

Resolution inducing the financing of a Food Retail Expansion to Support Health Program facility for Pennrose, LLC, and its affiliate, 50 Penn Retail LLC, as a (Straight-Lease) Transaction

WHEREAS, New York City Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Pennrose, LLC (the “Applicant”) has entered into negotiations with officials of the Agency for the acquisition and construction of an approximately 18,030 square foot retail condominium unit (the “Facility”) to be developed within an approximately 206,004 square foot mixed use building located on a 35,000 square foot parcel of land at 50 Pennsylvania Avenue, Brooklyn, New York 11207, for sublease to the Agency by 50 Penn Retail LLC, a real estate holding company, or another affiliate of the Applicant to be formed (the “Company”), and sub-sublease by the Agency to the Company, for use as a supermarket retail business, and having an approximate total project cost of approximately \$11,800,000 (the “Project”); and

WHEREAS, the Applicant has submitted a Project Application (the “Application”) to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant is a full-service real estate development company with 40 years of experience in affordable, mixed-income, and mixed-use development with offices in New York, New York (the “City”); that the Project expects to employ approximately 61 full time equivalent employees within the three years following the completion of the Project; that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project and thereby locate its operations in the City; and that, based upon the financial assistance provided through the Agency, the Applicant desires to proceed with the Project and locate its operations in the City; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Applicant and the Company are necessary to induce the Applicant to locate its operations in the City; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a straight-lease transaction, which cannot be immediately accomplished, and the Applicant intends to enter into loan commitments with banks or other entities which will provide funds to the Applicant and the Company in the form of loans to finance a portion of the costs of the Project; and

WHEREAS, in order to provide financial assistance to the Applicant and the Company for the Project, the Agency intends to grant the Applicant and the Company financial assistance through a straight-lease transaction in the form of real property tax abatements and sales tax exemptions all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the Project and the provision by the Agency of financial assistance to the Applicant and the Company pursuant to the Act in the form of a straight-lease transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant and the Company to proceed with the Project. The Agency further determines that

(a) the Project shall not result in the removal of any facility or plant of the Applicant or the Company or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or the Company or any other occupant or user of the Facility located within the State of New York (but outside of the City); and

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York.

Section 2. In connection with the Project, the Agency hereby makes the following determinations and findings which shall constitute a findings statement pursuant to Section 862(2)(c) of the Act based upon information provided by the Applicant:

(a) The Project will be used in making “retail sales” to customers who personally visit the Project, within the meaning of Section 862(2)(a) of the Act, and the Project is therefore subject to the restrictions set forth in Section 862(2) of the Act.

(b) However, the Project is located in a highly distressed area, as defined in Section 854(18) of the Act, because the Project is located in a census tract contiguous to a census tract which satisfies the criteria of Section 854(18)(a)(i) and (ii) of the Act.

(c) Therefore, the prohibition in Section 862(2)(a) of the Act against providing financial assistance to retail facilities does not apply to the Project.

(d) The Project will serve the Agency's public purposes as set forth in the Act by preserving or increasing the number of permanent, private sector jobs in the City and State of New York.

(e) The proposed action of the Agency described herein must be confirmed by the Mayor of the City.

Section 3. To accomplish the purposes of the Act and to provide financial assistance to the Applicant and the Company for the Project, a deviation from the Agency's Uniform Tax Exemption Policy is hereby approved and a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

Section 4. The Agency hereby authorizes the Applicant and the Company to proceed with the Project as herein authorized. The Applicant and the Company are authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Applicant and the Company that (i) nominal leasehold title to or other interest of the Agency in the Facility shall be in the Agency for purposes of granting financial assistance, and (ii) the Applicant and the Company are hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Applicant or the Company for such purpose.

Section 5. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant and the Company to assist in the Project.

Section 6. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution.

Section 7. Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

Section 8. This Resolution is subject to approval based on an investigative report with respect to the Applicant and the Company. The provisions of this Resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 7 hereof).

Section 9. The Agency, as lead agency, is issuing this determination pursuant to the State Environmental Quality Review Act (“SEQRA”) (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R. Part 617. This determination is based upon the Agency’s review of information provided by the Applicant and such other information as the Agency has deemed necessary and appropriate to make this determination.

The Agency has determined that the proposed project, an Unlisted action, pursuant to SEQRA and the implementing regulations, will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared. The reasons supporting this determination are as follows:

- (1) The Project will not result in a substantial adverse change in existing traffic, air quality, or noise levels.
- (2) The Project would not result in significant adverse impacts on the historic or aesthetic resources of the existing neighborhood.
- (3) The Project would not result in significant adverse impacts to natural resources, critical habitats, or water quality.
- (4) The Project would not result in a change in existing zoning or land use. The proposed supermarket will be a use consistent with surrounding land use and zoning compliant.
- (5) The construction of the mixed use building will adhere to the e-designation requirements placed on the site as part of the 2016 East New York Rezoning. The renovation of the supermarket itself does not involve any additional in-ground disturbance and would not result in any significant impacts related to hazardous materials.
- (6) No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 10. In connection with the Project, each of the Applicant and the Company covenant and agree to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3), as such provisions may be amended from time to time.

(1) The Applicant and the Company each acknowledge and agree that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Applicant and/or the Company New York State sales or use tax savings taken or purported to be taken by the Applicant or the Company, and any agent or any other person or entity acting on behalf of the Applicant or the Company, to which the Applicant or the Company is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized in Section 11 of this Resolution or which are for property or

services not authorized or taken in cases where the Applicant or the Company, or any agent or any other person or entity acting on behalf of the Applicant or the Company, failed to comply with a material term or condition to use property or services in the manner required by this Resolution or any agreements entered into among the Agency, the Applicant, the Company and/or any agent or any other person or entity acting on behalf of the Applicant or the Company. The Applicant and the Company shall, and shall require each agent and any other person or entity acting on behalf of the Applicant and/or the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such New York State sales or use tax savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine New York State sales or use taxes due from the Applicant and/or the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(2) The Applicant and the Company are hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Applicant or the Company or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of New York State sales or use tax savings from the Applicant, the Company, any agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, New York State sales or use tax savings from Applicant or the Company or any other agent, person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales or user tax savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. Such report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete such report shall be deemed to be the failure to file or substantially complete the statement required by such General

Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(3) The foregoing requirements of this Section 10 shall apply to any amounts of New York State sales or use tax savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency, the Applicant, the Company or any agent or other person or entity acting on behalf of the Applicant or the Company characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be New York State sales or use taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of New York State.

Section 11. In connection with the Project, the Agency intends to grant the Applicant and the Company real property tax abatements and sales and use tax exemptions in an amount not to exceed \$487,016.

Section This Resolution shall take effect immediately

12. ADOPTED: April 26, 2022

Accepted: _____, 2022

PENNROSE, LLC

By: _____

Name:

Title:

50 PENN RETAIL LLC

By: _____

Name:

Title: