

## AGENT AGREEMENT

THIS AGREEMENT, made as of the 1<sup>st</sup> day of March, 2016, by and between the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "Agency") and **NEPPERHAN FARMS LLC**, a New York limited liability company having offices at 1233 Nepperhan Avenue, Yonkers, New York 10703 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with respect to a certain project (the "Project") consisting of the acquisition and installation of certain machinery, equipment and other items of tangible personal property (the "Equipment") in furtherance of the internal renovation by the Company of the existing approximately 14,000 square-foot building with loading dock known as 1217 Nepperhan Avenue, Yonkers, New York, and shown on the tax maps of the City of Yonkers, New York, as 3.-3395-42.60 for use as a retail supermarket (the "Facility"); and

WHEREAS, by resolution adopted on February 24, 2016 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agreement. The Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors, and to such other parties as the Company chooses, including but not limited to the individuals and entities described on **Schedule A** attached to the "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment", which "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" is attached hereto in form as **Exhibit A**. The Company shall evidence the delegation of its agency to any agents, subagents, contractors, and subcontractors, by completing and filing with NYS IDA Unit – with respect to such agents, subagents, contractors and subcontractors – a completed and signed NYS Form ST-60, "IDA Appointment of Project Operator or Agent", a copy of which is attached hereto as **Exhibit B**, and shall simultaneously mail a copy of the same to the Agency. The Company shall have the right to amend **Schedule A** attached to the "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" from time to time, and the Company shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct, install and equip the Facility in accordance with the plans and specifications presented to the Agency.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on **December 31, 2016**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter.

The Agency has authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agreement. The Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors, and to such other parties as the Company chooses, including but not limited to the individuals and entities described on Schedule A attached to the "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment", which "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" is attached hereto as Exhibit A. The Company shall evidence the delegation of its agency to any agents, subagents, contractors, and subcontractors, by completing and filing with NYS IDA Unit – with respect to such agents, subagents, contractors and subcontractors – a completed and signed NYS Form ST-60, "IDA Appointment of Project Operator or Agent", and the Company shall simultaneously mail a copy of the same to the Agency. The Company shall have the right to amend Schedule A attached to the "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" from time to time, and the Company shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency.

All contracts entered into by the Company and its agents, subagents, contractors, and subcontractors acting as agent for the Agency shall include the following language:

"This contract is being entered into by Nepperhan Farms LLC [or \_\_\_\_\_ (Subagent)] (the "Agent"), as agent for and on behalf of the City of Yonkers Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 1217 Nepperhan Avenue, Yonkers, New York (the "Premises"). The labor, machinery, equipment and building materials to be incorporated and installed in and at the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions of the attached sales tax exemption procedures cover letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of that certain Agent Agreement, dated March 1, 2016, by and between the Agency and Nepperhan Farms LLC (the "Agent Agreement"). This contract is non-recourse

to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:

(a) The Company is a New York limited liability company duly organized and authorized to do business in the State of New York, has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company),

representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the City of Yonkers, New York, except for temporary periods during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the Company covenants and agrees that, if it receives New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") from the Agency, and it is determined that: (i) the Company is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Company will (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine New York State and local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.

(h) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in amount up to \$1,900,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$168,625.00.

(i) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60), in the form attached hereto as Exhibit A, for each agent, subagent, contractor, subcontractor, if any, contractors or subcontractors of such agents and subagents, if any, and to such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said NYS Form ST-60 to the State Department of Taxation and Finance within thirty (30) days of appointment.

(j) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340), in the form attached hereto as Exhibit C, regarding the value of sales and use tax exemptions the Company, its agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company with respect to the Project in

accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15<sup>th</sup> of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(k) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using NYS Form ST-123, "IDA Agent or Project Operator Exempt Purchase Certificate", a copy of which is attached hereto as **Exhibit D**, and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123, "IDA Agent or Project Operator Exempt Purchase Certificate". The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency.

(l) The Project will include facilities or property that are primarily used in making retail sales, as defined within Section 862(2) of the Act, to customers who personally visit the Facility. Notwithstanding the foregoing, and based upon the Application and supporting materials prepared and presented by the Company to the Agency, the predominant purpose of the Project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the City of Yonkers, New York, within which the proposed Project would be located (along with surrounding areas) because of a lack of reasonably accessible retail trade facilities offering such goods or services.

For purposes of indicating who is making purchases pursuant to the Agent Agreement, the Company acknowledges and agrees that the bill of invoice should state:

"I, the \_\_\_\_\_ of Nepperhan Farms LLC [\_\_\_\_\_] (subagent)], certify that Nepperhan Farms LLC [or \_\_\_\_\_ (subagent)] is the duly appointed agent of the City of Yonkers Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following City of Yonkers Industrial Development Agency project and that such purchases qualify as exempt from sales and use taxes under my agent agreement with the City of Yonkers Industrial Development Agency."

The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice:

Name of the Project:	Nepperhan Farms LLC Project
Street Address of Project Site:	1217 Nepperhan Avenue, Yonkers, NY
IDA OSC Project Number:	5507 16 05 A

(l) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), 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.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation, or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, rehabilitating, constructing, renovation, equipping, owning and leasing of the Equipment or the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well. Such insurance shall have a commercially reasonable deductible.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$10,000,000 per

accident or occurrence on account of personal injury, including death resulting therefrom, and \$10,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law. Such liability limits may be satisfied by any combination of primary and excess liability policies. Such primary general liability insurance may have a \$500,000 self-insured retention and such excess liability policy may have a commercially reasonable deductible. Such liability insurance requirements may be satisfied by blanket policies in the aggregate amount of not less than \$10,000,000.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4 hereof shall name the Agency as an additional insured, as its interest may appear. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with commercially reasonable deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency, except in the event of non-payment, in which at least ten (10) days prior written notice of the cancellation shall be delivered to the Company and the Agency. All insurance requirements in Section 4 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 4 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

(b) All such policies of insurance, or a certificate or certificates of insurance that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

6. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: City of Yonkers Industrial Development Agency  
470 Nepperhan Avenue, Suite 200  
Yonkers, New York 10701  
Attention: Kenneth Jenkins, President

With a Copy To: Gregory Young, Esq.  
566 Westchester Avenue  
Rye Brook, New York 10573

With Copy To: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attention: Shawn M. Griffin, Esq.

To the Company: Nepperhan Farms LLC  
1233 Nepperhan Avenue  
Yonkers, New York 10703  
Attn: Mike Hassen

With Copy To: Coran Ober P.C.  
25-02 Francis Lewis Boulevard  
Flushing, New York 11358  
Attn: Simeon Soterakis, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

8. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

9. The Company agrees not to take title to any real property as agent for the Agency. Upon completion of the acquisition and installation of the Equipment, the Agency shall transfer title to the Equipment to the Company by a bill of sale (the "Bill of Sale") in the form attached hereto as Exhibit E.

10. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (i) legal services in connection with the Project, including but not limited to those provided by the Agency's general and transaction counsel, and (ii) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within



ten (10) business days of receipt of the Agency's invoices therefore. The Company is entitled to receive a written estimate of fees and costs of the Agency's general and transaction counsel.

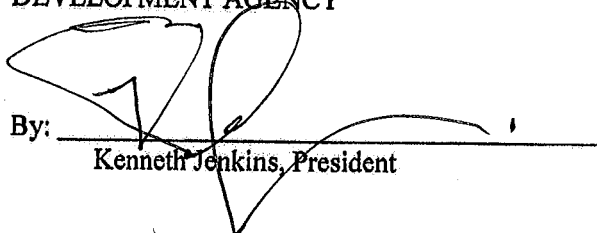
The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

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[Signature Page to Agent Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Kenneth Jenkins, President

NEPPERHAN FARMS LLC

By:   
Name:  
Title:

**EXHIBIT A**

**[AGENCY LETTERHEAD]**



**STAPLE TO ALL PROJECT INVOICES**

\* \* \* \* \*

**NOTICE OF SALES TAX EXEMPTION, AGENT RELATIONSHIP LETTER  
AND  
VENDOR INVOICE AMENDMENT**

March 1, 2016

Nepperhan Farms LLC  
1233 Nepperhan Avenue  
Yonkers, New York 10703

Re: City of Yonkers Industrial Development Agency ("Agency")  
Nepperhan Farms LLC ("Company")  
IDA OSC Project Number: 5507 16 05 A

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on February 24, 2016, the Agency appointed the Company its true and lawful agent to undertake a certain project (the "Project"), consisting of the acquisition and installation of certain machinery, equipment and other items of tangible personal property (the "Equipment") in furtherance of the internal renovation by the Company of the existing approximately 14,000 square-foot building with loading dock known as 1217 Nepperhan Avenue, Yonkers, New York, and shown on the tax maps of the City of Yonkers as 3.-3395-42.60 for use as a retail supermarket (the Facility").

This letter and accompanying Form ST 123 should be attached to all invoices, contracts, bills of lading or other operative document for materials or services. The agent appointment includes, and this letter and accompanying Form ST 123 evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion 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 construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction 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 the Facility, including all repairs and replacements of such property.

This "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" and the NYS Form ST-123, "IDA Agent or Project Operator Exempt Purchase Certificate" (attached in form to the Agent Agreement, dated as of March 1, 2016, by and between the Agency and the Company (the "Agent Agreement")) should be attached to all invoices, contracts, bills of lading or other operative document for materials or services. The agent appointment includes, and this "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" and accompanying NYS Form ST-123, "IDA Agent or Project Operator Exempt Purchase Certificate" evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion 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 construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction 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 the Facility, including all repairs and replacements of such property.

Additionally, the agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto. The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company hereby agrees to complete NYS Form ST-60, "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

**In exercising the agency appointment, the Company, its agents, subagents, contractors and subcontractors should give the supplier or vendor from whom it is making purchases/rentals a copy of this "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" 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 IDA OSC Code Project Code "**5507 16 05 A**" 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, the Company, the Company's agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents should

present to the supplier or other vendor of materials for the Facility a completed NYS Form ST-123, "IDA Agent or Project Operator Exempt Purchase Certificate" (attached in form to the Agent Agreement). You should give the supplier or vendor a copy of this "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" to show that the Company, the Company's agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents are acting as agent for the Agency in making the purchase. A copy of this "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" and the NYS Form ST-123 (attached hereto in form) 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(c)(1), 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 Facility.

The agency created by this "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" is limited to the Facility, and will expire on **December 31, 2016**. You may apply to extend this agency authority by showing good cause; provided, however, the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property. You may apply to the Agency to extend this agency authority by showing good cause.

This "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" is provided for the sole purpose of securing exemption from local and 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 "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment".

With respect to registered vehicles acquired by the Company in name of the Agency, the Agency shall transfer title to such vehicles immediately back to the Company, or as soon thereafter as reasonable practicable; and any personal property acquired by the Company in the name of the Agency shall be located in the City of Yonkers, New York, except for temporary periods during ordinary use.

Except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), 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 receipt of this "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment", the vendor hereby acknowledges the limitations on liability described herein and agrees that the invoice, contract, bill of lading or other operative document is modified to include the following by attachment of this "Notice of Sales Tax Exemption, Agent Relationship and Vendor Invoice Amendment" to said instrument:

"This contract is being entered into by Nepperhan Farms LLC [or, \_\_\_\_\_ (subagent)] (the "Agent"), as agent for and on behalf of the City of Yonkers Industrial Development Agency (the "Agency"), in connection with a project, undertaken by Nepperhan Farms LLC, as agent of the

Agency, consisting in part of the acquisition and installation of certain, machinery, equipment and building materials, all for incorporation and installation in certain premises located at 1217 Nepperhan Avenue, Yonkers, New York (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from New York State and local sales and use if the acquisition thereof is effected in accordance with the terms and conditions set forth in that certain Agent Agreement, dated as of March 1, 2016, by and between Nepperhan Farms LLC and the Agency (the "Agent Agreement"); and the Agent hereby represents that this contract is in compliance with the terms of Agent Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

[The balance of this page intentionally left blank]

**[SIGNATURE PAGE TO NOTICE OF SALES TAX EXEMPTION, AGENT  
RELATIONSHIP AND VENDOR INVOICE AMENDMENT]**

Very truly yours,

CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY

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

Kenneth Jenkins  
President

Date: March 1, 2016

SCHEDULE A

**LIST OF APPOINTED AGENTS<sup>1</sup>**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
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11. \_\_\_\_\_
12. \_\_\_\_\_
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_

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<sup>1</sup> FOR EACH AGENT OR SUBAGENT APPOINTED TO MAKE TAX-EXEMPT PURCHASES IN CONNECTION WITH THE PROJECT ON BEHALF OF THE COMPANY, THE COMPANY MUST COMPLETE AND FILE WITH NYS DEPARTMENT OF TAXATION AND FINANCE – WITHIN THIRTY (30) DAYS OF APPOINTMENT – A NYS FORM ST-60. A COPY OF SUCH COMPLETED NYS FORM ST-60 SHALL BE MAILED SIMULTANEOUSLY TO THE AGENCY.



**EXHIBIT B**

**FORM OF NYS FORM ST-60 TO BE COMPLETED  
BY NEPPERHAN FARMS LLC  
AND FILED WITH NYS TAX DEPARTMENT IDA UNIT  
FOR EACH APPOINTED SUBAGENT**

**[Attached Next Page]**

**IDA Appointment of Project Operator or Agent  
For Sales Tax Purposes****ST-60**

(4/13)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA City of Yonkers Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998) 5507 16 05A	
Street address 470 Nepperhan Avenue, Suite 200		Telephone number (914) 509-8651	
City Yonkers		State NY	ZIP code 10701
Name of IDA project operator or agent	Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street address	Telephone number ( )	Primary operator or agent? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
City	State	ZIP code	
Name of project Nepperhan Farms LLC Project		Purpose of project (see instructions) Other: Retail Supermarket	
Street address of project site 1217 Nepperhan Avenue			
City Yonkers		State NY	ZIP code 10703
Description of goods and services intended to be exempted from New York State and local sales and use taxes Goods and services used in furtherance of the internal renovation of the existing approximately 14,000 square foot building with loading dock for use as a retail supermarket			

Date project operator or agent appointed (mm/dd/yy)	Date project operator or agent status ends (mm/dd/yy) 12/31/16	Mark an X in the box if this is an extension to an original project: <input checked="" type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax:		Estimated value of New York State and local sales and use tax exemption provided:

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA

Kenneth Jenkins

Print title

President

Signature

Date

Telephone number

(914) 509-8651

**Instructions****Filing requirements**

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

**Purpose of project**

For Purpose of project, enter one of the following:

- |   |                   |
|---|-------------------|
| - Services  | - Construction    |
| - Agriculture, forestry, fishing                                  | - Wholesale trade |
| - Finance, insurance, real estate                                 | - Retail trade    |
| - Transportation, communication, electric, gas, sanitary services | - Manufacturing   |
|   | - Other (specify) |

**Mailing instructions**

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

**Need help?**

**Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)**  
(for information, forms, and publications)



**Sales Tax Information Center:** (518) 485-2889  
To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

**EXHIBIT C**

**FORM OF NYS FORM ST-340 TO BE COMPLETED  
BY NEPPERHAN FARMS LLC AND FILED WITH  
NYS TAX DEPARTMENT IDA UNIT  
BY LAST DAY OF FEBRUARY  
FOR PREVIOUS CALENDAR YEAR**

**[Attached Next Page]**

**Annual Report of Sales and Use Tax Exemptions  
Claimed by Agent/Project Operator of  
Industrial Development Agency/Authority (IDA)****ST-340**  
(3/11)IDA OSC PROJECT CODE:  
5507 16 05A

For Period Ending December 31, \_\_\_\_\_ (enter year)

**Project information**

Name of IDA agent/project operator <b>Nepperhan Farms LLC</b>	Federal employer identification number (FEIN) <b>47-5588670</b>	
Street address <b>1233 Nepperhan Avenue</b>	Telephone number ( <b>914</b> ) <b>476-9521</b>	
City <b>Yonkers</b>	State <b>NY</b>	ZIP code <b>10703</b>
Name of IDA agent/project operator's authorized representative, if any	Title	
Street address	Telephone number (       )	
City	State	ZIP code

Name of IDA <b>City of Yonkers Industrial Development Agency</b>		
Name of project <b>Nepperhan Farms LLC Project</b>		
Street address of project site <b>1217 Nepperhan Avenue</b>		
City <b>Yonkers</b>	State <b>NY</b>	ZIP code <b>10703</b>

1 Project purpose (mark an X in the appropriate box):

<input type="checkbox"/> Services	<input type="checkbox"/> Construction	<input type="checkbox"/> Agriculture, forestry, fishing
<input type="checkbox"/> Wholesale trade	<input checked="" type="checkbox"/> Retail trade (Supermarket)	<input type="checkbox"/> Finance, insurance or real estate
<input type="checkbox"/> Transportation, communication, electric, gas, or sanitary services		
<input type="checkbox"/> Manufacturing	<input type="checkbox"/> Other (specify) _____	

2 Date project began (mm/dd/yy): 03 / 01 / 16 - Date of IDA agent appointment3 Beginning date of construction or installation (mm/dd/yy; see instructions): \_\_\_\_ / \_\_\_\_ / \_\_\_\_; ☐ actual ☐ expected4 Completion date of construction phase of project (mm/dd/yy; see instructions): \_\_\_\_ / \_\_\_\_ / \_\_\_\_; ☐ actual ☐ expected5 Completion date of project (mm/dd/yy; see instructions): \_\_\_\_ / \_\_\_\_ / \_\_\_\_; ☐ actual ☐ expected

6 Duration of project (actual or expected; years/months): \_\_\_\_ / \_\_\_\_

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) ..... 7 \$

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer, employee, or authorized representative signing for the IDA agent/project operator	Title of person signing
Signature	Date

**Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.**Mail completed report to: **NYS Tax Department, IDA Unit, W A Harriman Campus, Albany NY 12227.**

## Instructions

## General information

## Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

## What must be reported?

The report must show the **total value of all state and local sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the **total combined** exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

## When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

## Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

## Name of IDA agent/project operator

Enter the name, address, federal employer identification number (FEIN), and telephone number of the IDA agent/project operator.

## Name of IDA agent/project operator's authorized representative

Enter the name, address, title (for example, attorney or accountant), and telephone number of the individual authorized by the IDA agent/project operator to submit this report.

## Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

## Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

## Line instructions

**Line 1 — Project purpose** — Mark an **X** in the box that identifies the purpose of the project. If you mark *Other*, please be specific in identifying its purpose.

**Line 2** — Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Line 3** — Enter the date you, or your general contractor or subcontractor, actually began, or expect to begin, construction or installation on the project. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected. If the project does not involve any construction, enter **Does not apply**.

**Line 4** — Enter the date the construction phase of the project was completed or is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

**Line 5** — Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

**Line 6** — Enter the total number of years and months from the project's inception to its completion or expected completion.

**Line 7** — Enter the total amount of New York State and local sales and use taxes exempted during the reporting period (if none, enter **0**) as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases on line 7.

## Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: **NYS Tax Department, IDA Unit, W A Harriman Campus, Albany NY 12227.**

## Need help?



**Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)**  
(for information, forms, and publications)



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To order forms and publications: (518) 457-5431



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(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

## Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

**EXHIBIT D-1**

**NYS FORM ST-123  
FOR USE BY  
NEPPERHAN FARMS LLC  
AS THE PURCHASER**

**[Attached Next Page]**



New York State Department of Taxation and Finance

New York State Sales and Use Tax

**IDA Agent or Project Operator****Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014****ST-123**

(2/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

Name of seller	Name of agent or project operator Nepperhan Farms LLC		
Street address	Street address 1233 Nepperhan Avenue		
City, town, or village	State	ZIP code	
Yonkers	NY	10703	
Agent or project operator sales tax ID number (see instructions)			

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA City of Yonkers Industrial Development Agency		
Name of project Nepperhan Farms LLC Project	IDA project number (use OSC number) 5507 16 05A	
Street address of project site 1217 Nepperhan Avenue		
City, town, or village Yonkers	State NY	ZIP code 10703
Enter the date that you were appointed agent or project operator (mm/dd/yy) ..... 03 / 01 / 16	Enter the date that agent or project operator status ends (mm/dd/yy) ..... 12 / 31 / 16	

**Exempt purchases**(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

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### Need help?



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- get information and manage your taxes online
- check for new online services and features



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**Text Telephone (TTY) Hotline**

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082



**EXHIBIT D-2**

**NYS FORM ST-123  
FOR USE BY  
SUBAGENTS OF NEPPERHAN FARMS LLC  
AS THE PURCHASER**

**[Attached Next Page]**

**IDA Agent or Project Operator  
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014**

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village      State      ZIP code	City, town, or village      State      ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA City of Yonkers Industrial Development Agency		
Name of project Nepperhan Farms LLC Project	IDA project number (use OSC number) 5507 16 05A	
Street address of project site 1217 Nepperhan Avenue		
City, town, or village Yonkers	State NY	ZIP code 10703
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	Enter the date that agent or project operator status ends (mm/dd/yy) ..... 12 / 31 / 16	

**Exempt purchases**(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082

**EXHIBIT E**

**FORM OF AGENCY BILL OF SALE  
TO  
NEPPERHAN FARMS LLC**

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 1070 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand PAID, and other good and valuable consideration received by the Grantor from **NEPPERHAN FARMS LLC**, a limited liability company of the State of New York with offices at 1233 Nepperhan Avenue, Yonkers, New York 10703 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor. The Grantor hereby sells, transfers and delivers unto the Grantee and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which were acquired by the Grantee as agent for the Grantor (collectively, the "Equipment"), which such Equipment is more particularly described in Exhibit B attached hereto and made a part hereof, pursuant to that certain Agent Agreement, dated as of March 1, 2016 (the "Agent Agreement"), by and between the Agency and the Company, whether now owned or hereafter acquired, which Equipment is located or intended to be located at 1217 Nepperhan Avenue, Yonkers, New York (the "Facility").

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OF DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

This Bill of Sale shall become effective as to each item of the Equipment as and when the same are delivered to the site of the Project (as defined in the Agent Agreement) or installed in the Project.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the authorized representative of the Agency described below on the date indicated beneath the signature of such authorized representative of the Agency and dated as of the 31<sup>st</sup> day of December, 2016.

CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Kenneth Jenkins  
President

## EXHIBIT A

### [Equipment]

All furniture, furnishings, machinery, equipment and other items of tangible and intangible personal property, including computer hardware and software to be installed at the Facility (as defined in the Agent Agreement, defined below) for use in the operation thereof; now or hereafter affixed to, located upon, appurtenant thereto or usable in connection with the present or future operation and occupancy of the Project together with any replacements therefore to the extent acquired in the name of the **City of Yonkers Industrial Development Agency** (the "Agency") by **Nepperhan Farms LLC** (the "Company"), pursuant to the Agency appointment described in the Agent Agreement, dated March 1, 2016, by and between the Agency and the Company, or to the extent the Company conveys title to the Agency.