

COPY

**SECOND AMENDMENT TO AGENT AND
FINANCIAL ASSISTANCE PROJECT AGREEMENT**

THIS SECOND AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, dated as of June 29, 2021, is by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **201 ELLICOTT COMMERCIAL, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 50 Fountain Plaza, Suite 500, Buffalo, New York 14202 ("Commercial LLC"), and **201 ELLICOTT, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 50 Fountain Plaza, Suite 500, Buffalo, New York 14202 ("Ellicott LLC" and together with the Commercial LLC, the "Company").

WITNESSETH:

WHEREAS, by Resolution dated August 28, 2019 (the "Resolution"), the Agency authorized Ellicott LLC, and any of its affiliates, subsidiaries, or entities formed or to be formed on its behalf, to undertake the Project (as defined within the Resolution) and act as the agent of the Agency for the purposes of acquiring, constructing and equipping the Facility (as defined within the Resolution), subject to Ellicott LLC entering into an agent agreement with the Agency; and

WHEREAS, the Resolution specifically authorized the Company, as agent of the Agency, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an estimated amount up to \$3,880,150.00, which may result in New York State and local sales and use tax exemption benefits not to exceed \$339,513.00 (the "Sales Tax Benefit Amount"); and

WHEREAS, the Agency and Ellicott LLC entered into that certain Agent and Financial Assistance Project Agreement, dated as of October 11, 2019 (the "Original Agent Agreement"), whereby the Agency authorized Ellicott LLC to act as its agent for the purposes of acquiring, constructing and/or equipping the Facility and specifically authorized Ellicott LLC to receive \$182,013.00 of sales and use tax exemption benefits (out of the original \$339,513.00 Sales Tax Benefit Amount); and

WHEREAS, as of December 18, 2019, the Project is now owned by Commercial LLC:
and

WHEREAS, Ellicott LLC and Commercial LLC requested that the Agency amend the Original Agent Agreement to also designate Commercial LLC as an agent of the Agency with respect to the Project and on December 18, 2019, the Agency, Ellicott LLC, and Commercial LLC entered into that certain First Amendment to Agent Agreement to reflect the addition of Commercial LLC as an Agent of the Agency (the "First Amendment", together with the Original Agent Agreement, the "Agent Agreement"); and

WHEREAS, the Agency and 225 Ellicott Street Market LLC d/b/a Braymiller Market (“Braymiller”), an affiliate of the Company, entered into that certain Agent and Financial Assistance Agreement, dated as of April 22, 2021, (the “Braymiller Agent Agreement”) whereby the Agency authorized Braymiller to also act its agent for the purposes of acquiring, constructing and/or equipping the Facility and specifically authorized Braymiller to receive \$157,500 of sales and use tax exemption benefits (out of the original \$339,513.00 Sales Tax Benefit Amount); and

WHEREAS, Ellicott LLC, Commercial LLC, and Braymiller have further allocated the Project’s Sales Tax Benefit Amount such that Ellicott LLC and Commercial LLC are to, collectively, now receive \$232,013.00 in sales and use tax exemption benefits, and Braymiller is to now receive \$107,500.00 in sales and use tax exemption benefits; and

WHEREAS, to effectuate the reallocation of the sales and use tax exemption benefits as so herein described, the Agency and the Company must amend the Agent Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

The Agent Agreement is amended as follows:

1. Section 2(h) of the Agent Agreement shall be amended and replaced in its entirety by the following paragraph:

In accordance with the Resolution, the Application, and the cost-benefit analysis, the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes shall be in an amount estimated up to \$2,651,577.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$232,013.00; (ii) covenants that the value of the mortgage recording tax exemption benefit shall not exceed \$34,500.00; and (iii) confirms that real property tax abatement benefits to be provided are estimated to be approximately \$391,000.00.

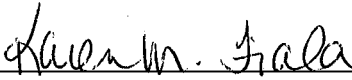
2. An additional Exhibit A is attached hereto, and shall be made a part of, and incorporated into, the Agent Agreement with reference to Ellicott LLC and Commercial LLC.

Unless otherwise amended pursuant to the terms contained herein, the terms of the Agent Agreement shall remain unchanged.

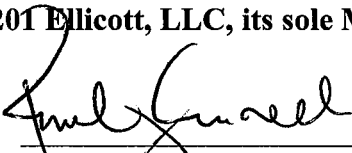
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IN WITNESS WHEREOF, the Agency and the Company have caused this Second Amendment to Agent and Financial Assistance Project Agreement to be executed in their respective names, all as of the date first above written.

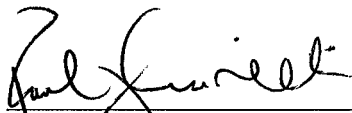
**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Karen M. Fiala
Title: Vice President

201 ELLICOTT COMMERCIAL, LLC
By: 201 Ellicott, LLC, its sole Member

By: 
Name: Paul F. Cimminelli
Title: President

201 ELLICOTT, LLC

By: 
Name: Paul F. Cimminelli
Title: President

AMENDED EXHIBIT A

**FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH
THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN
THIRTY (30) DAYS OF APPOINTMENT**

[Attached Next Page]



Department of Taxation and Finance

IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(1/18)

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**IDA information**

Name of IDA Erie County Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 1404-19-11A		
Street address 95 Perry Street, Suite 403			Telephone number (716) 856-6525		
City Buffalo	State NY	ZIP code 14203	Email address (optional)		

Project operator or agent information

Name of IDA project operator or agent		Mark an X in the box if directly appointed by the IDA: No <input type="checkbox"/>		Employer identification or Social Security number	
Street address		Telephone number ()		Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City	State	ZIP code	Email address (optional)		

Project information

Name of project 201 Ellicott, LLC and 201 Ellicott Commercial, LLC			
Street address of project site 225 Ellicott Street, and any lands located in Erie Co. and occupied by license or easement during construction or improvement by third parties for the benefit of the project.			
City Buffalo	State NY	ZIP code 14203	Email address (optional)
Purpose of project The construction and equipping of a 21,640+/- fresh food market consisting of wholesale space (9,580+/- SF), retail space (9,280 +/- SF), and back office space (2,780+/- SF), with 29+/- parking spaces specifically for the market users on the land to serve an adjacent 201-unit affordable housing project to be built and the surrounding community, and the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property.			

Description of goods and services intended to be exempted from New York State and local sales and use taxes Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after the completion of the project, or the item is geographically located outside the legal boundaries of the project facility; provided there is a reasonable basis to acquire the item to benefit the project.			
Date project operator or agent appointed (mmdyy) 101119	Date project operator or agent status ends (mmdyy) 123121	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: (all agents, all in) \$ 2,651,577.00		Estimated value of New York State and local sales and use tax exemption provided: (all agents, all in) \$ 232,013.00	

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 Karen M. Fiala		Print title Vice President	
Signature <i>Karen M. Fiala</i>		Date 06-29-2021	Telephone number (716) 856-6525

Instructions

When to file

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

Requirements to file

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 should not file this form if they do 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, they must, within 30 days of the change, file a new form with the new information.

If the information on this form changes

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, within 30 days, must 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. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

Mailing instructions

Mail completed form to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

Private delivery services – See Publication 55, *Designated Private Delivery Services*.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our website at www.tax.ny.gov

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

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service