

Project Summary

Western Beef Retail, Inc. (the “Applicant”), a Delaware corporation engaged in the supermarket retail business, and a to-be-formed affiliated real estate holding company (the “Company”), will own and operate a new full-service Western Beef Supermarket. The Company seeks financial assistance in connection with the acquisition, renovation, furnishing and equipping of an existing approximately 18,505 square foot facility located on an approximately 18,350 square foot parcel of land in the Bronx (the “Facility”). The Facility will be owned by the Company and operated by the Applicant as a full-service Western Beef Supermarket (the “Project”). The total project cost is approximately \$23,345,079.

Project Location

4720 Third Avenue
Bronx, NY 10458

Actions Requested

- Inducement and Authorizing Resolution for FRESH transaction.
- Adopt a SEQRA determination that the proposed project is a Type II action and therefore no further environmental review is required.

Anticipated Closing

December 2017

Impact Summary

Employment	
Jobs at Application:	0
Jobs to be Created at Project Location (Year 3):	94
Total Jobs (full-time equivalents)	94
Projected Average Hourly Wage (excluding principals)	\$19.39
Highest Wage/Lowest Wage	\$15.00 /26.00

Estimated City Tax Revenues	
Impact of Operations (NPV 25 years at 6.25%)	\$10,949,825
One-Time Impact of Renovation	\$399,577
Total impact of operations and renovation	\$11,349,402
Additional benefit from jobs to be created	\$5,065,129

Estimated Cost of Benefits Requested: New York City	
Building Tax Exemption (NPV, 25 years)	\$9,296,343
Land Tax Abatement (NPV, 25 years)	\$548,599
MRT Benefit	\$203,125
Sales Tax Exemption	\$232,875
Agency Financing Fee	(\$195,079)
Total Cost to NYC Net of Financing Fee	\$10,085,863
Available As-of-Right Benefits (ICAP)	\$6,280,264
Agency Benefits in Excess of As-of-Right Benefits	\$3,805,599

Western Beef Retail, Inc.

Costs of Net Benefits Per Job	
Estimated Net Cost of NYCIDA Benefits per Total Jobs	\$40,485
Estimated Net City Tax Revenue per Total Jobs	\$174,623
Estimated Cost of Benefits Requested: New York State	
MRT Benefit	\$109,375
Sales Tax Exemption	\$226,406
Total Cost to NYS	\$335,781

Sources and Uses

Sources	Total Amount	Percent of Total Financing
Commercial Loans	\$14,500,000	62%
Equity	\$8,845,079	38%
Total	\$23,345,079	100%

Uses	Total Amount	Percent of Total Costs
Land & Building Acquisition	\$16,000,000	69%
Hard Costs	\$5,250,000	22.5%
Construction Soft Costs	\$400,000	1.7%
Furnishings & Equipment	\$1,500,000	6%
Fees	\$195,079	0.8%
Total	\$23,345,079	100%

Fees

	Paid At Closing	On-Going Fees (NPV, 25 Years)
Agency Fee	\$195,079	
Project Counsel	Hourly	
Annual Agency Fee	\$1,250	\$15,607
Total	\$196,329	\$15,607
Total Fees	\$211,935	

Financing and Benefits Summary

The Company will finance the Project with a \$12,500,000 mortgage loan from People's United Bank, a \$2,000,000 construction loan from People's United Bank, \$6,900,000 in company funds, and \$1,750,000 from three affiliated property ownership partners. The remaining closing costs will be financed through company funds. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, mortgage recording tax abatement, and exemption from City and State sales and use taxes.

Company Performance and Projections

The Applicant's parent, Cactus Holdings, Inc., demonstrates strong financial stability. Cactus Holdings, Inc. owns and operates 23 Western Beef supermarkets (16 of which are in New York City), five Junior's Food Outlets and a wholesale and distribution center in Ridgewood, Queens, which supplies food products to hundreds of supermarkets in the New York City metro area. The Facility will be the Applicant's 7th location in the Bronx, and its 17th location

Western Beef Retail, Inc.

within the five boroughs. The Project will allow the Applicant to enhance current operations by hiring an additional 94 full-time equivalent employees.

Inducement

- I. City policy, as set forth by the Food Retail Expansion to Support Health (FRESH) program, aims to promote the establishment and retention of neighborhood grocery stores in underserved communities.
- II. Without the proposed financial assistance from the Agency, the Company would be unable to convert the Facility into a supermarket at this scale, which is required to meet the neighborhood demand for grocery retail.

UTEP Considerations

The Agency finds that the Project meets one or more considerations from Section I-B of the Agency's Uniform Tax Exemption Policy ("UTEP"), including the following:

- The Project involves the grocery retail industry which the Agency seeks to retain and foster;
- The Company maintains that, through the Project, it will create 94 full-time equivalent jobs over the next three years;
- Financial assistance is required to induce the Project;
- The Project is likely to be completed in a timely manner.

Applicant Summary

In 1973, Western Beef opened its first warehouse-style store in College Point, Queens. Over the past 43 years, Western Beef has steadily increased its retail operations and typically operates stores in culturally diverse, urban neighborhoods. The Applicant's slogan, "We Know the Neighborhood," reflects a corporate commitment to customize the products offered in each store to provide the highest quality product at the best value to meet customer needs. Western Beef operates 5 smaller-scale warehouse-style Junior's Food Outlet stores in New York City, which the Applicant plans to convert to full-service Western Beef Markets over the next two years. The Applicant currently operates 2 successful FRESH projects in the Bronx, one on Webster Avenue and the other on Bruckner Boulevard.

Peter Castellana III, President & Chief Executive Officer

Peter Castellana III is President and Chief Executive Officer of Cactus Holdings, Inc. Mr. Castellana plans, coordinates, and controls daily operations of Cactus Holdings, Inc. and its subsidiaries through division directors and managers. He develops and establishes current and long-range goals, objectives, plans, and policies. Prior to his appointment as Chief Executive Officer, Mr. Castellana served as a consultant to Cactus Holdings, Inc. creating and implementing protocols to streamline business operations. Prior to joining Western Beef, he was President and Chief Executive Officer of Gold Coast Semi-Conductor.

Benjamin Petrofsky, Vice President & Chief Legal Officer

Mr. Petrofsky has served as Chief Legal Officer and Vice President at Western Beef Retail, Inc. since 2012. In this role he offers counsel, negotiates, writes and executes agreements and contracts for a variety of legal issues regarding construction, real estate, agency rules and regulations and risk management. From 2012 to 2013, he served as Chief Security Officer for the Applicant. Mr. Petrofsky previously served as a police officer in Washington D.C. and New York City. He holds a Juris Doctorate from the Jacobs D. Fuchsberg School of Law.

Employee Benefits

Employee benefits will include health and dental coverage, disability coverage, life insurance, a 401(k) plan, profit sharing, and on-the-job training.

Recapture

Pursuant to UTEP, all benefits are subject to recapture for a 10-year period.

Western Beef Retail, Inc.

SEQRA Determination

Type II Action which, if implemented, will not result in significant adverse environmental impacts. The completed Environment Assessment Form for this Project has been reviewed and signed by Agency staff.

Due Diligence

The Agency conducted a background investigation of the Company and its principals and found no derogatory information.

Compliance Check:	Satisfactory
Living Wage:	Exempt
Paid Sick Leave:	Compliant
Affordable Care Act:	ACA Coverage Offered
Bank Account:	Bank of America, People’s United Bank
Bank Check:	Relationships are reported to be satisfactory
Supplier Checks:	Relationships are reported to be satisfactory
Customer Checks:	Not Applicable
Unions:	Not Applicable
Vendex Check:	No derogatory information was found.
Attorney:	Frank V. Carone Abrams Law 1 MetroTech Center, Suite 1701 Brooklyn, New York 11201
Accountant:	Eugene Shear RSM US, LLP 1185 Avenue of the Americas, 7 th Floor New York, New York 0036
Community Board:	Bronx, CB #6

Western Beef Retail, Inc.

Projected Financials

Income Statement	Year		
	2018	2019	2020
Sales	\$15,000,000	\$15,500,000	\$15,750,000
Less: Cost of Goods Sold	\$10,950,000	\$11,315,000	\$11,497,500
Gross Profit	\$4,050,000	\$4,185,000	\$4,252,500
Operating Expenses			
Payroll	\$1,550,000	\$1,650,000	\$1,750,000
Payroll Burden	\$465,000	\$495,000	\$525,000
Store Expenses	\$1,300,000	\$1,350,000	\$1,400,000
General/Administrative Expenses	\$500,000	\$500,000	\$500,000
Total Expenses	\$3,815,000	\$3,995,000	\$4,175,000
Income <Loss> Before Other Income			
And Income Taxes	\$235,000	\$190,000	\$77,500
Add: Other Income	\$225,000	\$225,000	\$225,000
Net Income <Loss>	\$460,000	\$415,000	\$302,000

Western Beef Retail, Inc.

Income Statement	2016 FYE	2015 FYE	2014 FYE	YoY change FY15-FY16	YoY change FY14-FY15
Revenues	\$590,604,000.00	\$595,701,000.00	\$647,016,000.00	-1%	-8%
Costs (% of sales)	\$432,108,000.00 73%	\$438,823,000.00 74%	\$490,953,000.00 76%	-2%	-11%
Gross Profit (gross margin)	\$158,496,000.00 27%	\$156,878,000.00 26%	\$156,063,000.00 24%	1%	1%
Selling, General and Administrative Expenses	\$146,266,000.00	\$143,830,000.00	\$145,668,000.00	2%	-1%
Net Income	\$ 12,299,000.00	\$ 12,310,000.00	\$ 8,696,000.00	0%	42%

Balance Sheet	2016 FYE	2015 FYE	2014 FYE	YoY change FY15-FY16	YoY change FY14-FY15
Current Assets:					
Cash and cash equivalents	\$ 14,321,000.00	\$ 12,243,000.00	\$ 14,686,000.00		
Accounts receivable, less allowances	\$ 14,595,000.00	\$ 12,892,000.00	\$ 12,981,000.00		
Inventories	\$ 33,749,000.00	\$ 32,359,000.00	\$ 31,587,000.00		
Notes receivable, including related party	\$ 2,086,000.00	\$ 2,060,000.00	\$ 2,060,000.00		
Prepaid expenses	\$ 4,843,000.00	\$ 7,190,000.00	\$ 4,688,000.00		
Total Current Assets:	\$ 69,594,000.00	\$ 66,744,000.00	\$ 66,002,000.00		
Property and Equipment, net:	\$ 98,843,000.00	\$ 93,339,000.00	\$ 88,015,000.00		
Total Other Assets	\$ 13,304,000.00	\$ 12,202,000.00	\$ 11,471,000.00		
TOTAL ASSETS	\$181,741,000.00	\$172,285,000.00	\$165,488,000.00	5%	4%
Current Liabilities:					
Accounts payable	\$ 39,458,000.00	\$ 29,880,000.00	\$ 27,142,000.00		
Short-term notes	\$ 2,089,000.00	\$ 2,369,000.00	\$ 2,419,000.00		
Accrued expenses/Other	\$ 12,584,000.00	\$ 14,841,000.00	\$ 14,755,000.00		
Compensation and employee benefit	\$ 5,882,000.00	\$ 4,955,000.00	\$ 3,878,000.00		
TOTAL LIABILITIES	\$ 70,964,000.00	\$ 65,013,000.00	\$ 64,678,000.00	9%	1%
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	\$181,545,000.00	\$172,285,000.00	\$165,488,000.00	5%	4%

Western Beef Retail, Inc.

Cash Flow Statement	2016 FYE	2015 FYE	2014 FYE	YoY change FY15-FY16	YoY change FY14-FY15
NET CASH USED IN OPERATING ACTIVITIES	<u>14,448,000</u>	<u>10,685,000</u>	<u>12,042,000</u>	35%	-11%
NET CASH PROVIDED BY INVESTING ACTIVITIES	<u>(12,370,000)</u>	<u>(13,128,000)</u>	<u>(7,434,000)</u>	-6%	77%
NET DECREASE IN CASH	2,078,000	(2,443,000)	4,608,000	-185%	-153%
CASH, BEGINNING OF YEAR	<u>12,243,000</u>	<u>14,686,000</u>	<u>10,078,000</u>	-17%	46%
CASH, END OF YEAR	<u>14,321,000</u>	<u>12,243,000</u>	<u>14,686,000</u>	17%	-17%



Western Beef Corporate Headquarters
47-05 Metropolitan Avenue Ridgewood, NY 11385
Tel 718-417-3770 Fax 718-628-2388

September 21, 2017

New York City Economic Development Corp.
Industrial Development Agency
110 William Street, 3rd Floor
New York, New York 10038

Attn: Tida Infahsaeng, Assistant Vice President,
FRESH Director

Re: FRESH Application Packet
4720 Third Avenue, Bronx, NY 10458
Bronx Block 3042/13, 22,28

Dear Ms. Infahsaeng;

Enclosed please find the Application being submitted by Western Beef Retail, Inc. for financial benefits offered under the FRESH program for the location referenced above.

Western Beef Retail, Inc. would like to open and operate a modern full service Western Beef supermarket at this location, which was formally a retail space, and is currently vacant. The new Western Beef supermarket will create 125 new jobs.

The acquisition of this property will cost a total of \$18 million. We are in the process of obtaining financing of \$14.5 million, of which \$12 million will go towards the acquisition and the remainder will be used towards the construction and conversion work that is necessary at the location. The anticipated construction, conversion and upgrading costs will exceed \$5 million.

The investment involved in modernizing the existing building, creating an inviting environment for shoppers, establishing a stable employment base, purchasing and installing new energy efficient equipment, in addition to paying a high rent, make it a necessity for financial relief to be granted. Supermarkets operate on a very tight profit margin and this Western Beef project will not be able to move forward without these benefits. The only viable option if benefits are not available is to sublease this location to another business.

