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Westford Board of Selectmen
Town of Westford
55 Main Street
Westford, MA 01886

RE: Westford Gateway, LLC/66-68 Boston Road, Westford

Dear Town Manager Ross and members of the Board of Selectmen:

To follow up on my letter of September 29, 2016, notwithstanding that we thought we would be further along in our legal analysis at this time, we respectfully request that the Board of Selectmen place the enclosed Articles on the Warrant for the 2017 Annual Town Meeting. At this moment we are not necessarily requesting that you support the Articles, we are simply asking that you place the Articles on the Warrant (or at least add "place savers") so that in the event we are collectively ready to proceed on March 25th that we will have the ability to do so. In support of this request, please be advised as follows:

Enclosed please find revised building plans for the restaurant. The building is considerably smaller than shown on prior plans, and the function hall has been eliminated. The building's gross footprint area is 8,130 square feet; which is less than 50% the area proposed at the 2016 Annual Town Meeting. Be advised that according to the Assessor's records, the building footprint of the existing principal retail building is 5,422 square feet.

Since September, our client has taken many steps to address concerns raised by the Board of Selectmen, including:

1. Goats were brought on to the property (an agricultural use) over the period of six (6) weeks to naturally start to clean up some of the brush on the property;
2. All the dilapidated greenhouse buildings were taken down, and their contents and surrounding refuse were disposed of;

3. The path to the Boy Scout trail was cleaned;
4. Eight (8) dumpsters of refuse was removed from the site;
5. Seven hundred (700) yards of clean loam was brought to the site (to be spread when weather permits); and
6. The farm area was mowed and tilled. When weather permits, the old apple trees will be cut down, the loam will be spread and the loam will be treated with lime.

On October 18, 2017 we submitted a request for public information to the office of the Commissioner of the Department of Agricultural Resources; unfortunately the office has been unable to provide a response within the statutory time period, which in turn has delayed our legal analysis. Nevertheless, our client engaged expert outside counsel to evaluate the legal issues surrounding the proposal to amend the APR and we expect to deliver their opinion to you shortly.

During the course of our review of legal issues we reviewed the purpose and ramifications of the attachment to APR #3 incorporating the approval of the Commissioner of the Department of Food and Agriculture and determined that the approval was added exclusively to avoid the restriction from being "...unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land.." as provided by Ch 184 s 32. We see that APR #1 and APR #2 do not contain such approvals. As we would like to proceed to amend the agreement by and between our client and the Board of Selectmen, we respectfully suggest that it may be in the Town's best interest amend the agreement with our client wherein the approval of the Commissioner may also be included within APR #1 and #2 to eliminate any question regarding the enforceability of those instruments.

Moreover, there is nothing in APR #3 that specifically limits the types of products that can be sold in the retail store. We mailed the Board of Assessors a request for public information asking for documentation regarding the percentage of the products sold on the premises having been raised on the premises. The only reply we received was in a phone call with the Chief Assessor that they never collected that information. We respectfully suggest that it may be in the Town's best interest amend the agreement with our client to eliminate the open ended language regarding the retail uses permitted at the property and preferably to incorporate limitations on the proposed restaurant so as to tie the restaurant to agricultural uses as follows:

- * After the third growing season, during the harvest season of the primary crop raised on the land, at least twenty five (25%) percent of the Produce (which term "Produce" will hereinafter refer to all fruits and vegetables, sold or served raw, cooked, or otherwise prepared for consumption) sold in the Restaurant facility shall be grown on the site.
- * During the months of June, July, August and September of each year, at least fifty (50%) percent of the Produce sold in the restaurant facility shall be grown at Massachusetts farms; with a preference toward local farmers.

- * The balance of the year, our client will do its best to source its Produce from Massachusetts farms.
- * If our client was operating a vegetarian restaurant, using the above criteria, the Restaurant would qualify as a protected, permitted agricultural use. However, our client's menu will also contain meat, poultry and seafood. To include a wider menu while supporting local farmers, our client will also make the following additional commitments:
 - * At least eighty percent (80%) of the beef, pork, lamb, and veal served at the Restaurant will come from Massachusetts farms, with a preference for local farmers.
 - * At least fifty percent (50%) of the poultry served at the Restaurant will come from Vermont farms that do not use growth hormones or other non-organic means, and the balance will come from local farms in Massachusetts.
 - * At least ninety (90 %) of the seafood served at the Restaurant will come from fishermen/women based in Massachusetts with the remaining ten percent (10%) sourced within New England.

We wish to reiterate the comments made in our September 29th letter, especially as regard to Westford's Town Counsel opinion expressed in his letter of June 13, 2016, further supplemented by the question and answer session held on June 28, 2016. Counsel opined that the Town has the authority to make certain amendments to APR 3. We will provide additional support for his conclusions shortly. Perhaps at that time the Board will either seek a second opinion and/or be convinced that (a) the 1996 Town Meeting vote authorized the Board of Selectmen to negotiate with the landowner regarding the terms of the APR, and as the Board remains as the sole "Grantee" of the instrument, therefore the Board continues to have the authority to amend the instrument, (b) the proposed amendment is not a "release" of the APR or a conveyance of land and the approval of the Commissioner and the approval of the Legislature are not required, and (c) as it appeared that the Drew Gardens Task Force was likely to conclude that it was not financially feasible to limit the use of the property as a farm stand, that it would be worthwhile to continue to work with the land owner on an acceptable farm to table restaurant proposal.

We also wish to reiterate that we believe that it is inaccurate to make a broad statement that a restaurant may never be maintained on the property. There is no question that a restaurant is considered to be an "agricultural use" provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is

located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located. For more detail see MGL Chapter 40A Section 3. Any statement that a restaurant can never be an agricultural use is a false statement. We can agree to debate the size of the restaurant and the menu, but such are details that we would like to address with the Task Force and the Board.

Thank you for your attention to this matter.

Very truly yours,

Alphen & Santos, P.C.



Paul F. Alphen, Esquire