

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE: December 1, 2018**

**ELIGIBLE LOCATION:  
2 ST. ANN'S AVENUE, IN BRONX, NEW YORK,  
CONSTITUTING PART OF LOT I IN BLOCK 2543  
AND PART OF LOT 62 IN BLOCK 2260**

April 15, 2015

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:

a. Pursuant to the Letter of Authorization of Sales Tax Exemption attached here to as Exhibit A (the "Sales Tax Letter"), issued pursuant to 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 "Lessee"), the Agency has authorized the Lessee to act as its agent for the in connection with the Project described therein.

b. Upon the Lessee's request, the Agency has appointed The Railroad Associates Corporation (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Sales Tax Letter, which is deemed incorporated herein by reference.

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 Lessee). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter and the Sales Tax Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Project and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

d. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

e. The Agent agrees to comply with the terms and conditions of the Sales Tax Letter, including but not limited to Section 875(1) and (3) of the General Municipal Law, attached to this letter as **Exhibit B**, as such provisions may be amended from time to time. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Lessee to provide services in connection with the Project, (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 shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

f. In order to assist the Lessee 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 semi-annually with the Lessee (no later than January 15<sup>th</sup> and July 15<sup>th</sup> of 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 six-month period (ending on June 30<sup>th</sup> or December 31<sup>st</sup>, as applicable) in connection with the Project and the Facility by completing and submitting to the Lessee the **Sales Tax Registry** attached hereto as **Exhibit C**. 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 Lessee or the Agency its copy of the Sales Tax Agent Authorization Letter and the Sales Tax Letter.

g. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter and the Sales Tax Letter, it shall pay any and all applicable New York State sales and use taxes and any interest and penalties. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

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:

1. 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;
2. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
3. has been convicted of a felony in the past ten (10) years;
4. 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
5. 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 a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

“City” shall mean The City of New York.

“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. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter and the Sales Tax Letter by the Agent is strictly for the purposes stated herein and in the Sales Tax Letter.

j. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the “Termination Date”) that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Sales Tax Letter. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate,

and the Agent shall surrender this Sales Tax Agent Authorization Letter to the Agency for cancellation.

k. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the Expiration Date of this Sales Tax Agent Authorization Letter the Agent shall surrender this letter to the Agency for renewal or cancellation. The Agent may continue to use a facsimile copy of this Sales Tax Agent Authorization Letter until its Expiration Date, unless the Termination Date has occurred. Within ten (10) days of receipt of this Sales Tax Agent Authorization Letter, the Agency shall provide such annual renewal of the letter to the Agent if and to the extent it is required to renew the Sales Tax Letter under the Lease Agreement.

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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

Name: Jeffrey Lee  
Title: Executive Director

ACCEPTED AND AGREED TO BY:

**THE RAILROAD ASSOCIATES CORPORATION**

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

Name:  
Title: