive Wetlands Database* map, freshwater forested/shrub wetlands are located at the southern and western portions of the Project Area and a freshwater emergent wetland is located at the southern-central portion of the Project Area. The central portion of the Project Area contains an area of bordering vegetated wetlands that contain bank associated with a section of intermittent stream along with several smaller ephemeral internal drainage channels. There is no defined outlet leaving this area of wetlands and it is presumed that overland flow percolates into the sandy soils at the southern end of the Project Area. The western portion of the Project Area is the largest of the three (3) areas. It consists of forested uplands that are bisected by the cleared utility right-of-way. Furthermore, wetland vegetation has been observed in certain portions throughout the majority of the Project Area.

Additionally, The MassDEP Phase I Site Assessment Map dated January 24, 2019 indicates that areas designated as Natural Heritage & Endangered Species Program (“NHESP”) Estimated Habitat of Rare Wildlife for the Eastern Box Turtles are located throughout the majority of the Project Area. There is also an electrical easement for the two (2) high-powered 115 kV transmission lines that transverse the central portion of the Project Area extending from the southern Project Area boundary to the northern Project Area boundary, which runs through the center of the Project Area. The existence of the large easement that runs through the center of the Project Area makes it very difficult and expensive to build around particularly considering the physical conditions and unsuitable soil in large portions of the Project Area.

The Project Area is surrounded primarily by industrial warehouse distribution centers and commercial buildings. The blighted and decadent area has an abundant amount of distribution centers and heavy 18 wheeler truck traffic that puts a strain on the local infrastructure causing damaged roads, potholes, traffic congestion and results in litter and garbage being discarded on the roadways in the area. The conditions in and around the Project Area have become detrimental to the safety, health, morals, welfare and sound growth of the community in which it is situated.

The vast majority of the Project Area has remained undeveloped despite being located in the Industrial A and Industrial Park Districts of the City where industrial development has been concentrated over the last decade. There are only three (3) smaller commercial buildings that are located in the Project Area on less than three (3) acres that will be demolished as part of the larger development.

At least three (3) previous development opportunities dating back more than a decade consisting of a natural gas electric power plant, another large Federal Express distribution center and the development of a portion of the Industrial Park for regional distribution and manufacturing firms that includes the Home Depot Distribution Center and the Preferred Freezer Warehouse and Distribution Center never materialized.

In late 2007, the Pioneer Valley Energy Center (PVEC) proposed the development, construction and operation of a new 431 MW combined cycle natural gas electric generating facility that was located on approximately 80 acres, or more than half of the Project Area. The controversial power plant proposal was met with stiff opposition from members of the community and took more than five (5) years to develop and go through the extensive federal, state and local permitting processes for approval of the natural gas power plant on the site. After extensive resources were expended by federal, state and local officials to review the project and after extensive public opposition from the local community, the developer ultimately abandoned the controversial natural gas power plant project despite having spent substantial costs and expenses developing the project over a period of more than five years.

More recently in 2018 to 2020, another large Federal Express distribution center was being developed on the same 80 acre area of the Project Area. The distribution center would have added significant 18 wheeler truck traffic to the already congested area further straining the City's resources and negatively impacting the local infrastructure causing more damaged roads, potholes, traffic congestion and litter and rubbish being discarded on the roadways in the area. The distribution project was difficult to locate in the Project Area due to the size of the distribution center and parking areas needed to accommodate the truck traffic to support the facility particularly given the potential wetland impacts from the project. Ultimately, the developer abandoned the distribution center project in late 2020 so it was never permitted, approved or constructed.

A third development occurred on another portion of the Project Area dating back to 2003 consisting of three parcels totaling approximately 33.58 acres. The three (3) parcels were part of an overall 130 acre business park that was developed back in 2003. The developer sold 14.7 acres of the business park where Preferred Freezer Warehouse and Distribution Center was constructed and in late 2009, the developer sold an additional 71.67 acres of the business park to Home Depot for its Distribution Center that was subsequently constructed in the business park. However, three (3) parcels in the same business park totaling approximately 33.58 acres that comprise a portion of the Project Area remain vacant to this day due in part to the irregular lot sizes, wetlands and physical conditions of the parcels. These parcels also have two different electric transmission easements on the property, one of the easements is 100 feet wide that runs north to south through the Project Area for the two high-powered 115 kV transmission lines owned by Eversource and the second easement is 20 feet wide for additional transmission lines that cross these parcels in the Project Area east to west that are owned by WG&E making development much more expensive and difficult to build around. The transmission line easements are identified on page 2 of Exhibit B-1.

The Project Area is a “blighted open area” and is a predominantly open which is detrimental to the sound growth of the City because it is unduly costly to develop it soundly through the ordinary operations of private enterprise by reason of the existing physical conditions, unsuitable soil, the unduly expensive measures incident to building around or over rights of way through the area, the diversity of ownership of plots and because there has been a substantial change in business and economic conditions due to the coronavirus pandemic. The Project Area is also a “decadent area” because of the irregular lot sizes, some of which are partial lots, the diversity of ownership of the lots and the substantial change in business and economic conditions due to the coronavirus pandemic. The combination of these conditions and other conditions that have not been remedied by the ordinary operations of private enterprise have caused the predominantly open Project Area to become detrimental to the safety, health, morals, welfare and sound growth of the City in which it is situated.

The Project offers a unique opportunity to successfully develop the Project Area while avoiding and mitigating wetland and habitat impacts. The Project is a state-of-the-art hyperscale data center campus consisting of ten (10) data center buildings that have been designed with different sizes and shapes to optimize the Project Area. This is accomplished in the challenging location by accumulating approximately 155.49 acres that can support the data center buildings totaling approximately 2.74 million of data center space while also mitigating wetland and environmental impacts. The superior quality of the Project is the best use of the Project Area. The Project will consist of high-tech, modern design buildings that will elevate the quality and character of the industrial location and help transform the City into the center of the high-tech, high-growth data center market in the northeast.

Photographs attached hereto as Exhibit F document some of the blighted and decadent areas existing within and around the Project Area.

6. Amenities Which Warrant Additional Tax Exemption

Pursuant to the provisions of Section 10 of M.G.L. c. 121A and in consideration of the Project benefits listed below, the Applicant requests the Department's approval of one twenty-five (25) year extension to the fifteen (15) statutory period of property tax exemption for a total of forty (40) years.

The Applicant believes that the Project will provide extraordinary economic development benefits and is in the public interest, which justifies the extension requested. The following is a schedule of such public benefits (the "Public Benefits"), each supporting the twenty-five (25) year extension requested:

- a. ***The substantial long-term additional payments to the City in lieu of taxes that can be used to benefit the Community.*** The Payment Schedule would result in significant long-term property taxes to support the local community averaging over \$8.5 million dollars in payments over the forty (40) year term, and more than \$11 million per year after the full buildout of the Project. The total payments to the City are expected to be more than \$350 million over the forty (40) year term that can be used to help fund important public services including public education, parks and recreation services, police and fire departments, housing services, ambulance and emergency medical services, municipal courts, transportation services and public works including street improvements, water, sewers, maintenance and snow removal among others.

- b. ***The significant potential for job creation and opportunities for increased economic development.*** The Project is a ten (10) building data center campus that will be built out in a phased approach and will result in significant job creation from construction jobs, indirect jobs and well paid full time jobs at the Project. The Project is expected to produce approximately 1,800 construction jobs for each of the data center buildings resulting in approximately 18,000 construction jobs over the twelve (12) to eighteen (18) year buildout period including technical trades, electrical, plumbing, HVAC and other construction jobs. The Project is also expected to support over 1,200 indirect jobs in local community including engineers, architects, legal, environmental and support and supply services that will provide services to the Project. The Project is also expected to produce over 400 full time, high paying jobs with an average annual salary of over \$100,000 per year. The Project will utilize the skilled workforce in the City and partner with local

educational institutions to support the pipeline of high quality, well educated workers that the Project will need over the long-term.

- c. ***Significant support of economic development and expansion in the City.*** The Project Area is located in North Side of the City along the Route 10/202 corridor in the two industrial districts in the City, Industrial A and Industrial Park, where industrial development has been concentrated over the last decade. The Project Area is also centrally located in close proximity between Westfield-Barnes Regional Airport and the new Westfield Turnpike Industrial Park that is being developed by the City. The Project will promote jobs and economic growth while also facilitating the objectives and goals of the City to develop the City in a responsible manner. The ancillary businesses that will provide services to the Project will foster economic development and help the City achieve its goals and objectives for the Westfield Turnpike Industrial Park at full build out over an expected eight (8) to ten (10) year period of 1,100 jobs and \$1.3 million in additional property tax per year thereafter.

- d. ***The substantial public benefits to the local municipal utility Westfield Gas & Electric that will benefit the Community.*** The Project will require electric service, natural gas supply, fiber and water. The Applicant is expected to partner with the local municipal utility Westfield Gas and Electric (“WG&E”) and the City for these services. WG&E is expected to receive substantial revenue from wholesale electricity services, natural gas supply, and a massive fiber buildout to support the Project. The City will also be supplying water to the Project, which will bring in incremental revenue to the Water Department. WG&E will have to extend its natural gas infrastructure to the Project Area that will be supported by the Project and expand natural gas availability to other customers in the area. Additionally, the Project will require a significant expansion of fiber services for the high-tech facility that will be provided by WG&E and its network providers. WG&E will be able to utilize its expanded capabilities and fiber network infrastructure to enhance its already very successful implementation of its Whip City Fiber services in the City and beyond. The substantial additional revenues from the Project will help WG&E enhance utility services and its Whip City Fiber services in the City while also reducing costs to the local community.

- e. ***The enormous potential economic development benefits for Westfield, the Surrounding Communities, the Greater Boston area and the Commonwealth.*** The Project will result in ten (10) data center buildings totaling over 2.7 million square feet of new data center space in the City and in New England at full buildout. It will become a significant source of new hyperscale data center computing power

in the Northeast region. The data center market is very competitive and characterized by clusters of data center providers that will enter markets that allow the data centers to thrive over the long-term while benefiting the community with significant tax revenue, jobs and economic development. The Project has the capability and the likelihood to attract numerous other data centers to the City and surrounding areas. The Project Area is ideally located next to two high power transmission lines, in close proximity to the robust fiber network, adjacent to the Pioneer Valley rail line, next to Westfield-Barnes Regional Airport, only 30 minutes from Bradley International Airport and only 90 minutes from Boston Logan International Airport offering convenient access to the City and the greater Boston area. Additionally, the robust fiber network provides access to the Undersea Cables in the Boston area to international markets for the Project. The Commonwealth has the real opportunity to become the data center hub of the Northeast by utilizing the Project to spur the expansion and growth of the data center market in the state attracting other data center providers to locate to the Commonwealth from higher cost states such as New York, New Jersey and Connecticut. Additionally, Boston will have the unique opportunity to capitalize on the growth of the data center market in the City and surrounding areas by attracting companies moving to the City for data center services to relocate their corporate offices to Boston from higher costs and less business friendly areas such as the New York City, New Jersey and the greater Metropolitan area.

- f. ***The superior quality of the development is the best use of the Project Area.*** Although the Project Area is located in the City's two industrial districts, the parcels are very difficult to develop due the wetlands in the area and the habitat for the Eastern Box Turtle. Most of the Project Area is vacant land and at least three (3) previous development opportunities consisting of a natural gas electric generation facility, another distribution center and the development of a portion of the Industrial Park for regional distribution and manufacturing firms never materialized. The blighted area has an abundant amount of distribution centers and heavy 18 wheeler truck traffic that puts a strain on the local infrastructure causing damaged roads, potholes, traffic congestion and results in litter and garbage being discarded on the roadways in the area. The Project is a state-of-the-art hyperscale data center campus consisting of ten (10) data center buildings data totaling more than 2.7 million square feet of IT capacity at full buildout. This is accomplished in the challenging location by accumulating approximately 155.49 acres that can support the data center buildings while also mitigating wetland and environmental impacts. The Project will consist of high-tech, modern design buildings that will elevate the quality and character of the industrial location. The Project is the best use of the Project Area and has the potential to completely transform the City into

the center of the high-tech, high-growth data center market in the Northeast. The Project will be built out on a phased approach and consists of the demolition of three (3) commercial buildings located at the Project Area, restoration, and the construction of data center buildings, accessory buildings and site improvements as follows:

