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August 13, 2021

## VIA ELECTRONIC MAIL

Suffolk County Industrial Development Agency  
H. Lee Dennison Building  
100 Veterans Highway  
P.O. Box 60100  
Hauppauge, New York 11788

Attention: Natale Wright, Chair  
Kevin Harvey, Vice-Chair  
Sandra Cochran, Treasurer  
Tony Giordano, Secretary  
Gregory T. Casamento  
Joshua Slaughter  
Brian Beedenbender  
Anthony J. Catapano, Executive Director

**Re: Jimar Realty, LLC  
Trophy Depot, Inc.  
2015 Project – 400 Rabro Drive, Hauppauge, NY 11788**

Ladies and Gentlemen:

This submission is being made on behalf of Jimar Realty, LLC and Trophy Depot, Inc. in connection with the recent sale of the property located at 400 Rabro Drive, Hauppauge, New York 11788 (the “**Premises**”). The Premises is also known as District 500, Section 24, Block 1, Lot 18.007 on the Land and Tax Map of Suffolk County.

On or about November 18, 2015, with the prior approval of the Board of the Suffolk County Industrial Development Agency (“**Board**”), Jimar Realty, LLC (“**Jimar**”), as owner of the Premises, entered into an economic development facility with the Suffolk County Industrial Development Agency (“**IDA**”) for the acquisition of its new facility for the express purpose of leasing it Trophy Depot, Inc. (“**Trophy Depot**”) for the manufacture, distribution and supply of its primary product line, trophies and awards, primarily for schools, colleges, universities and amateur athletic teams.

This submission is being made to supplement the information previously furnished to the Board and the IDA in connection with its request to terminate the IDA facility, which was granted in 2015. For the reasons set forth in the prior submissions and in this letter, there is no legal basis nor policy basis to withhold consent to the request.

The mission of the IDA is to promote business activity in Suffolk County, New York. Its policy is to enhance business development in Suffolk County by the extension of economic benefits in order for companies to come to Suffolk County, remain in Suffolk County and grow their businesses in Suffolk County for the benefit of all of its residents. Trophy Depot has, in all respects, fulfilled this mission of the IDA and to deny the request herein is, in fact, contrary to the very mission of the Agency. As set forth below, Trophy Depot fulfilled and exceeded all of its commitments and obligations to the Agency in terms of hiring and recruiting full time employees and only through the events beyond the control of Trophy Depot did it become necessary to sell the Premises.

However, the sale of the Premises has not resulted in the loss of Trophy Depot’s existence and continued production and distribution of its products in Suffolk County in the same location.

A denial of the relief set forth herein will, in fact, not only be contrary to the legal documents entered into at the time the benefits were extended to Trophy Depot, it would also send a message to businesses throughout Suffolk County and those seeking to come to Suffolk County, that if a pandemic or other national, economic conditions beyond the control of the business management occur, the IDA will penalize the company. Such a message would be devastating to the continued mission of the IDA and would, in fact, discourage businesses from coming to Suffolk County and receiving IDA benefits knowing that there was a risk that if circumstances beyond their control caused a significant loss to the business, they would be subject to paying hundreds of thousands of dollars in forfeiture of the benefits they had received.

Trophy Depot has not liquidated its operations and, in fact, continues in business in Suffolk County in the same premises that it had been since it completed the Project. The lessee (Jimar) has sold the Premises, however, only under extreme economic hardship. The primary lender at the time of the closing in 2015, Sterling National Bank, had extended a loan for the acquisition and development of the Premises which was consolidated to form a single lien on the Premises of \$10,515,900.00. In addition, there was an outstanding term loan of \$2,279,056.97, for a total indebtedness to the bank of \$12,794,957.00. Because of the circumstances hereinafter described, including, but not limited to, a substantial loss of revenue between March, 2018 and November.

2019 by an illegal computer “hack” which diverted substantial sales away from Trophy Depot, the terms of the loan with Sterling Bank had to be re-negotiated. In or about December 2020, a Second Extension Modification and Forbearance Agreement was entered into with the Bank which extended the loan, which was then in default, to June 30, 2021. At that time, the entire outstanding balance of the loan was almost \$13,000,000.00. The terms of the Forbearance Agreement required the loan to be paid in full by June 30, 2021.

As is well known, with the COVID-19 pandemic rapidly overtaking the country and causing devastating economic consequences. Trophy Depot was particularly hard hit. Since its business is trophies and awards for schools, colleges and universities and amateur athletic teams, the business was substantially eliminated as a result of the pandemic. High schools, colleges and universities suspended all their athletic teams. Amateur athletic leagues were no longer permitted to conduct games in the various leagues and give awards to the various players. Employment by Trophy Depot fell from approximately 140 employees to approximately 40 employees. This was proximately and directly caused by the impact of the COVID-19 pandemic on the national and local economy. Approximately 95% of Trophy Depot’s business is conducted online. With no teams conducting sporting events, no awards were ordered by the various schools, colleges, universities and athletic teams that make up their customer base. With the threat of foreclosure by Sterling National Bank and the extreme and substantial loss of income by Trophy Depot, it became apparent that it would have to sell the Premises in order to survive. James O’Boyle and his wife Marian, the owners of Trophy Depot and Jimar, had invested hundreds of thousands of dollars in the business and had borrowed an additional \$250,000.00 from a long-time family friend in order to keep the business afloat. A foreclosure by the lender would have resulted in a loss of the property and a default on the debts they had incurred to keep their business going. This would have led to closing the business and the loss of all employment.

I first will address the legal basis for Trophy Depot’s application.

The Lease Agreement entered into with the Agency provides that under certain circumstances, the Agency benefits can be recaptured. These conditions are set forth in Section 8.4 of the Lease between the Agency and Jimar:

1. **The Lessee (Jimar) or the Sublessee (Trophy Depot) shall liquidate its operations and/or assets (absent a showing of extreme hardship).**

It is respectfully submitted that the above clearly demonstrates extreme economic hardship beyond their control.

2. **The Lessee or Sublessee shall have ceased all or substantially all of its operations at the Facility (other than a relocation to another Facility within the County).** Trophy Depot has, in fact, continued to do business at the same Premises in Suffolk County and as athletic teams began to renew their sports activities, their business has again begun to grow. In fact, the biggest obstacle to their continued revival has been difficulty retaining the employees to

work at the Facility. The revenues are again growing and they are re-hiring employees as quickly as they can be retained. All in Suffolk County.

3. **The Lessee or Sublessee or its Affiliates shall have transferred all or substantially all of its employees employed at the Facility to a location outside of the County.** The Lessee (Jimar) had no employees. The Sublessee (Trophy Depot) has not transferred any of its employees to a location outside of the County and has continued to do business at the same location and is re-hiring as many employees as it can as sports activities resume.

4. **The Lessee or Sublessee shall have effected a substantial change in the scope and nature of the operations of the Lessee or the Sublessee at the Facility.** Trophy Depot continues in the exact same business it was in before the sale of the building. It is now operating as a licensee at the same Premises doing the same business and the operations are of the same scope and nature as they were before the closing.

5. **The Lessee or Sublessee shall have subleased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 of the Lease.** Neither the Lessee nor the Sublessee have subleased all or any portion of the Facility.

6. **The Lessee or Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility.** The Approved Facility, as defined in the Lease, "is the office, warehouse, manufacturing and distributing facility for use in connection with the Sublessee's...general contracting business, and the acquisition from time to time of machinery, equipment, furniture, fixtures and other tangible personal property for use therein". Thus, the Facility is Trophy Depot. Trophy Depot has not transferred or otherwise disposed of all or substantially all of its interest in the Facility. It still owns all of its equipment, tools, computerized conveyor system, packaging equipment, raw materials and inventory.

7. **The Lessee or the Sublessee or its Affiliate shall have effected significant employment reductions at the Facility not reflective of the normal business cycle of the Lessee or the Sublessee and/or local or national economic conditions.** Prior to the pandemic, Trophy Depot had exceeded all of the commitments made to the IDA when the economic benefit package was extended to Trophy Depot to hire additional full time employees. Although there was a substantial reduction in employment during the depths of the economic recession caused by the pandemic, that has now turned around and Trophy Depot is again hiring as many employees as it can find. The reduction was clearly the result of "local or national economic conditions" caused by the pandemic and, therefore, this should not be a basis for the IDA to declare the circumstances a Recapture Event.

Section 9.1 of the Lease defines a *Force Majeure* event as including epidemics. This is defined to be a circumstance that is reasonably beyond the control of the party.

Clearly, the pandemic is a *Force Majeure* event.

Thus, each and every one of the circumstances which allow the Agency to declare a Recapture Event does not apply to the circumstances of Trophy Depot.

Moreover, Section 8.4(d) grants the Agency, in its discretion, the ability to “waive all or any portion of any payment owed by the lessee under this Section 8.4”.

In the event, assuming *arguendo*, that the Agency finds that a technical Recapture Event has occurred which is not covered by the exclusions set forth above (or a *force majeure* event), paragraph 8.4(d) gives the Agency, in its discretion, the right to “waive all or any portion of any payment owed the Lessee under this Section 8.4”. Clearly, the economic devastation caused by the pandemic, which is declared to be a *force majeure*, warrants the Board to exercise its discretion and waive any liability for the recapture of Agency benefits. The circumstances described above were not the result directly or even indirectly of poor management by the owners of Trophy Depot, James and Marian O’Boyle or an intent to abandon Suffolk County, but were solely and proximately caused initially by the criminal computer hack and thereafter by the pandemic.

Submitted to the Board were letters by Sasserath & Co., CPA’s dated August 11, 2021, the accountants for Jimar and Trophy Depot in response to a report submitted by William Camera & Company (the “**Camera Report**”) dated July 15, 2021. The Camera Report analyzes the losses resulting from COVID and indicates that their usual business cycle is “beginning to return with the approximately 25% increase in Gross Income from March over February”. It is reasonable to see this increase as encouraging”. The Camera Report goes on to state “it is reasonable to expect business to rebound to approximately pre-COVID (March, 2020) performance. In its Summary of Facts, the Camera Report states as follows “The sale of 400 Rabro Drive relieved debt service on the substantial debt of approximately \$13,800,000.00. This was a sound business decision for a good business in a prolonged bad cycle”.

Therefore, the Agency’s own accountant believes that the sale was in the best interest of the company which would allow it to again thrive, employ people and do its business in Suffolk County. The Sasserath supplemental response dated August 11, 2021 submitted to the Board gives more context to the uneven sales figures which the Camera Report mentions. It explains the substantial loss in revenue from the criminal computer hack, which once resolved, allowed the company to continue to grow only to be shut down again by the COVID-19 pandemic. Both reports conclude that the company, now that is free of the debt from the building and its term loan, is viable and improving.

If this Agency were to declare a Recapture Event and compel the forfeiture of \$671,000.00 which is necessary for the business operations to continue to improve, it would likely result in a complete loss of the business, the employment of those employed and the economic activity generated here in Suffolk County by the company.

The only two (2) interpretations that can be reach which would allow the Agency to impose the recapture penalty is that either poor business judgment resulted in the loss of business

or the criminal computer hack and the pandemic did. Neither circumstance is what the recapture of benefits was implemented for.

As a member of the IDA Board for more than seventeen (17) years during which time I served as Vice-Chair for several years, I was very familiar with the reason for the recapture provisions in the Agency leases and, in fact, was on the Board and supported the change in policy when it was adopted. The recapture provisions were initiated after at least two (2) large companies were acquired by out of state corporations which they then closed down their operations in Suffolk County and moved them out of state while they were still receiving benefits thereby negating the very reason that the benefits were extended at the time they were granted.

This is not the circumstance with Trophy Depot. They continue to remain in the County employing people in the County, creating economic activity in the County and are again trying to recapture the business they lost during the shutdown of all athletic events during the pandemic just as they were recovering after having uncovered the criminal and illegal hack of their website, which diverted millions of dollars of sales to a foreign company.

At the time the closing on the sale of the Premises, Trophy Depot entered into an agreement with the buyer of the property for an eighteen (18) month occupancy agreement. If the company were required to forfeit over \$670,000.00 of benefits as a "Recapture Event", it would in all likelihood result in the loss of the business in Suffolk County.

Finally, Trophy Depot is not seeking to obtain any benefits it would have received if Jimar continued to own the building. It is only seeking not to have to repay the benefits it received while Jimar did own the building. It is understood that those benefits will cease going forward. No request is being made for future benefits. It is merely requesting that it not have to repay benefits it received while it was operating in Suffolk County, employing more people than it had originally agreed to employ, and during which time the County received every benefit, plus more, than Trophy Depot committed to.

To be submitted under separate cover are the following exhibits:

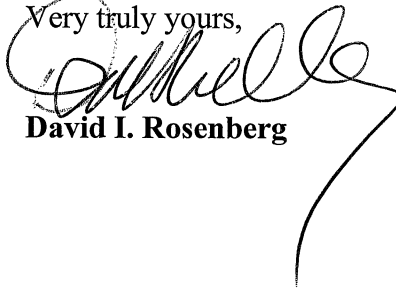
1. Letter from James and Marian O'Boyle, owners of Jimar and Trophy Depot;
2. Documents concerning the criminal hack of Trophy Depot's website;
3. Letter of Sasserath & Zorian LLP dated March 24, 2021;
4. Default letter and loan modification of Sterling Bank;
5. Letter of Sasserath && Co. (successor to Sasserath & Zorian, LLP) dated August 11, 2021; and
6. License Agreement for continued occupancy at the Premises.

**Conclusion**

It is respectfully submitted that the mere sale of the Premises has not in any way altered the benefit that Suffolk County receives by the continued operations of Trophy Depot in the County and it should not be penalized for national economic conditions or the *force majeure* of the pandemic. The IDA should find that there had been no Recapture Event, or, in any event, exercise its discretion under the unique circumstances herein, to waive any forfeiture of prior benefits received.

Thank you for your favorable consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "David I. Rosenberg", written over a circular stamp. The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

**David I. Rosenberg**

DIR:dmg