
City of Syracuse
Industrial Development Agency
333 West Washington Street, Suite 130
Syracuse, New York 13202
Tel (315) 473-3275 Fax (315) 435-3669

April 23, 2014

Butternut St. LLC
3721 New Court Avenue
Syracuse, New York 13206
Attn: Mr. Giovanni LaFace

Re: City of Syracuse Industrial Development Agency
Butternut Commons Project - Butternut St. LLC
Sales Tax Appointment Letter - Extension to September 30, 2015

Dear Mr. LaFace:

Pursuant to a resolution duly adopted on April 25, 2013, the City of Syracuse Industrial Development Agency (the "**Agency**") appointed Butternut St. LLC (the "**Company**") the true and lawful agent of the Agency to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400 Butternut St., 410 Butternut St. and 811 N. McBride St.¹) in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, commercial, approximately 24 apartments and approximately 4 rental townhouses and related parking, all located on the Land (collectively, the "**Facilities**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facilities, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the

¹ These parcels were formally known as 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.)

Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

On December 11, 2013, the Agency issued its first Sales Tax Appointment Letter (the "*First STAL*"), appointing the Company its agent for the purposes set forth therein. The First STAL expired by its terms on March 31, 2014. On or about March 24, 2014, the Company requested, and on April 23, 2014 the Agency approved, the retroactive extension of the First STAL in order to permit additional time to fully complete the Project Facility.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement and equipping of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved by the Agency **shall not exceed \$512,000.00**.

This agency appointment includes the authority of the Company to appoint a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "*Additional Agents*") provided the Company complies with the requirements and conditions set forth in the Agency Agreement dated as of April 23, 2014 by and between the Company and the Agency. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent.

The Company agrees, whenever requested by the Agency, to provide, or cause its agents to provide, and certify, or cause to be certified, such information regarding job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees, that pursuant to Section 875(3) of the Act, the Agency shall recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "*Recapture Amount*") consisting of (1) (a) that portion of the State

Sales and Use Tax exemption to which the Company was not entitled, which is in excess of the amount of the State Sales and Use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State Sales and Use Tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as provided in the Agency Documents; (2) together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. The failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance (the "**Commissioner**") to collect the State Sales and Use Taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

In exercising this agency appointment, the Company, its agents, subagents, contractors and subcontractors should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you or your contractor should present to the supplier or other vendor of materials for the Project Facility, a completed "Contractor Exempt Purchase Certificate" (Form ST-120.1), checking box "(a)". You should give the supplier or vendor a copy of this letter to show that you (or the contractor) are acting as agent for the Agency in making the purchase. A copy of this letter retained by any vendor or seller may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York Tax Law §1132(1)(ii), thereby relieving such vendor or seller from the obligation to collect sales and use tax with respect to the construction and installation and equipping of the **Project Facility**.

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form St-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent.

The agency created by this letter is limited to the Project Facility, and will expire on the earlier of **September 30, 2015** or termination of the Agency Lease. You may apply to extend this agency authority by showing good cause.

This letter is provided for the sole purpose of securing exemption from New York State Sales and Use Taxes **for this project only**. No other principal/agent relationship is intended or may be implied or inferred by this letter.

Butternut St. LLC
April 23, 2014
Page 4

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 (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By:



William M Ryan, Chairman