- i. Data Center Building 1 (closest to Ampad Road on the westerly side of the site) is expected to be a three-story building with approximately 120,000 square feet per floor for a total of approximately 360,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- ii. Data Center Building 2 (adjacent to Building 1 to the south on the westerly side of the site next to Ampad Road) is expected to be a three-story building with approximately 60,000 square feet per floor for a total of approximately 180,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- iii. Data Center Building 3 (closest to the intersection of Ampad Road and Servistar Industrial Way) is expected to be a three-story building with approximately 73,400 square feet per floor for a total of approximately 220,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems

(UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- iv. Data Center Building 4 (adjacent to Building 3 to the northeast on Servistar Industrial Way) is expected to be a three-story building with approximately 80,000 square feet per floor for a total of approximately 240,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- v. Data Center Building 5 (northwest of Building 4 in the center of the property) is expected to be a three-story building with approximately 60,000 square feet per floor for a total of approximately 180,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.
- vi. Data Center Building 6 (adjacent to Building 5 to the north in the center of the property) is expected to be a three-story building with approximately 100,000 square feet per floor for a total of approximately 300,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- vii. Data Center Building 7 (adjacent to Building 6 to the north in the center of the property) is expected to be a three-story building with approximately 120,000 square feet per floor for a total of approximately 360,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- viii. Data Center Building 8 (adjacent to Building 7 to the north on Campanelli Drive) is expected to be a three-story building with approximately 60,000 square feet per floor for a total of approximately 180,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- ix. Data Center Building 9 (adjacent to Building 8 to the east on Campanelli Drive) is expected to be a three-story building with approximately 100,000 square feet per floor for a total of approximately 300,000 square feet consisting of: slab-on-grade foundation with steel frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- x. Data Center Building 10 (northeast of Building 9 across the street on Campanelli Drive) is expected to be a three-story building with approximately 140,000 square feet per floor for a total of approximately 420,000 square feet consisting of: slab-on-grade foundation with steel

frame construction with modern glass and wall-panel systems comprising data server space, office and conference room space, loading dock, high-efficiency and redundant heating, ventilating, cooling and plumbing systems, high-efficiency and redundant electrical systems including IT load centers, uninterruptible power systems (UPS), and dedicated emergency generator resources and redundant telecommunication and fiber hub connections.

- xi. Accessory Building 1 (in the center of the site between Building 1 and Building 5) is expected to be a two-story building with approximately 144,000 square feet consisting of: slab-on-grade structural steel metal frame with metal wall panels, natural gas emergency generation resources, battery storage and load balancing system components.
- xii. Accessory Building 2 (adjacent to Building 9) is expected to be a two-story building with approximately 30,000 square feet consisting of: slab-on-grade structural steel metal frame with metal wall panels for substation electrical equipment and utilities.
- xiii. Additional Project Site improvements include the construction of an electrical substation and interconnection with the high-voltage electric transmission grid, the installation of natural gas utilities, telecommunications and fiber, water and sewer service infrastructure, stormwater drainage systems, emergency generators, battery storage units, on-site solar photovoltaic systems and integrated carports, asphalt paved driveways, landscape walkways, landscaping and perimeter fencing.

7. Development Schedule

State and local regulatory approvals are expected to be obtained for the Project by the end of the year. Construction of the first data center building, the accessory buildings, the electrical substation, utilities, telecommunications and fiber, asphalt paved driveways, landscaping and perimeter fencing are expected to be completed in 18 to 24 months. Subsequent data center buildings are expected to have a 12 month construction schedule and be built out on a phased approach approximately every eighteen months over 12 to 18 years. A tentative development schedule for the Project is as follows:

1. **Data Center Building 1** – Construction expected to begin in 2023 and completion of construction and Certificate of Occupancy by the end of 2024;

