

Resolution inducing the financing of a commercial facility for Western Beef Retail, Inc. and a to-be-formed real estate holding company affiliate as a Straight-Lease Transaction and authorizing and approving the execution and delivery of agreements in connection therewith

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, civic, 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, Western Beef Retail, Inc., a Delaware corporation (the “Applicant”) and a to-be-formed real estate holding company affiliate (the “Company”), have entered into negotiations with officials of the Agency for the furnishing and equipping of a commercial facility in the Bronx, New York (the “Facility”), consisting of a retail condominium unit (the “Condominium Unit”) containing 15,708 square feet located in an approximately 53,360 square foot mixed-use development on an approximately 19,907 square foot parcel of land at 3629 White Plains Road, Bronx, New York 10467, all for the use by the Applicant as a supermarket, for lease to the Agency by the Company, and sublease by the Agency to the Company for subsequent sub-sublease in whole to the Applicant, and having an approximate total project cost of approximately \$10,985,000 (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 and the Project will meet all requirements of the City’s Food Retail Expansion to Support Health Program (“FRESH”); that the Applicant is currently located in The City of New York (the “City”) and expects to employ approximately 94 full time equivalent employees in the City 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 establish and expand 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 establish and expand 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 expand its operations in the City; and

WHEREAS, in order to finance a portion of the costs of the Project, People’s United Bank (such financial institution, or any other financial institution as may be approved by

a certificate of determination of an Agency officer, the “Lender”) has agreed to enter into a loan arrangement with the Company pursuant to which the Lender will lend up to approximately \$5,000,000 to the Company, and the Agency and the Company will grant a mortgage on the Facility to the Lender (the “Lender Mortgage”), with the remaining costs of the Project to be financed with funds consisting of equity in the Company, which will be owned in equal shares by owners of the Applicant and by an investor and their respective affiliates.; and

WHEREAS, for purposes of refinancing from time to time the indebtedness secured by the Lender Mortgage (the “Original Mortgage Indebtedness”) (whether such refinancing is in an amount equal to or greater than the outstanding principal balance of the Original Mortgage Indebtedness), the Applicant may from time to time desire to enter into new mortgage arrangements, including but not limited to consolidation with mortgages granted subsequent to the Lender Mortgage; and therefore the Applicant may request the Agency to enter into the mortgage instruments required for such new mortgage arrangements (“Refinancing Mortgage(s)”); and

WHEREAS, the Act allows the Agency to provide financial assistance for a project at which facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost if, among other alternative requirements:

(1) the project is located in a “highly distressed area,” defined in Section 854(18) of the Act, to include an area in which a census tract, or tracts or block numbering area or areas or such census tract or block numbering areas contiguous thereto, which, according to the most recent census data available has (i) a poverty rate of at least 20% for the year to which the data relates or at least 20% of households receiving public assistance and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; and

(2) the Agency determines after a public hearing that undertaking the project will serve the public purposes of Article 18-A of the Act by increasing the overall number of permanent, private sector jobs in New York State; and

WHEREAS, the Agency has determined: that the Project is located in Census Tract 378 in the Bronx; that the poverty rate calculated from the most recent census data (American Community Survey 2012-2016 5-Year Estimate) for Census Tract 378 indicates that for the year to which the census data relates approximately 27.7% of the population was living below the poverty level; that the unemployment rate in Census Tract 378 for the year to which the census data relates was approximately 20.7%, while the statewide unemployment rate for such year was 4.8%; that 20.7% is greater than 1.25 times the statewide rate of 4.8%; and that, therefore, the proposed Project meets the statutory requirements of being located in a “highly distressed area”; 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 expand its operations in the City; 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, sales tax exemptions and mortgage recording tax deferrals all pursuant to the Act, provided that such financial assistance shall not apply to any parking facilities that are included in the Condominium Unit;

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 Project located within the State of New York (but outside of the City);

(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;

(c) the Project is located in a “highly distressed area” (as defined in Section 854(18) of the Act); and

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

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant and the Company for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. 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 neither the Agency nor any of its members, directors, officers, employees, agents or servants shall have

any personal liability for any such action taken by the Applicant or the Company for such purpose.

Section 4. The execution and delivery of a Company Lease Agreement from the Company leasing the Facility to the Agency, an Agency Lease Agreement from the Agency subleasing the Facility to the Company (the "Lease Agreement") (for sub-sublease to the Applicant), a Sales Tax Letter from the Agency to the Company and the Applicant, the Lender Mortgage, the Refinancing Mortgages and the acceptance of a Guaranty Agreement from the Company, the Applicant and the Applicant's and the Company's owners and/or principals in favor of the Agency (the "Guaranty Agreement") (each document referenced in this Section 4 being, collectively, the "Agency Documents"), each being substantively the same as approved by the Agency for prior transactions, are hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director and General Counsel of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

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. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 7. 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. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals

by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Agency officer.

Section 8. 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 9. 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 8 hereof).

Section 10. 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 action is a Type II action, pursuant to 6 N.Y.C.R.R. Part 617.5(c)(2), because it is the "replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes", which would not result in adverse environmental impacts requiring the preparation of an Environmental Impact Statement.

Section 11. In connection with the Project, each of the Applicant and the Company covenants and agrees to comply, and to cause each of their respective 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 12 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 11 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 12. In connection with the Project, the Agency intends to grant the Applicant and the Company sales and use tax exemptions in an amount not to exceed \$356,775 and mortgage recording tax deferrals.

Section 13. This Resolution shall take effect immediately

ADOPTED: _____, 2018

Accepted: _____, 2018

WESTERN BEEF RETAIL, INC.

By: _____
Name:
Title: