

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

EXPIRATION DATE: May 1, 2015

ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS  
AND FACILITY PERSONALTY:  
400 Walnut Avenue, Bronx, New York 10454

May 22, 2013

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
2013 Fairway Bakery LLC

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 January 8, 2013, and a certain Agency Lease Agreement, dated as of May 1, 2013 (the "Lease Agreement"), between the Agency and Fairway Bakery LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), the Agency has authorized the Company to act as its agent in connection with the renovation, equipping and/or furnishing of an approximately 237,000 square foot industrial facility on an approximately 469,000 parcel of land located at 400 Walnut Avenue, in Bronx, New York (the "Facility") to be used by the Company as a centralized production facility (including bakery, produce processing and prepared foods facilities and a warehouse, distribution and central headquarters facility in support of the Company's retail markets (together with the Facility, the "Project").

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 the Company to act as its agent in connection with the acquisition, construction, renovation and equipping of the Project and authorizes the Company 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. Subject to the provisions of this letter, this agency appointment includes the power of the Company to delegate from time to time such agency appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Company chooses provided that any such delegation is limited to the acquisition, construction, renovation and equipping of the Project and any such activities are effected in compliance with the Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

4. If the Company, or an Agent appointed directly or indirectly by the Company, intends to appoint an Agent 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, the Company shall, and shall require and cause each such Agent, to comply with the required procedures set forth on Annex B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60"), a form of which is attached as Addendum A to Annex B.

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 Annex C, as such provisions may be amended from time to time.

6. As agent for the Agency, the Company 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 acquisition, 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 Fairway Bakery 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 of the Agency for the Agent consisting of the renovation, equipping and/or furnishing of an approximately 237,000 square foot industrial facility on an approximately 469,000 parcel of land located at 400 Walnut Avenue, in Bronx, New York (the "Facility") to be used by the Agent as a centralized production facility (including bakery, produce processing and prepared foods facilities and a warehouse, distribution and central headquarters facility in support of the Agency's retail markets (together with the Facility, 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 an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" 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, the completed Form ST-60 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 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 or, as applicable, any Agent, shall be the sole party liable thereunder.

8. By execution by the Company of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company 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 appointed by the Agency of the Company 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) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Annex B and in the Agency Agreement referred to therein.

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 shall surrender, and cause each Agent to surrender, this letter to the Agency for renewal. The Company 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 if and to the extent required under the Lease Agreement.

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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

ACCEPTED AND AGREED TO BY:

**FAIRWAY BAKERY LLC**

By: \_\_\_\_\_  
Name:  
Title:

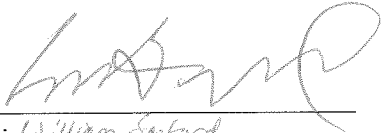
The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

ACCEPTED AND AGREED TO BY:

**FAIRWAY BAKERY LLC**

By:   
Name: *William Sanford*  
Title: *President*

## Annex A

The Company 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) **Capital Improvements.** With respect to capital improvements to the Facility Realty (as defined in the Lease Agreement):

(a) purchases of materials, goods, machinery, equipment and supplies that are incorporated into and made an integral component part of the Facility Realty;

(b) 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); and

(c) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

(ii) **Personal Property.**<sup>1</sup>

*[List the Personal Property]*

*[If including personal property, state the following: Purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property must have a useful life of one year or more, may include mainframe computers (and peripherals), personal computers, telecommunications equipment, business machines and software, but shall exclude vehicles of any sort (including watercraft and rolling stock), fine art, plants (whether potted or landscaped), objects d'art and other similar decorative items, ordinary office supplies such as pencils, paper clips and paper, and any cost of utilities, cleaning service or supplies or other costs of operation].*

(iii) **Services.** With respect to the eligible items identified in (i)(a) 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, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (but excluding materials or substances that are consumed in the operation of machinery and equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

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<sup>1</sup> Either insert "None" or list equipment.

## Annex B

### Form ST-60--Required Procedures

**Introduction.** Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

**Required Procedures.** In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, must enter into an Agency Agreement with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

- "a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and *[identify Company or Company Agent]* \_\_\_\_\_ dated \_\_\_\_\_, 2013 (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A *[attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company]*.
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.
- c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company and is attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Annex B).
- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.
- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales

Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.

- f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:
- (i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;
  - (ii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
    - (i) has been convicted of a felony in the past ten (10) years;
    - (ii) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
    - (iii) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

"Control" or "Controls" shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities,



(y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

“Entity” shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean an individual or any Entity.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent’s Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company’s status as agent of the Agency shall result in the immediate termination of the Agent’s status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement.”
- k) The Agent covenants and 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 A [incorporating Annex C to the Sales Tax Letter in its entirety], as such provisions may be amended from time to time.”

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Company must submit to the Agency a Form ST-60 completed with the information required in each of the shaded areas shown on the example form attached hereto as Addendum A.

The Agency requires the Company to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing [www.tax.state.ny.us/pdf/2002/fillin/st/st60\\_702\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_fill_in.pdf) into the address bar of your internet browser and saving the “fill-in” PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency.

Upon completion of the form by the Agent, the Company must submit the form to the Agency by emailing it to [Compliance@nycedc.com](mailto:Compliance@nycedc.com).

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.

## Annex C

### 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.”

**Addendum A**

FORM ST-60