2. **Data Center Building 2** – Construction expected to begin in 2025 and completion of construction and Certificate of Occupancy by the middle of 2026;
3. **Data Center Building 3** – Construction expected to begin in the middle of 2026 and completion of construction and Certificate of Occupancy by the end of 2027;
4. **Data Center Building 4** – Construction expected to begin in 2028 and completion of construction and Certificate of Occupancy by the middle of 2029;
5. **Data Center Building 5** – Construction expected to begin in the middle of 2029 and completion of construction and Certificate of Occupancy by the end of 2030;
6. **Data Center Building 6** – Construction expected to begin in 2031 and completion of construction and Certificate of Occupancy by the middle of 2032;
7. **Data Center Building 7** – Construction expected to begin in the middle of 2032 and completion of construction and Certificate of Occupancy by the end of 2033;
8. **Data Center Building 8** – Construction expected to begin in 2034 and completion of construction and Certificate of Occupancy by the middle of 2035;
9. **Data Center Building 9** – Construction expected to begin in middle of 2035 and completion of construction and Certificate of Occupancy by the end of 2036; and
10. **Data Center Building 10** – Construction expected to begin in 2037 and completion of construction and Certificate of Occupancy by the middle of 2038.
11. **Entire Project** is expected to be completed by December 31, 2038.

8. Cost of Project

The Project cost as estimated by the Developers is approximately \$2.7 billion. Detailed statements on the sources and uses of funds, income and expense projections and operating pro forma are attached hereto as Exhibit G.

9. Method of Financing

(a) General

M.G.L. c. 121A designation is essential to the feasibility of the Project. It is intended that the Applicant will enter into a ground lease for the Project with Servistar DC. Servistar DC may, in turn, enter into space leases at the Project with tenants or other similar agreements with other potential occupants of the Project. Servistar DC and all tenants under such space leases and other occupants need predictable payments. Payments made pursuant to an arrangement under M.G.L. c. 121A will achieve such predictability while at the same time approximate, as of this date, the average annual tax that would be due to the City pursuant to M.G.L. c. 59.

(b) Method of Financing

i. Amount to be Raised by Mortgage

- a. The Applicant has yet to determine the amount to be raised by mortgage; however, it is anticipated that the initial land acquisition and land development costs will be financed by Equity. It is anticipated that overall project build out will be financed with a combination of debt and equity contributions. The operating proforma assumes debt financing of approximately \$1.35 billion which will represent approximately 50% of the Project costs.

ii. Amounts to be Contributed by Equity Capital

- a. Amounts to be raised by equity capital are yet undetermined; however a best estimate would anticipate approximately \$1.35 billion of equity contribution to the Project.

iii. Other Amounts to be Raised and the Source

- a. None at this time.

iv. Any Stock or Other Securities Issued

- a. Shares for Services: No ownership interest in the Applicant is to be issued, created or transferred in exchange for services.
- b. Limits on Return on Investment: Consistent with Section 9 of M.G.L. c. 121A, the owner(s) of the Applicant (but not others, even affiliates, parents or subsidiaries of the owner(s)) in its sole capacity as such and not in its capacity as a lessee or sublessee of, or as a member of any lessee or sublessee of, or any other entity having any interest in, the Project or of any other entity, shall not receive or accept, in repayment of their investment in the Applicant, any sum in excess of an annual cumulative eight percent (8%) cash return on amount invested in the Applicant for so long as the Project, or applicable portion thereof, is subject to M.G.L. c. 121A.

v. A List of People or Entities who will have a Financial Interest in Project Including Nature and Amount of Interest

- a. Persons Having Beneficial Interest: Persons who have an interest in the Project, and whose interests are required to be disclosed to the Department are Erik Bartone, Paul Corey and John Fonfara equal members of the Applicant. The attorneys representing the Applicant are listed in this Application at Section 1(b).

(c) Municipal Liens

The Applicant is unaware of any unpaid municipal charges with respect to the Project Area.

10. Fiscal impact on City

The Project is expected to have a significant positive impact on the City resulting from the best use of the Project Area, a substantial increase in payments to the City and significant job creation and economic development as follows:

(a) ***The Applicant believes that the Project is consistent with the most suitable development in the industrial zoning districts in the City.*** The Project will be a desirable state-of-the-art commercial data center campus that is expected to be built out in a phased approach offering long-term benefits to the City and the community. The Project Area is located in the North Side of the City along the Route 10/202 corridor in the two industrial districts in the City where industrial development has been concentrated over the last decade. The Project Area is surrounded primarily by industrial warehouse distribution centers and commercial buildings and is located in close proximity between the Westfield-Barnes Regional Airport and the new Westfield Turnpike Industrial Park that is being developed by the City. The Project Area is located in a blighted and decadent area consisting primarily of vacant land that is very difficult to develop due to wetlands and habitat for the Eastern Box Turtles. At least three (3) previous development opportunities consisting of a natural gas electric power plant, another large Federal Express distribution center and the development of a portion of the Industrial Park for regional distribution and manufacturing firms never materialized. The blighted area has an abundant amount of distribution centers and heavy 18 wheeler truck traffic that puts a strain on the local infrastructure causing damaged roads, potholes, traffic congestion and results in litter and garbage being discarded on the roadways in the area. The negative effects of the blighted and decadent area place a strain on City resources to repair and maintain the roads and improve the roadways to alleviate excessive congestion resulting from excessive truck traffic and can negatively affect future desirable commercial developments in the area. The Project is the best use of the Project Area and has the potential to completely transform the City into the center of the high-tech, high-growth data center market in the Northeast.

(b) ***The Project will provide long-term significant payments in lieu of taxes to the City that can be used to provide numerous benefits to the community.*** The Project is a ten (10) building data center campus that will be built out in a phased approach and will result in substantial property tax payments, jobs and economic development for the

City. The total payments in lieu of taxes to the City are expected to be more than \$350 million over the forty year term that can be used to help fund important public services including public education, parks and recreation services, police and fire departments, housing services, ambulance and emergency medical services, municipal courts, transportation services and public works including street improvements, water, sewers, maintenance and snow removal among others.

- (c) *The Project is expected to result in significant job creation and economic development for the City of Westfield.* The Project is expected to produce approximately 1,800 construction jobs for each of the data center buildings, support over 1,200 indirect jobs in local community and produce over 400 full time, high paying jobs at the data center campus at full buildout. The Project will utilize the skilled workforce in the City and partner with local educational institutions to support the pipeline of high quality, well educated workers that the Project will need over the long-term. Additionally, the Project will offer a source of substantial new revenue to WG&E from wholesale electricity services, natural gas supply and a massive fiber buildout that will enhance its services to other customers in the community. The Project is also complimentary to the new Westfield Turnpike Industrial Park being developed by the City. The extensive jobs and economic development created by the Project and the growth of the ancillary businesses in the area needed to support the Project will also help the City realize its goals for the Turnpike Industrial Park to create up to approximately 1,100 permanent new jobs, 800 temporary construction jobs, and, at full buildout, annual property tax revenues in excess of \$1.3 million per year thereafter for the City.

In summary, the Project will have a very positive fiscal impact on the City. The Project is the best use of the Project Area and will help transform the City into the center of the high-tech, high-growth data center market in the Northeast. The Project is also expected to result in substantial long-term property tax payments, jobs and economic development that will produce significant benefits to the City well into the future.

11. Section 6A Agreement

- a. M.G.L. c. 121A designation is essential to the feasibility of the Project as it allows the Project Developers, their tenants and other occupants and the City the ability to rely on a fixed expense or income stream with predictable tax payments or excise payments. In the case of M.G.L. c. 121A, the economic feasibility of the Project is significantly enhanced.
- b. A draft of the contract proposed to be entered into under Section 6A of M.G.L. c. 121A with respect to the Project is attached hereto as Exhibit H (the “6A Agreement”). In accordance with the formula set forth in the 6A Agreement,

the Applicant will pay each year the annual excise payable with respect to such year under Section 10 of M.G.L. c. 121A.

c. By its approval of this Application, the Department hereby approves the 6A Agreement.

d. A copy of the estimated revenue to the City is attached hereto as Exhibit I.

12. Statement Concerning Relocation

There are no anticipated relocations needed.

13. Environmental Assessment

The Applicant anticipates filing the Environmental Notification Form in the September 2021 timeframe and will provide it together with the Certificate when issued and received.

14. Agreements for Public Improvements

The Project does not include an agreement with the City for public improvements, but it is anticipated that the Project will improve the vehicular safety in the area and reduce road maintenance costs for the City by having a low impact on vehicle traffic rather than contributing another source of heavy 18 wheeler truck traffic in the industrial area dominated by distribution centers.

15. Local Regulatory Compliance

a. The list of expected permits required for the Project are listed below:

i. State

1. Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (Eastern Box Turtle)
2. MassDEP – Wetlands and Stormwater Compliance

ii. Local

1. Special Permit & Site Plan Review (Westfield Planning Board)
2. Order of Conditions (Westfield Conservation Commission)
3. Stormwater Management Permit (Westfield Conservation Commission)
4. Construction and Utility Permits

- b. The Project will be in compliance with all applicable zoning, environmental, health and building bylaws or ordinances and any other applicable laws, bylaws, ordinances, rules and regulations.

16. Regulatory Agreement

In order that the Applicant may undertake the Project, pursuant to its lease with Servistar DC, it is hereby requested that the Department grant approval under Section 18C of M.G.L. c. 121A for the Applicant, as an entity subject to the benefits and burdens of M.G.L. c. 121A, to (i) undertake the Project, pursuant to the Lease, as described above and (ii) have Servistar DC, pursuant to the Lease, develop, operate and maintain the Project. A copy of the Section 18C Agreement is attached hereto as Exhibit J.

17. Statement Regarding Non-Disposal of 121A Interest Without Prior Approval

If, in connection with development of the Project, the Applicant seeks the Department's approval to transfer all or a portion of its interest in the Project and/or the Project Area to one or more persons, affiliates, parent company or subsidiaries (other than Servistar DC), associations of persons in the form of joint ventures, partnerships, limited partnerships, limited liability companies, trusts or charitable corporations for the purposes of undertaking the Project or such portion of the Project, it shall be upon application of the proposed transferee pursuant to the provisions of Section 18B of M.G.L. c. 121A and upon request for approval of any such transfer by the Applicant pursuant to the provisions of Section 11 of M.G.L. c. 121A. Upon approval by the Department, and the receipt of any necessary consent from the City, any such entity shall be subject to the burdens and receive the benefits of M.G.L. c. 121A and any approval granted pursuant to this Application. Nothing herein or in any approval granted or agreement executed pursuant hereto shall prohibit the sale of any membership units or shares of the Project Developers without further approval.

18. Additional Determinations, Findings and Approvals

By approval of this Application, the Department agrees that (i) neither the Applicant nor any of its respective members, partners, venturers, trustees, beneficiaries, shareholders, officers, directors, employers or agents or any of their respective successors and assigns (including, without limitation, mortgagees) or any person or entity directly or indirectly holding any interest in any of the foregoing, shall have any personal liability hereunder or under any agreement or undertaking related hereto specifically set out herein or in any agreements entered into as required hereby; (ii) the approval of the Department of this Application shall be final when such approval is given, which shall be after the Planning Board's, City Council's and the Mayor's approval is obtained (the "Approval Date"), but such Approval Date shall not become effective as to the obligation to make payments to the City and the Commonwealth until the effective date stated in the 6A Agreement (the "Effective Date") and shall continue subject to the terms hereof for the fifteen (15) year period from the Effective Date, as such period is extended for twenty-five (25) additional

years for the reasons set forth in Section 6 hereof, for a total of forty (40) years, and the Applicant shall not thereafter be subject to the obligations of M.G.L. c. 121A, nor enjoy the rights and privileges thereunder, nor be subject to the terms, conditions and obligations of the approval of this Application; (iii) all of the provisions hereof shall be binding upon and inure to the benefit of the Applicant and its successors and assigns; and (iv) whenever in the future any notice, agreement, consent or any other action is required of the Applicant hereunder, the same shall be treated as authorized and sufficient if given or taken by the Applicant or its successors or assigns. Upon the occurrence of the Effective Date, the Department and the Applicant shall enter into a memorandum specifying the Effective Date and provide a copy thereof to the City's Assessor.

