

**LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION**

**EXPIRATION DATE: December 1, 2016**

**ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS  
AND FACILITY PERSONALTY:**

2 ST. ANN'S AVENUE, IN BRONX, NEW YORK,  
CONSTITUTING PART OF LOT 1 IN BLOCK 2543  
AND PART OF LOT 62 IN BLOCK 2260

December 19, 2013

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
(2013 Fresh Direct, LLC/Fresh Property Bronx, LLC Project)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on July 23, 2013, and a certain Agency Lease Agreement, dated as of December 1, 2013 (the "Lease Agreement"), between the Agency and Fresh Property Bronx, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), the Agency has authorized each of the Company and the Sublessee (as defined below) to act as its agent for the acquisition, construction, renovation and equipping a commercial facility (the "Facility"), consisting of the construction, furnishing and equipping of an approximately 500,000 square foot industrial, manufacturing and distribution facility, including without limitation the acquisition and/or leasing and installation of Acquired Assets and Facility Personalty, including machinery, equipment, furniture, fixtures and other tangible personal property for use at such Facility by the Company and the Sublessee in connection with their food manufacturing and distribution business.

3. In connection with such resolution, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein and herein granted, the Agency authorizes each of the Company and the Sublessee to act as its agent in connection with the construction, renovation and equipping of the Project and authorizes each of the Company and the Sublessee to use this Letter of Authorization for Sales Tax Exemption as its agent only for purpose of (a) purchasing or leasing materials, equipment, machinery, goods and supplies and (b) purchasing certain services, solely in connection with the Project, and subject to the scope and limitations described in Annex A attached hereto.

4. If upon the Company's or the Sublessee's request, the Agency appoints a contractor, subcontractor or other party to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax

Exemption (each party so appointed, hereinafter an "Agent"), this Sales Tax Letter must be attached to the Sales Tax Agent Authorization Letter provided to such Agent.

5. Each of the Company and the Sublessee 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 Annex B, as such provisions may be amended from time to time.

6. **VENDORS MUST IDENTIFY THE PROJECT ON EACH BILL AND INVOICE FOR PURCHASES AND LEASES OF ELIGIBLE ITEMS OR SERVICES AND INDICATE ON THE BILL OR INVOICE THAT SUCH ITEMS OR SERVICES WERE PURCHASED BY THE COMPANY OR THE AGENT AS AGENT FOR THE AGENCY.** Accordingly as agent for the Agency, the Company and each Agent agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company or by an Agent, as agent for the Agency for the construction, renovation and equipping of the Project, shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Fresh Property Bronx, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project consisting of the construction, renovation and equipping of a commercial facility (the "Facility"), consisting of the construction, furnishing and equipping of an approximately 500,000 square foot industrial, manufacturing and distribution facility, including without limitation the acquisition and/or leasing and installation of Acquired Assets and Facility Personalty, including machinery, equipment, furniture, fixtures and other tangible personal property for use at such Facility by the Company and the Sublessee in connection with their food manufacturing and distribution business (the "Project"). The [purchase, lease, rental, use] of the [materials, machinery, equipment, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [*insert name and address of vendor* (the "Vendor")] shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The [Company or Agent] has provided the Vendor with a copy of, in the case of the Company, the Letter of Authorization for Sales Tax Exemption, an in the case of any other Agent, the Sales Tax Agent Authorization Letter, together with a copy of the Letter of Authorization for Sales Tax Exemption to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

7. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company, the Sublessee or any Agent as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company, the Sublessee or any Agent, shall be the sole party liable thereunder.

8. By execution of this Letter of Authorization for Sales Tax Exemption, the Company and the Sublessee agree to accept the terms hereof and represent and warrant to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company, the Sublessee or by any Agent is strictly for the purposes above stated.

9. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 3.3 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the “Termination Date”), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency relationship appointed between the Agency and the Company, the Sublessee and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) and each Sales Tax Agent Authorization Letter to the Agency for cancellation.

10. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the Expiration Date of this Letter of Authorization for Sales Tax Exemption, the Company and the Sublessee shall surrender, and cause each Agent to surrender, this letter to the Agency for renewal. The Company, the Sublessee and any Agent may continue to use a facsimile copy of this Letter of Authorization for Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency shall provide such annual renewal of the letter to the Company and the Sublessee if and to the extent required under the Lease Agreement.

The signature of a representative of the Company and the Sublessee where indicated below will indicate that the Company and the Sublessee has accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

Name: Jeffrey T. Lee

Title: Executive Director

ACCEPTED AND AGREED TO BY:

**FRESH PROPERTY BRONX, LLC**

By: \_\_\_\_\_

Name: Jason Ackerman

Title: Chief Executive Officer

**FRESH DIRECT, LLC**

By: \_\_\_\_\_

Name: Jason Ackerman

Title: Chief Executive Officer

**U.T.F. TRUCKING, INC.**

By: \_\_\_\_\_

Name: Jason Ackerman

Title: Chief Executive Officer

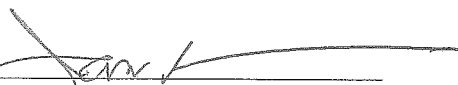
The signature of a representative of the Company and the Sublessee where indicated below will indicate that the Company and the Sublessee has accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

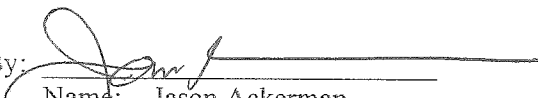
By: \_\_\_\_\_  
Name: Jeffrey T. Lee  
Title: Executive Director

ACCEPTED AND AGREED TO BY:


**FRESH PROPERTY BRONX, LLC**

By:  \_\_\_\_\_  
Name: Jason Ackerman  
Title: Chief Executive Officer

**FRESH DIRECT, LLC**

By:  \_\_\_\_\_  
Name: Jason Ackerman  
Title: Chief Executive Officer

**U.T.F. TRUCKING, INC.**

By:  \_\_\_\_\_  
Name: Jason Ackerman  
Title: Chief Executive Officer

ANNEX A  
TO  
LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

The Lessee and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

- (i) purchases of materials, goods, machinery, equipment and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, including the following items:
  - a. [List the personal property]
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods, machinery, equipment and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed);
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty; and
- (vi) Notwithstanding the foregoing, purchases or leases of the following items and the services described below are **NOT ELIGIBLE** for a sales and use tax exemption using this Sales Tax Letter:
  - a. vehicles of any sort, watercraft and rolling stock;
  - b. fine art, plants (whether potted or landscaped), artwork and other similar decorative items;
  - c. ordinary office supplies such as pencils, paper clips and paper;
  - d. any cost of utilities, cleaning service or supplies or other ordinary operating cost;
  - e. any materials or substances that are consumed in the operation of machinery;
  - f. equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
  - g. maintenance of the type as shall constitute janitorial services.

ANNEX B  
TO  
LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

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.”