The importance of the benefits granted by the FRESH program is best illustrated by the success of our Western Beef locations at 2044 Webster Avenue and 1851 Bruckner Boulevard, Bronx, which both opened under FRESH. We hope to continue our successful association with NYCEDC and the IDA with this new location.

Sincerely yours,

Dawn Addabbo
Chief Administrative Officer

DA:da

RESOLUTION INDUCING THE FINANCING OF A COMMERCIAL FACILITY FOR THE BENEFIT OF WESTERN BEEF RETAIL, INC. AS A STRAIGHT-LEASE TRANSACTION AND AUTHORIZING THE EXECUTION AND DELIVERY OF AGREEMENTS IN CONNECTION THEREWITH

WHEREAS, the New York City Industrial Development Agency, New York, New York (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, Western Beef Retail, Inc. (the “Applicant”), has entered into negotiations with officials of the Agency for the acquisition, renovation, furnishing and equipping of a commercial facility (the “Facility”), consisting of an existing approximately 18,505 square foot facility on an approximately 18,350 square foot parcel of land located at 4720 Third Avenue, in Bronx, New York, all for the use by the Applicant as a supermarket, for lease to the Agency by an affiliated real estate holding company to be formed (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 \$23,150,000 (the “Project”); and

WHEREAS, the Applicant has submitted an application with respect to the Project (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 desire to proceed with the Project and establish and expand its operations in the City; and

WHEREAS, the Agency held a public hearing with respect to the Project on November 2, 2017; 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 and proceed with the Project; and

WHEREAS, the Applicant and/or the Company have entered into or may enter into loan commitments with one or more commercial banks, institutional lenders or governmental entities lenders acceptable to the Applicant and the Agency (collectively, the “Lender”), which may provide funds to the Applicant and/or the Company in the form of a loan to finance a portion of the costs of the Project, and

the Agency and the Applicant and/or the Company will grant one or more mortgages on the Facility to the Lender (collectively, the “Mortgage”); 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 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);

(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; and

(c) the Project will make available goods and services which would not, but for the Project, be reasonably accessibly to the residents of the area within which the proposed Project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services within the meaning of Section 862(2)(b)(i) of the New York General Municipal Law.

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 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 in accordance with this Resolution, the Company Lease Agreement and the Agency Lease Agreement; 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 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 or agents (other than the Applicant, as aforesaid) shall have personal liability for any such action taken by the Applicant or the Company or any director, officer, employee, agent or affiliate of either, for such purpose.

Section 4. The execution and delivery of a Company Lease Agreement, an Agency Lease Agreement and the Mortgage (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, is 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 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.

Section 6. 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 7. Any costs and expenses incurred by the Agency with respect to the Project and the financial assistance contemplated by this Resolution shall be paid by the Applicant, whether or not the Applicant proceeds with the financing of the Project as contemplated herein or financial assistance by the Agency to the Applicant, through the straight lease transaction between the Agency and the Applicant, is provided as herein authorized (other than by the sole fault of the Agency). By acceptance hereof, the Applicant agrees to pay such costs and expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for any loss, liability, damage or injury or cost or expense incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 8. This Resolution is subject to the approval of a private investigative report with respect to the Applicant and the Company. The provisions of this Resolution shall continue to be effective until 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) unless prior to the expiration of such year the Agency shall by subsequent resolution extend the effective period of this Resolution.

Section 9. 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 any of 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 any Agency Document 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 thereof 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 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 hereby determines that the Project is a Type II action, pursuant to 6 N.Y.C.R.R. Part 617(c)(2), ‘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. The Chairperson, the Vice Chairperson, the Secretary, the Assistant Secretary, the Executive Director and the Deputy Executive Director and the General Counsel of the Agency, and any member 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, agreements 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 and the Agency Documents.

Section 12. In connection with the Project, the Applicant and Company covenant and agree 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.

(a) The Applicant and Company covenant 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 Company New York State sales or use tax savings taken or purported to be taken by the Applicant and the Company, and any agent or any other person or entity acting on behalf of the Applicant and the Company, to which the Company is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized in Section 13 of this Resolution or which are for property or services not authorized or taken in cases where the Applicant and the Company, or any agent or any other person or entity acting on behalf of the Applicant and 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 and the Company and/or any agent or any other person or entity acting on behalf of the Applicant and 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 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 Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(b) 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

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 and 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 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).

(iii) The foregoing requirements of this Section 12 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 or 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 13. In connection with the Project, the Agency intends to grant the Applicant and the Company sales tax exemptions in an amount not to exceed \$459,281, real property tax exemptions and a mortgage recording tax exemption.

Section 14. This Resolution shall take effect immediately.

ADOPTED: November 8, 2017

ACCEPTED: _____, 2017

WESTERN BEEF RETAIL, INC.

By: _____
Name:
Title: