

**RESOLUTION AUTHORIZING AND APPROVING THE
EXECUTION AND DELIVERY OF AGREEMENTS IN
CONNECTION WITH A STRAIGHT-LEASE PROJECT FOR
FRESH DIRECT, LLC AND U.T.F. TRUCKING, INC.**

WHEREAS, the New York City Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Fresh Direct, LLC and U.T.F. Trucking, Inc. (collectively, the “Company”) have entered into negotiations with officials of the Agency to undertake a “project” within the meaning of the Act (the “Project”), consisting of certain site improvements, the construction, furnishing and equipping of an approximately 500,000 square foot industrial, manufacturing and distribution facility, the acquisition and/or leasing and installation of machinery, equipment, furniture, fixtures and other tangible personal property for use at such facility and a separate small parking lot, all to be located on approximately 12.6 acres, located on land constituting part of Lot 1 in Block 2543 and part of Lot 62 in Block 2260, parcels being located between East 132nd Street and the Harlem River, and between Willis Avenue Bridge to the west and the Robert F. Kennedy bridge to the east (collectively, the “Facility”), which Facility will be used by the Company in connection with its food manufacturing and distribution business; and

WHEREAS, in connection with the Project, the Agency will expend approximately \$9,500,000 of its own funds to pay a portion of the costs of certain site preparation and improvements (the “Site Improvements”) to be undertaken at the Facility and to purchase, acquire or contract to purchase delivery trucks, equipment or other assets (the “Acquired Personalty”) and lease such Acquired Personalty to the Company; and

WHEREAS, the People of the State of New York acting by and through the New York State Department of Transportation (the “Owner”) is the owner of the premises known as the Harlem River Yards, in Bronx, New York; and

WHEREAS, the Owner, as landlord, and Harlem River Yard Ventures, Inc. (“HRY”), entered into a ground lease for the development and operation of a portion of such premises; and

WHEREAS, to facilitate the Project, the Company will provide for (i) the leasing of the Facility by HRY or an affiliate thereof (an “HRY Entity”) to the Agency (the “HRY Overlease”), (ii) the subleasing of the Facility by the Agency to an HRY Entity (the “HRY Lease”); (iii) the subsequent subleasing of the Facility by an HRY Entity to the Company or a special purpose entity wholly owned by Fresh Direct LLC and formed solely for the Project or a related real estate holding company or companies on behalf of the Company (collectively, a “Company Entity”) pursuant to a lease agreement (the “Prime Lease”); (iv) the subsequent subleasing of the Facility by a Company Entity to the Agency pursuant to a company lease agreement (the “Company Lease”); (v) the subsequent subleasing of the Facility by the Agency to a Company Entity pursuant to a lease agreement (the “Project Lease”); (vi) the purchase, acquisition or lease of the Acquired Personalty by the Agency (collectively, the “Personalty Agreement”),

and (vii) the leasing or subleasing of such Acquired Personalty to a Company Entity (the "Personalty Lease"); and

WHEREAS, on February 14, 2012, the Agency adopted a resolution approving the taking of preliminary action with respect to providing financial assistance in the form of a straight-lease transaction; and

WHEREAS, in order to finance a portion of the costs of the Project, JPMorgan Chase Bank, N.A. (such financial institution, or any other financial institution as may be approved by a certificate of determination of an Agency officer, the "Lender") has agreed to enter into a loan arrangement with a Company Entity pursuant to which the Agency, as mortgagor, and a Company Entity, as debtor, will grant a mortgage on the Facility to the Lender (the "Mortgage"); and

WHEREAS, for purposes of refinancing from time to time the indebtedness secured by the Mortgage (the "Original Mortgage Indebtedness") (whether such refinancing is in an amount equal to or greater than the outstanding principal balance of the Original Mortgage Indebtedness), the Company Entity may from time to time desire to enter into new mortgage arrangements, including but not limited to consolidation with mortgages granted subsequent to the Mortgage; and therefore the Company Entity may request the Agency to enter into the mortgage instruments required for such new mortgage arrangements ("Refinancing Mortgages"); and

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, HEREBY RESOLVES AS FOLLOWS:

Section 1. To accomplish the purposes of the Act and to provide financial assistance to the Company (or a Company Entity of behalf of the Company) for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution and the Agency Documents hereinafter authorized.

Section 2. The execution and delivery of the HRY Overlease, the HRY Lease, the Company Lease, the Project Lease, the Personalty Agreement and the Personalty Lease from the Agency to a Company Entity, a Sales Tax Letter from the Agency to the Company, the Mortgage and the Refinancing Mortgages (each document referenced in this Section 2 being, collectively, the "Agency Documents"), each being substantively the same as approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel and Vice President for Legal Affairs of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 3. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 4. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Agency officer.

Section 5. The Company agrees to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the terms and conditions of Section 875(1) and (3) of the General Municipal Law, attached hereto as Exhibit A, as such provisions may be amended from time to time.

Section 6. This Resolution shall take effect immediately.

ADOPTED: July 23, 2013

EXHIBIT A

SPECIAL PROVISIONS RELATING TO STATE SALES TAX SAVINGS General Municipal Law, Section 875(1) and (3)

“Section 875. Special provisions applicable to State sales and compensating use taxes and certain types of facilities.

1. For purposes of this Section: “State sales and use taxes” means sales and compensating use taxes and fees imposed by Article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a City by Section eleven hundred seven or eleven hundred eight of such Article twenty-eight. “IDA” means an industrial development agency established by this Article or an industrial development authority created by the public authorities law. “Commissioner” means the Commissioner of taxation and finance. . .

3. (A) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy State sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such State sales and use exemptions benefits.

(B) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity State sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person’s agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such State sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the Commissioner to assess and determine State sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

(C) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of State sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. An IDA shall join the Commissioner as a party in any action or proceeding that the IDA commences to recover, recapture, obtain, or otherwise seek the return of, State sales and use tax exemption benefits from an agent, project operator or other person or entity.

(D) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (A) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales and use exemptions benefits described in paragraph (B) of this subdivision, together with such other information as the Commissioner and the Commissioner of economic development may require. The report required by this subdivision shall be filed with the Commissioner, the Director of the division of the budget, the Commissioner of economic development, the State Comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the Annual

financial statement required by paragraph (B) of subdivision one of Section eight hundred fifty-nine of this Title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (B) of subdivision one of Section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (B) of subdivision one of such section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (E) of subdivision one of such Section eight hundred fifty-nine.

(E) This subdivision shall apply to any amounts of State sales and use tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State sales and use taxes and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.”