The obligations of the Applicant pursuant to this Application are conditioned in all respects upon: (i) the Applicant's acquisition of all parcels within the Project Area necessary for the development of the Project and the issuance of all permissions, variances, permits and licenses that may be required with respect to the construction, maintenance and management of the Project, whether or not the same are specified in this Application; (ii) the Applicant's obtaining all local, state (including MEPA) and federal regulatory approvals, as applicable, for the construction, maintenance and operations of the Project; (iii) the appropriate agency or authority within the City certifying in a timely way to the appropriate authorities of the Commonwealth of Massachusetts the "fair cash value" of all real and personal property included within the Project to be not more than the amount described in Section 10 of the proposed 6A Agreement; and (iv) the gross income of the Applicant for purposes of M.G.L. c. 121A being limited to gross income actually received by the Applicant and not others including, but not limited to, Servistar DC, tenants, affiliates, subsidiaries or parent companies. If the conditions set forth in clauses (iii)-(iv) above are not met at any time during the term of the Applicant's designation under M.G.L. c. 121A pursuant to this Application, then the Applicant shall have the right to seek the termination of the designation of the Project under M.G.L. c. 121A and the Department shall, within thirty (30) days of such application, approve such termination. If any of the conditions set forth in clause (i) above are not met at any time during the term of Applicant's designation under M.G.L. c. 121A pursuant to this Application, in addition to any other rights that the Applicant may have hereunder to seek to terminate approvals granted pursuant to this Application, the Applicant shall have the right to terminate the designation of the Project under M.G.L. c. 121A. In any event, and in addition to any provisions regarding termination available to the Applicant, if any of the conditions set forth in this Section 18 are not met at any time during the term of the Applicant's designation under M.G.L. c. 121 pursuant to this Application, the Applicant shall have the right to seek such remedies as may be available at law or in equity, including, without limitation, the right to bring an action for mandamus or specific performance.

The Project Developers shall not be held in any way liable for delays which may occur due to an act of Force Majeure, which includes:

(a) Strikes, lockouts, labor disputes, disputes arising from a failure to enter into a union or collective bargaining agreement, inability to procure materials attributable to market-wide shortages, failure of utilities, labor shortages or explosions;

(b) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires and other casualties, landslides, earthquakes, epidemics, pandemics, quarantine, pestilence, and/or abnormal inclement weather;

(c) Acts of a public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrections, riots, civil disturbances, or national or international calamities;

(d) Concealed and unknown conditions of an unusual nature that are encountered below ground or in an existing structure;

(e) Any temporary restraining order, preliminary injunction or permanent injunction, or mandamus or similar order, or any litigation which impedes the ability of to complete the Project, unless based in whole or in part on the actions or failure to act of the Projects Developers; or

(f) Any impacts to major modes or routes of transportation to the Project, whether private or public, which adversely and materially impact access to the Project, including but not limited to, sustained and material closure of airports or sustained and material closure of highways servicing the Project.

To the extent the Applicant hereafter desires to fundamentally change the Project, the Applicant shall notify the Department of such proposed fundamental change, which shall be subject to the approval of the Department and the City pursuant to Section 13 of M.G.L. c. 121A. To the extent the Applicant hereafter desires to change the Project in a manner that is not fundamental, the Applicant shall notify the Department of such purposed non-fundamental change, which shall be subject to the approval of the Department pursuant to Section 13 of M.G.L. c. 121A.

19. Miscellaneous

By approval of this Application, the Department agrees that:

(a) If any provisions of this Application or the approval granted pursuant to this Application or of any of the agreements entered into in connection therewith are held invalid, the remainder of such provisions shall not be affected thereby.

(b) The Applicant reserves its right to amend this Application at any time prior to the Department's transmission to the City for approval. If the Applicant seeks to amend this Application after the Department's transmission to the City for approval, then such amendment shall be subject to Department and City approval.

(c) The respective rights and remedies of the parties hereunder or under the approval granted pursuant to this Application or under any of the agreements entered into in connection therewith or at law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other such rights or remedies.