

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

AND

SIX ROSES LLC

AMENDMENT OF LEASE AGREEMENT

Dated as of December 30, 2014

Town of Brookhaven Industrial Development Agency
(Amendment to Six Roses LLC/Clare Rose, Inc. Facility)

THIS AMENDMENT OF LEASE AGREEMENT (this "**Amendment of Lease Agreement**"), dated as of December 30, 2014, is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "**Agency**"), and SIX ROSES LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at 72 Clare Rose Boulevard, Patchogue, New York 11772 (the "**Company**").

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "**Act**");

WHEREAS, the Act authorized the creation of industrial development agencies for the Public Purposes of the State;

WHEREAS, the Act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living;

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Agency was created by Chapter 358 of the Laws of 1970 of the State of New York and is empowered under the Act to undertake the providing, financing and leasing of the Facility defined below;

WHEREAS, the Agency previously entered into a straight lease transaction on behalf of the Company consisting of the acquisition of an approximately 34 acre parcel of land located at the southwest corner of the Long Island Expressway and the William Floyd Parkway, Town of Brookhaven, Suffolk County, New York (further identified as Tax Map. No. 200-584-01-p/o 1.007) (the "**Land**"), and the construction and equipping thereon of an approximately 269,567 square foot building including, without limitation, the furnishing and equipping of corporate office and warehouse space (the "**Improvements**" and "**Equipment**"; and, together with the Land, the "**Original Facility**"), leased by the Agency to the Company and subleased by the Company to, and used by Clare Rose, Inc., a corporation duly organized and validly existing under the laws of the State of New York, having an office at 72 Clare Rose Boulevard, Patchogue, New York 11772 (the "**Sublessee**") in its business as a distributor of alcoholic and non-alcoholic beverages to major and independent chain grocery stores, local and chain restaurants and as a wholesale distributor for Anheuser-Busch products; and

WHEREAS, the Agency leased the Original Facility to the Company pursuant to and in accordance with a certain Lease Agreement, dated as of August 1, 2009 (the "**Original Lease Agreement**"), and, together with the Amendment of Lease Agreement, the "**Lease Agreement**"), between the Agency and the Company, and a Memorandum of Lease Agreement was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, the Company subleased the Original Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated July 20, 2009 (the "**Sublease Agreement**"), between the Company and the Sublessee, and a Memorandum of Sublease Agreement was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of August 1, 2009 (the "**Original PILOT Agreement**"), whereby the Company and the Sublessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of August 1, 2009 (the "**Original Environmental Compliance and Indemnification Agreement**"), whereby the Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, the Agency previously consented to a request from the Company and the Sublessee related to the sub-subleasing by the Sublessee of a portion of the Original Facility to Environmental Resource Recycling, Inc., a New York business corporation (the "**Tenant**"); and

WHEREAS, the Company and the Sublessee have now requested the Agency's assistance in connection with the improvement, reconstruction, repair, refurbishing, installation, furnishing and equipping of the Original Facility consisting of the acquisition, installation and equipping of a photovoltaic system on the roof of the Original Facility (the "**2014 Facility**"); and together with the Original Facility, the "**Facility**"); and

WHEREAS, in connection with the 2014 Facility, the Agency and the Company intend to amend the Original Lease Agreement pursuant to the terms of this Amendment of Lease Agreement to reflect (i) that the definition of "Facility" in the Original Lease Agreement now includes the 2014 Facility, (ii) the extension of the term of the Original Lease Agreement; and (iii) the provision of sales and use tax exemptions with respect to the 2014 Facility; and

WHEREAS, contemporaneously with the execution and delivery of this Amendment of Lease Agreement, the Agency, the Company and the Sublessee intend to amend the Original Environmental Compliance and Indemnification Agreement pursuant to the terms of an Amendment to Environmental Compliance and Indemnification Agreement, dated as of December 30, 2014 (the "**Amendment to Environmental Compliance and**

Indemnification Agreement”), to reflect that the definitions of “Facility” in the Original Environmental Compliance and Indemnification Agreement include the 2014 Facility; and

WHEREAS, contemporaneously with the execution and delivery of this Amendment of Lease Agreement, the Agency, the Company and the Sublessee intend to amend and restate the Original PILOT Agreement, pursuant to the terms of an Amended and Restated PILOT Agreement, dated as of December 30, 2014 (the “**Amended and Restated PILOT Agreement**”), to provide for payments-in-lieu-of-taxes by the Company and the Sublessee with respect to the 2014 Facility; and

WHEREAS, contemporaneously with the execution and delivery of this Amendment of Lease Agreement, the Agency, the Company and the Sublessee amended and restated the Original Recapture Agreement, pursuant to the terms of an Amended and Restated Recapture Agreement, dated as of December 30, 2014 (the “**Amended and Restated Recapture Agreement**”), to include the 2014 Facility.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions in this Amendment of Lease Agreement. All capitalized terms used in this Amendment of Lease Agreement which are not otherwise defined herein shall have the meanings assigned thereto in the Original Lease Agreement which definitions are incorporated herein and made a part hereof by reference.

ARTICLE II

AMENDMENT OF ORIGINAL LEASE AGREEMENT

Section 2.1. Amendment of Exhibit B to the Original Lease Agreement. The Agency and the Company agree that the Original Lease Agreement is hereby amended to add the description of the Equipment set forth as Exhibit B hereto to the Original Lease Agreement to be incorporated into and made a part of the Original Lease Agreement as part of Exhibit B to the Original Lease Agreement. All references to the “Facility”, the “Improvements” and the “Equipment” in the Original Lease Agreement shall be amended to reflect that the Equipment now includes the personal property described in Exhibit B attached hereto and such Equipment shall be leased by the Agency to the Company pursuant to the Original Lease Agreement as amended by this Amendment of Lease Agreement.

Section 2.2. Addition of Section 4.6 to the Original Lease Agreement. A new Section 4.6 is added to the Original Lease Agreement as follows:

“Section 4.6 Sales Tax Exemption

(a) Definitions. The following capitalized terms used in this Section 4.6 shall have the respective meanings specified below:

“Completion Date” shall mean the date of completion of the expansion and modernization of and installation of equipment in the Facility as certified in writing to the Agency by the Company.

“Eligible Items” shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility: (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility; (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more; (iii) with respect to the eligible items identified in (ii) above; purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs; (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

“Form ST-123” shall mean NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate” or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt for Sales and Use Taxes with respect to industrial development agency transactions.

“Form ST-340” shall mean NYSDTF Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority” or such additional or substitute form as is adopted by NYSDTF to report Sales Tax Savings with respect to industrial development agency transactions.

“Form ST-60” shall mean NYSDTF Form ST-60 “IDA Appointment of Project Operator or Agent” or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

“Ineligible Items” shall mean the following items of personal property and services with respect to which the Company and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

“Maximum Sales Tax Savings Amount” shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall equal \$315,000; provided, however, that the Maximum Sales Tax Savings Amount shall refer only to Sales Tax Savings that are received on or after December 30, 2014.

“NYSDTF” shall mean the New York State Department of Taxation and Finance.

“Sales Tax Agent Authorization Letter” shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit D – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 4.6(c) of the Lease Agreement.

“Sales Tax Exemption” shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Facility.

“Sales Tax Registry” shall mean the Sales Tax Registry in the form set forth in Exhibit E.

“Sales Tax Savings” means all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent,

pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

“Sales and Use Taxes” shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

“State Sales and Use Taxes” shall mean sales and compensating use taxes and fees imposed by Article 28 or 28-A of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

“State Sales Tax Savings” shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Agent, pursuant to this Lease Agreement and the Sales Tax Agent Authorization Letter issued in connection with the Facility.

(b) Agency’s Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent or any third party that any Sales Tax Exemption is available under this Lease Agreement.

(c) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company and the Sublessee, subject to the terms and conditions of this Lease Agreement, to act as its agent in connection with the Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency’s authorization with respect to such Sales Tax Exemption provided to the Company, the Sublessee and their respective Agents pursuant to this Lease Agreement and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on December 30, 2014 and expiring upon the earliest of (A) the termination of this Lease Agreement, (B) the Completion Date, or (C) the termination of the Sales Tax Exemption authorization by the Agency upon the occurrence of an Event of Default under the Lease Agreement (such date being referred to herein as the “**Termination Date**”).

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company and the Sublessee that the Company or the Sublessee is in default under this Lease Agreement until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Lease Agreement.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Company and the Sublessee at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Company or the Sublessee), it being the intention of the Agency, the Company and the Sublessee that the sales and use tax exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company or the Sublessee at the Facility.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company or the Sublessee, without the prior written consent of the Agency.

(vii) By execution by the Company of this Lease Agreement, the Company agrees to accept the terms hereof and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Company, the Sublessee and each Agent shall cease being agents of the Agency, the Company and/or the Sublessee shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

(ix) The Company and the Sublessee agree that the aggregate amount of Sales Tax Savings realized by the Company, the Sublessee and by each Agent of the Company and the Sublessee in connection with the Facility shall not exceed in the aggregate the Maximum Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Company or the Sublessee desire to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent (an "Agent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Lease Agreement, it must complete the following steps:

(i) General Municipal Law Section 874(9) and Form ST-60 and the regulations relating thereto require that within thirty (30) days of the date that the Agency appoints a project operator or other person or

entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Company or the Sublessee must complete and submit Form ST-60 to the Agency.

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit D, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Company or the Sublessee. The Company and/or the Sublessee shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company and/or the Sublessee.

(iii) The Company and/or the Sublessee shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

(e) Form ST-60 Not an Exemption Certificate. The Company and/or the Sublessee acknowledge that the executed Form ST-60 designating the Company, the Sublessee or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company nor the Sublessee nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(f) Form ST-123 Requirement. As an agent of the Agency, the Company and the Sublessee agree that they will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or the Sublessee or by any Agent, as agent for the Agency, for the expansion, modernization, renovation, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor

accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company or Sublessee, as project operator of the Agency, was the purchaser. The Company and/or the Sublessee shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(g) Form ST-340 Filing Requirement. The Company and/or the Sublessee shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYSDTF and with a copy to the Agency, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF, of the value of all Sales Tax Savings claimed by the Company and/or the Sublessee and each Agent in connection with the Facility. Should the Company and/or the Sublessee fail to comply with the foregoing requirement, the Company and/or the Sublessee and each Agent shall immediately cease to be agents of the Agency in connection with the Facility without any further action of the Agency and the Company and/or the Sublessee shall immediately and without demand notify each Agent appointed by the Agency in connection with the Facility of such termination.

(h) Sales Tax Registry Filing Requirement. No later than August 1st of each year, the Company and/or the Sublessee shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit E, which accounts for all Sales Tax Savings realized by the Company and/or the Sublessee and each Agent during the prior annual period ending on the preceding June 30th (or such shorter period beginning on December 30, 2014 and ending on the preceding June 30th), unless the Termination Date occurred prior to such June 30th. Within ten (10) days after the Termination Date, the Company and/or the Sublessee shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Company and each Agent during the period from the preceding July 1st to the Termination Date.

(i) Special Provisions Relating to Sales Tax Savings.

(i) The Company and the Sublessee 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) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control except as set forth in clauses (ii) and (iii) below where the Lease Agreement shall

control.

(ii) The Company and the Sublessee acknowledge and agree that pursuant to General Municipal Law Section 875(3) and the policies of the Agency, the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company and/or the Sublessee Sales Tax Savings taken or purported to be taken by the Company and/or the Sublessee, any Agent or any other person or entity acting on behalf of the Company and/or the Sublessee to which the Company and/or the Sublessee is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Company and/or the Sublessee, any Agent or any other person or entity acting on behalf of the Company and/or the Sublessee failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company and/or the Sublessee shall, and shall require each Agent and any other person or entity acting on behalf of the Company and/or the Sublessee, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Sales 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 NYSDTF to assess and determine State Sales and 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.

(iii) Subject to the provisions of Section 4.6(h) hereof, in the event that the Company and/or the Sublessee or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company and/or the Sublessee shall promptly deliver notice of same to the Agency, and the Company and/or the Sublessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company and/or the Sublessee or any Agent (as applicable).

(iv) Upon request by the Agency with reasonable notice to the Company and/or the Sublessee, the Company and/or the Sublessee shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and/or the Sublessee and any Agent, and require all appropriate officers and employees of the Company and/or the

Sublessee to respond to reasonable inquiries by the Agency, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company and/or the Sublessee or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company and/or the Sublessee under this Section 4.6.

Section 2.3. Addition of Exhibits D and E to the Original Lease Agreement. The Agency and the Company agree that the Original Lease Agreement is hereby amended to add (i) Exhibit D – “Form of Sales Tax Agent Authorization Letter” attached to this Amendment of Lease Agreement, and (ii) Exhibit E – “Sales Tax Registry” attached to this Amendment of Lease Agreement, immediately following Exhibit C to the Original Lease Agreement in alphabetical order and Exhibits D and E are each to be incorporated into and made a part of the Original Lease Agreement.

Section 2.4. Amendment of Section 5.2(b) of the Original Lease Agreement. Section 5.2(b) of the Lease Agreement is hereby amended and replaced in its entirety as follows:

“(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on December 31, 2031 or on such earlier date as may be permitted by Section 11.1 hereof.”

Section 2.5. Recording of Memorandum of Amendment of Lease Agreement. In connection with the execution and delivery of this Amendment of Lease Agreement, the Agency and the Company shall record or cause to be recorded a Memorandum of Amendment of Lease reflecting the amendment and modification of the Original Lease Agreement pursuant to the terms of this Amendment of Lease Agreement.

ARTICLE III MISCELLANEOUS

Section 3.1. Binding Effect. This Amendment of Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 3.2. Severability. In the event any provision of this Amendment of Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3.3. Amendments, Changes and Modifications. This Amendment of Lease Agreement may not be amended, changed, modified, altered to terminated except in a writing executed by the parties hereto.

Section 3.4. Execution of Counterpart. This Amendment of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.5. Applicable Law. This Amendment of Lease Agreement shall be governed exclusively by the applicable laws of the State of New York without regard or reference to its conflict of laws principles.

Section 3.6. Ratification of Lease Agreement. Except as otherwise amended and modified by this Amendment of Lease Agreement, the Original Lease Agreement is hereby ratified and confirmed and remains in full force and effect.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment of Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date and year first above written.

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY**

By: *Lisa MG Mulligan*
Name: Lisa MG Mulligan
Title: Chief Executive Officer

STATE OF NEW YORK)
 : ss.:
COUNTY OF SUFFOLK)


On the 19 day of December in the year 2014, before me, personally appeared **Lisa MG Mulligan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Christine J Schroder
Notary Public

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SIX ROSES LLC

By: 
Name: Sean Rose
Title: Managing Member

STATE OF NEW YORK)
 : SS.:
COUNTY OF SUFFOLK)

On the 23 day of December in the year 2014, before me, the undersigned, personally appeared **Sean Rose** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.


Notary Public

CATHERINE RIEDEL
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01R14685395
QUALIFIED IN SUFFOLK COUNTY
TERM EXPIRES JANUARY 31 2015

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Exhibit A

Legal Description of Real Property

PARCEL I

ALL that certain plot, piece or parcel of land, situate, lying and being at Ridge, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the southeasterly side of South Service Road of the Long Island Expressway S.R. 495 distant the following ten courses and distances from the southerly end of the arc of curve connecting the westerly side of William Floyd Parkway (C.R. 46A) and the southerly side of South Service Road;

- 1) North 63 degrees 01 minutes 04 seconds East, 2.00 feet;
- 2) southeasterly along the westerly side of William Floyd Parkway along the arc of a curve bearing to the right having a radius of 2788.79 feet a distance of 317.41 feet to a point;
- 3) South 20 degrees 27 minutes 40 seconds East still along the westerly side of William Floyd Parkway, 289.48 feet to the northwesterly side of a proposed 60 foot wide right of way easement;
- 4) South 75 degrees 26 minutes 00 seconds West, 225.93 feet to a point;
- 5) South 58 degrees 02 minutes 10 seconds West, 326.25 feet to a point;
- 6) Southwesterly along the arc of a curve to the right having a radius of 270.00 feet a distance of 137.82 feet to a point;
- 7) South 87 degrees 16 minutes 56 seconds West, 242.14 feet to a point;
- 8) Southwesterly along the arc of a curve to the left having a radius of 390.00 feet a distance of 199.07 feet to a point;
- 9) South 58 degrees 02 minutes 10 seconds West, 44.93 feet to a point;
- 10) North 36 degrees 02 minutes 00 seconds West, 959.09 feet to a point on the southeasterly side of South Service Road, the point or place of beginning;

THENCE South 36 degrees 02 minutes 00 seconds East, 959.09 feet to the northwesterly side of the proposed 60.00 foot wide right of way easement;

THENCE along the proposed 60.00 foot right of way easement, the following 4 courses and distances:

- 1) South 58 degrees 02 minutes 10 seconds West, 1362.89 feet to a point;
- 2) Southwesterly and northwesterly along the arc of a curve bearing to the right having a radius of 327.00 feet a distance of 490.43 feet to a point;

- 3) North 36 degrees 02 minutes 00 seconds West, 238.17 feet to a point;
- 4) northeasterly along the arc of a curve to the right having a radius of 327.00 feet a distance of 414.20 feet to the southeasterly side of the South Service Road as widened;

THENCE along the southeasterly side of the South Service Road the following 4 courses and distances:

- 1) North 53 degrees 58 minutes 00 seconds East, 1341.32 feet to a point;
- 2) northeasterly along the arc of a curve to the right having a radius of 770.00 feet a distance of 93.95 feet to the point or place of BEGINNING.

The above described premises is also show as Parcel 4 on the land division map filed June 12, 2009 in the Suffolk County Clerk's Office as Map No. A688

Exhibit B

Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed and installed and/or to be acquired, constructed and installed in connection with the completion by Six Roses LLC and Clare Rose, Inc. of the acquisition, installation and equipping of a photovoltaic system on the roof of the facility located on approximately 34.0 acres of land at 72 Clare Rose Boulevard, Patchogue, Town of Brookhaven, New York.

Exhibit C

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Note to the following Exhibit D and Exhibit E

- (i) Exhibit D – “Form of Sales Tax Agent Authorization Letter” attached to this Amendment of Lease Agreement, and
- (ii) Exhibit E – “Sales Tax Registry” attached to this Amendment of Lease Agreement, have each been incorporated herein to be attached as Exhibit C to the Original Lease Agreement

Exhibit D

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: _____ **1, 201**__

ELIGIBLE LOCATION:

72 Clare Rose Boulevard, Patchogue, Town of Brookhaven, New York 11772

_____, 201__

TO WHOM IT MAY CONCERN

Re: Town of Brookhaven Industrial Development Agency
(Six Roses LLC/Clare Rose, Inc. Facility)

Ladies and Gentlemen:

The Town of Brookhaven Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Lease Agreement, dated as of August 1, 2009 (as amended to date, the "**Lease Agreement**"), between the Agency and Six Roses LLC, a limited liability company organized and existing under the laws of the State of New York (the "**Company**"), the Agency has authorized the Company to act as its agent for the in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

2. Upon the Company's request, the Agency has appointed [**insert name of Agent**] (the "**Agent**"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms and provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Exhibit A hereto with respect to the scope of Sales Tax Exemption provided under the Lease Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("**Form ST-60**") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("**Form ST-123**") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the expansion, modernization, renovation, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

6. The Agent agrees to comply with the terms and conditions of the Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Company to provide services in connection with the Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("**Form ST-340**"), the Agent covenants and agrees that it shall file semi-annually with the Company and the Agency (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Facility) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Facility by completing and submitting to the Company and the Agency the **Sales Tax Registry** attached hereto as

Exhibit B. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Facility (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

9. **Special Provisions Relating to State Sales Tax Savings.**

(a) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "Special Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Lease Agreement and the Special Provisions, the Special Provisions shall control except as expressly set forth in the Lease Agreement.

(b) The Agent acknowledges and agrees that pursuant to General Municipal Law Section 875(3) and the policies of the Agency, the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent Sales Tax Savings taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent or the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Sales 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 State Sales and 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.

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Company and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements,

invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Lease Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

(Remainder of Page Intentionally left Blank -Signature Page Follows)

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY**

By: _____
Name:
Title:

ACCEPTED AND AGREED TO BY:

 [AGENT]

By: _____
Name:
Title:

Exhibit A

**To
SALES TAX AGENT AUTHORIZATION LETTER**

Set forth below is a description of items that are eligible for the Sales Tax Exemption

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

Ineligible Items shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;

- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

Exhibit B

To

SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX REGISTRY

Please Complete: **REPORTED PERIOD: SEMI-ANNUAL PERIOD FROM [JANUARY 1][JULY 1], 201__ to [JUNE 30][DECEMBER 31], 201__**

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or Invoice number	Sales Tax Savings

TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:

Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the Town of Brookhaven Industrial Development Agency ("TOBIDA"), and may be disclosed by TOBIDA in connection with the administration of the programs by TOBIDA ; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: _____
Signature By: _____
Name (print): _____
Title: _____
Date: _____

Exhibit E

Sales Tax Registry

Please Complete: **REPORTED PERIOD: ANNUAL PERIOD FROM JULY 1, 201__ to JUNE 30, 201__**

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []:						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []:						
TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:						

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Town of Brookhaven Industrial Development Agency ("TOBIDA"). This form and information provided pursuant hereto may be disclosed by TOBIDA in connection with the administration of the programs by TOBIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Lessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

SIX ROSES LLC

and

CLARE ROSE, INC.

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(SUFFOLK COUNTY, NEW YORK)

AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Town of Brookhaven Industrial Development Agency
(Six Roses LLC/Clare Rose, Inc. 2009 Facility)

Dated as of August 1, 2009

Amended and Restated as of December 1, 2014

Town of Brookhaven, Suffolk County, Longwood Central School District

Property Address: southwest corner of the Long Island Expressway
and the William Floyd Parkway, Town of
Brookhaven, Suffolk County, New York

Tax Account Number: 200-584-01-p/o 1.007

AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of December 30, 2014 (this "**Amended and Restated PILOT Agreement**"), is by and among SIX ROSES LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its office at 72 Clare Rose Boulevard, Patchogue, New York 11772 (the "**Company**"), CLARE ROSE, INC., a corporation duly organized and validly existing under the laws of the State of New York, having its office at 72 Clare Rose Boulevard, Patchogue, New York 11772 (the "**Sublessee**"), and the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY; an industrial development agency and a public benefit corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "**Agency**").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the "**Act**"); and

WHEREAS, the Agency previously entered into a straight lease transaction on behalf of the Company consisting of the acquisition of an approximately 34 acre parcel of land located at the southwest corner of the Long Island Expressway and the William Floyd Parkway, Town of Brookhaven, Suffolk County, New York (further identified as Tax Map No. 200-584-01-p/o 1.007) (the "**Land**"), and the construction and equipping thereon of an approximately 269,567 square foot building including, without limitation, the furnishing and equipping of corporate office and warehouse space (the "**Improvements**" and "**Equipment**"; and, together with the Land, the "**Original Facility**"), leased by the Agency to the Company and subleased by the Company to, and used by the Sublessee in its business as a distributor of alcoholic and non-alcoholic beverages to major and independent chain grocery stores, local and chain restaurants and as a wholesale distributor for Anheuser-Busch products; and

WHEREAS, the Agency leased the Original Facility to the Company pursuant to and in accordance with a certain Lease Agreement, dated as of August 1, 2009 (the "**Original Lease Agreement**"), between the Agency and the Company, and a Memorandum of Lease Agreement was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, the Company subleased the Original Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated July 20, 2009 (the "**Sublease Agreement**"), between the Company and the Sublessee, and a Memorandum of Sublease Agreement was to be recorded in the Suffolk County Clerk's office; and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of August 1, 2009 (the "**Original PILOT Agreement**"), whereby the Company and the Sublessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of August 1, 2009 (the "**Original Environmental Compliance and Indemnification Agreement**"), whereby the Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, the Agency previously consented to a request from the Company and the Sublessee related to the sub-subleasing by the Sublessee of a portion of the Original Facility to Environmental Resource Recycling, Inc., a New York business corporation (the "**Tenant**"); and

WHEREAS, the Company and the Sublessee have now requested the Agency's assistance in connection with the improvement, reconstruction, repair, refurbishing, installation, furnishing and equipping of the Original Facility consisting of the acquisition, installation and equipping of a photovoltaic system on the roof of the Original Facility (the "**2014 Facility**"); and together with the Original Facility, the "**Facility**"); and

WHEREAS, in connection with the 2014 Facility, the Agency and the Company intend to amend the Original Lease Agreement pursuant to the terms of a certain Amendment of Lease Agreement, dated as of December 30, 2014 (the "**Amendment of Lease Agreement**"); and, together with the Original Lease Agreement, the "**Lease Agreement**"), between the Agency and the Company, to reflect (i) that the definition of "Facility" in the Original Lease Agreement now includes the 2014 Facility, (ii) the extension of the term of the Original Lease Agreement; and (iii) the provision of sales and use tax exemptions with respect to the 2014 Facility; and

WHEREAS, contemporaneously with the execution and delivery of the Amendment of Lease Agreement, the Agency and the Company intend to amend and restate the PILOT Agreement, pursuant to the terms of this Amended and Restated PILOT Agreement to provide for payments-in-lieu-of-taxes by the Company and the Sublessee with respect to the Facility; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency, the Company and the Sublessee deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company and the Sublessee to the Town of Brookhaven, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, Longwood Central School

District and appropriate special districts (hereinafter the "Taxing Authorities") in which any part of the Facility is or is to be located;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) As long as the Lease Agreement is in effect, the Company and the Sublessee, jointly and severally, agree to make payments in lieu of all real estate taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company and not by the Agency (the "**Taxes on the Facility**"). The amounts of such payments and method for calculation are set forth herein.

(b) Prior to the effective date of this Amended and Restated PILOT Agreement, the Company and the Sublessee shall pay, as payments in lieu of taxes and assessments, any amounts currently due under the Original PILOT Agreement.

(c) Commencing after the effective date of this Amended and Restated PILOT Agreement, the Company and the Sublessee shall pay, jointly and severally, as payments in lieu of taxes and assessments, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(d) The Company and the Sublessee, jointly and severally, shall pay, or cause to be paid, the amounts set forth in paragraphs 1(b) and (c) above, as applicable, after receipt of tax bills from the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company and the Sublessee of their respective obligations to make all payments provided for hereunder. If, for any reason, the Company and/or the Sublessee do not receive an appropriate tax bill, the Company and the Sublessee shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. Payments shall be made directly to the Taxing Authorities as directed by the tax bill. Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one month delinquent.

(e) During the term of this Amended and Restated PILOT Agreement, the Company and the Sublessee shall continue to pay all special ad valorem levies, special assessments and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the "Completion Date" (as such term is defined in the Lease Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as "Additional Facilities"), the Company and the Sublessee agree to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company and not the Agency times the assessment or assessments established for that tax year by the Town of Brookhaven. All other provisions of this Amended and Restated PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that title to the Facility or any part thereof is transferred from the Agency to the Company at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Town of Brookhaven, Longwood Central School District, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, or appropriate special districts, as the case may be, by such taxable status date, the Company and the Sublessee, jointly and severally, hereby agree to pay at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time the Company took title until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Amended and Restated PILOT Agreement by the Agency, the Company or the Sublessee to the respective Taxing Authorities relating to any period of time after the date of transfer of title to the Company. The provisions of this paragraph 2, shall survive the termination or expiration of the Lease Agreement.

3. In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company and the Sublessee hereunder shall, to such extent, be null and void.

4. In the event the Company and the Sublessee shall enter into a subsequent payment in lieu of tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company and the Sublessee hereunder, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

5. Reserved.

6. As long as this Amended and Restated PILOT Agreement is in effect and the Company and the Sublessee have been paying PILOT payments under Exhibit A hereof, and

for a period of two years after the expiration or termination of this Amended and Restated PILOT Agreement, the Company and the Sublessee agree that the Company shall not institute judicial review of an assessment of the real estate with respect to the Facility pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time.

7. The Company and the Sublessee, in recognition of the benefits provided under the terms of this Amended and Restated PILOT Agreement, including, but not limited to, the formula for payments in lieu of taxes set forth in Exhibit A hereto, and for as long as the Lease Agreement is in effect, expressly waive any rights they may have for any exemption under Section 485 or 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the General Municipal Law) with respect to the Facility. The Company and the Sublessee, however, reserve any such rights with respect to all special ad valorem levies, special assessments and service charges levied against the Facility as referred to in paragraph 1(e) and the Additional Facilities as referred to in paragraph 1(f) and with respect to the assessment and/or exemption of the Additional Facilities.

8. Reserved.

9. Except as otherwise provided herein, any notice required to be given by or under this Amended and Restated PILOT Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

The Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Chief Executive Officer

To the Company:

Six Roses LLC
72 Clare Rose Boulevard
Patchogue, New York 11772
Attention: Sean Rose, Managing Member

To the Sublessee:

Clare Rose, Inc.
72 Clare Rose Boulevard
Patchogue, New York 11772
Attention: Sean Rose, President

With copies for Company and Sublessee to:

William Garbarino, Esq.
40 Main Street
Sayville, New York 11782

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third business day after mailing.

10. Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Company and/or the Sublessee under this Amended and Restated PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Company's and/or the Sublessee's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any or all of the Company's and/or the Sublessee's obligations hereunder. No waiver, amendment, release or modification of this Amended and Restated PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company and/or the Sublessee or receipt by the Agency of a lesser amount than or different manner from the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Amended and Restated PILOT Agreement or otherwise provided at law or in equity.

11. This Amended and Restated PILOT Agreement shall become effective December 30, 2014. All taxes, assessments, special assessments, service charges, special ad valorem levies or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company and the Sublessee when due. Upon termination or expiration of the Lease Agreement and reconveyance of title to the Facility to the Company, this Amended and Restated PILOT Agreement shall terminate.

12. Whenever the Company and/or the Sublessee fail to comply with any provision of this Amended and Restated PILOT Agreement, the Agency may, but shall not be obligated to, take whatever action at law or in equity may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company and the Sublessee under this Amended and Restated PILOT Agreement. The Agency agrees to notify the Company and the Sublessee in writing of any failure by the Company and/or the Sublessee to comply with any provision of this Amended and Restated PILOT Agreement within thirty (30) business days after the Agency becomes aware of such failure and shall provide the Company and/or the Sublessee with the opportunity to cure such failure within thirty (30) days after receipt by the Company and the Sublessee of such notice.

13. This Amended and Restated PILOT Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without regard or reference to its conflict of laws principles.

14. The Company and the Sublessee agree to hold the Agency harmless from and against any liability arising from any default by the Company and/or the Sublessee in performing their respective obligations hereunder or any expense incurred under this Amended and Restated PILOT Agreement, including any expenses of the Agency, including, without limitation, attorneys' fees.

15. This Amended and Restated PILOT Agreement may be modified only by written instrument duly executed by the parties hereto.

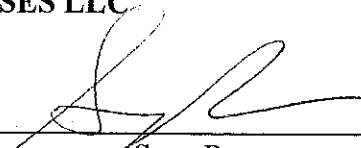
16. This Amended and Restated PILOT Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

17. If any provision of this Amended and Restated PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Amended and Restated PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

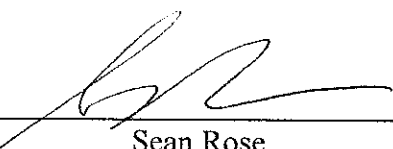
(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated PILOT Agreement as of the date first written above.

SIX ROSES LLC

By: 
Name: Sean Rose
Title: Managing Member

CLARE ROSE, INC.

By: 
Name: Sean Rose
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Lisa MG Mulligan
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated PILOT Agreement as of the date first written above.

SIX ROSES LLC

By: _____
Name: Sean Rose
Title: Managing Member

CLARE ROSE, INC.

By: _____
Name: Sean Rose
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**


By:  _____
Name: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT A

Formula for In-Lieu-of-Taxes Payment: Town of Brookhaven (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Suffolk County, Longwood Central School District and Appropriate Special Districts

Payment

<u>Year</u>	<u>PILOT Payment</u>
2015/2016	\$ 49,440.00
2016/2017	50,430.00
2017/2018	51,440.00
2018/2019	52,470.00
2019/2020	53,520.00
2020/2021	54,590.00
2021/2022	614,100.00
2022/2023	626,380.00
2023/2024	638,910.00
2024/2025	651,690.00
2025/2026	664,720.00
2026/2027	678,020.00
2027/2028	691,580.00
2028/2029	705,410.00
2029/2030	719,520.00
and thereafter	

EXHIBIT B

LEGAL DESCRIPTION OF REAL PROPERTY

PARCEL I

ALL that certain plot, piece or parcel of land, situate, lying and being at Ridge, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the southeasterly side of South Service Road of the Long Island Expressway S.R. 495 distant the following ten courses and distances from the southerly end of the arc of curve connecting the westerly side of William Floyd Parkway (C.R. 46A) and the southerly side of South Service Road;

- 1) North 63 degrees 01 minutes 04 seconds East, 2.00 feet;
- 2) southeasterly along the westerly side of William Floyd Parkway along the arc of a curve bearing to the right having a radius of 2788.79 feet a distance of 317.41 feet to a point;
- 3) South 20 degrees 27 minutes 40 seconds East still along the westerly side of William Floyd Parkway, 289.48 feet to the northwesterly side of a proposed 60 foot wide right of way easement;
- 4) South 75 degrees 26 minutes 00 seconds West, 225.93 feet to a point;
- 5) South 58 degrees 02 minutes 10 seconds West, 326.25 feet to a point;
- 6) Southwesterly along the arc of a curve to the right having a radius of 270.00 feet a distance of 137.82 feet to a point;
- 7) South 87 degrees 16 minutes 56 seconds West, 242.14 feet to a point;
- 8) Southwesterly along the arc of a curve to the left having a radius of 390.00 feet a distance of 199.07 feet to a point;
- 9) South 58 degrees 02 minutes 10 seconds West, 44.93 feet to a point;
- 10) North 36 degrees 02 minutes 00 seconds West, 959.09 feet to a point on the southeasterly side of South Service Road, the point or place of beginning;

THENCE South 36 degrees 02 minutes 00 seconds East, 959.09 feet to the northwesterly side of the proposed 60.00 foot wide right of way easement;

THENCE along the proposed 60.00 foot right of way easement, the following 4 courses and distances:

- 1) South 58 degrees 02 minutes 10 seconds West, 1362.89 feet to a point;
- 2) Southwesterly and northwesterly along the arc of a curve bearing to the right having a radius of 327.00 feet a distance of 490.43 feet to a point;

- 3) North 36 degrees 02 minutes 00 seconds West, 238.17 feet to a point;
- 4) northeasterly along the arc of a curve to the right having a radius of 327.00 feet a distance of 414.20 feet to the southeasterly side of the South Service Road as widened;

THENCE along the southeasterly side of the South Service Road the following 4 courses and distances:

- 1) North 53 degrees 58 minutes 00 seconds East, 1341.32 feet to a point;
- 2) northeasterly along the arc of a curve to the right having a radius of 770.00 feet a distance of 93.95 feet to the point or place of BEGINNING.

The above described premises is also show as Parcel 4 on the land division map filed June 12, 2009 in the Suffolk County Clerk's Office as Map No. A688



ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Elizabeth A. Wood
Paralegal
T 585-263-1391
ewood@nixonpeabody.com

Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604-1792
585-263-1000

January 6, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Ryan
Sole Assessor
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

RE: Town of Brookhaven Industrial Development Agency
(Six Roses LLC/Clare Rose, Inc. 2009 Facility)

Dear Mr. Ryan:

Enclosed, please find a completed Form RP 412-a Application for Real Property Tax Exemption with respect to the above-referenced transaction, which originally closed on August 25, 2009, and was amended and restated December 30, 2014 to include, in part certain improvements to the facility and the extension of the payments-in-lieu-of-taxes benefits.

Also enclosed are copies of (i) the Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of December 1, 2014 (the "**Amended and Restated PILOT Agreement**"), among the Town of Brookhaven Industrial Development Agency (the "**Agency**"), Six Roses LLC (the "**Company**") and Clare Rose, Inc. (the "**Sublessee**"), (ii) the Amended and Restated Recapture Agreement, dated December 30, 2014 (the "**Amended and Restated Recapture Agreement**"), among the Agency, the Company and the Sublessee, and (iii) the Amendment of Lease Agreement, dated December 30, 2014 (the "**Amendment of Lease**"), between the Company and the Agency, the Amended and Restated Recapture Agreement and a memorandum of Amendment to Lease have been submitted for recording in the Suffolk County Clerk's office.

Please contact us office should you have any questions. Thank you.

Very truly yours,

Elizabeth Wood

Elizabeth A. Wood
Paralegal

Enclosures

cc: Distribution List (w/enclosures)

Distribution List

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Steven Bellone
Suffolk County Executive
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788-0099

Hon. Edward R. Romaine
Town Supervisor
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

Dr. Michael R. Lonergan, DSW
Superintendent
Longwood Central School District
35 Yaphank-Middle Island Road
Middle Island, New York 11953

FIRST CLASS MAIL

Lisa MG Mulligan
Chief Executive Officer
Town of Brookhaven Industrial
Development Agency
One Independence Hill, 3rd Floor
Farmingville, New York 11738

Annette Eaderesto, Esq.
Town Attorney
Town of Brookhaven
One Independence Hill, 3rd Floor
Farmingville, New York 11738

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Mr. James Ryan
Sole Assessor
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

Article Number
(Transfer from service label) 7008 1830 0001 7087 6680

Form 3811, February 2004 0120 Domestic Return Receipt 70236/647 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 B. Received by (Printed Name) H. Lee Addressee
 C. Date of Delivery 2/20/05
 D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Hon. Steven Bellone
 Suffolk County Executive
 H. Lee Dennison Building
 100 Veterans Memorial Highway
 Hauppauge, New York 11788-0099

**U.S. Postal Service™
 CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$ 3.27
 Certified Fee 3.34
 Return Receipt Fee (Endorsement Required) 2.00
 Restricted Delivery Fee (Endorsement Required) 7.29
 Total Postage & Fees \$ 16.20

Sent To Mr. James Ryan
 Sole Assessor
 Town of Brookhaven
 One Independence Hill
 Farmingville, New York 11738

Postmark Here

70236/647

**U.S. Postal Service™
 CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$ 3.27
 Certified Fee 3.34
 Return Receipt Fee (Endorsement Required) 2.00
 Restricted Delivery Fee (Endorsement Required) 7.29
 Total Postage & Fees \$ 16.20

Sent To Hon. Steven Bellone
 Suffolk County Executive
 H. Lee Dennison Building
 100 Veterans Memorial Highway

Postmark Here

70236/647

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 B. Received by (Printed Name) H. Lee Addressee
 C. Date of Delivery 2/20/05
 D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

Postmark Here
70236/647

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dr. Michael R. Loneragan, DSW
 Superintendent
 Longwood Central School District
 35 Yaphank-Middle Island Road
 Middle Island, New York 11953

2. Article Number

7008 1830 0001 7087 6710

(Transfer from service label)

PS Form 3811, February 2004 0420 Domestic Return Receipt 70236(647) 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Edward R. Romaine Agent Address
- B. Received by (Printed Name) Edward R. Romaine C. Date of Delivery 1-27
- D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

**U.S. Postal Service™
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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$	3.97
Certified Fee	3.90
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	7.27
Total Postage & Fees \$	13.84

Sent To: Hon. Edward R. Romaine
 Town Supervisor
 Town of Brookhaven
 Street, Apt. No., One Independence Hill

Postmark Here

70236(647)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Edward R. Romaine
 Town Supervisor
 Town of Brookhaven
 One Independence Hill
 Farmingville, New York 14738

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Paul M. Loneragan Agent Address
- B. Received by (Printed Name) PAUL M. LONERAGAN C. Date of Delivery
- D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

**U.S. Postal Service™
 CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$	3.97
Certified Fee	3.90
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	9.27
Total Postage & Fees \$	13.84

Sent To: Dr. Michael R. Loneragan, DSW
 Superintendent
 Longwood Central School District
 Street, Apt. No., 35 Yaphank-Middle Island Road
 or PO Box No. Middle Island, New York 11953
 City, State, ZIP+4

PS Form 3811, February 2004 0420 Domestic Return Receipt 70236(647) 102595-02-M-1540

Postmark Here

70236(647)

7008 1830 0001 7087 6710



NYS BOARD OF REAL PROPERTY SERVICES

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Town of Brookhaven Industrial Development Agency
Street 1 Independence Hill, 3rd Floor
City Farmingville
Telephone no. Day () Evening ()
Contact Lisa MG Mulligan
Title Chief Executive Officer

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)
Six Roses Inc.
Name Clare Rose, LLC
Street 72 Clare Rose Boulevard
City Patchogue 11772
Telephone no. Day () Evening ()
Contact Sean Rose
Title President/Managing Member

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) District 0200 Section 584.00 Block 01.00 p/o 1.007
b. Street address SW cor LIE and William Floyd Parkway
c. City, Town or Village Brookhaven
d. School District Longwood Central School District
e. County Suffolk
f. Current assessment unavailable
g. Deed to IDA (date recorded; liber and page)

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) distribution center
b. Type of construction N/A
c. Square footage app. 269,567
d. Total cost N/A
e. Date construction commenced N/A
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) 12/31/2031

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment see attached "Amended and Restated PILOT Agreement"

- b. Projected expiration date of agreement 12/31/2031

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Suffolk</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Brookhaven</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village <u>Brookhaven</u>		
School District <u>Longwood Central</u>	<input checked="" type="checkbox"/>	

d. Person or entity responsible for payment

Name Sean Rose
 Title President and Managing Member
 Address 72 Clare Rose Boulevard
Patchogue 11772

e. Is the IDA the owner of the property? Yes/No (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement.

Telephone _____

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption Section 874(1) assessment roll year _____

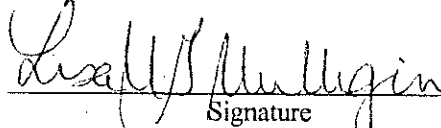
7. A copy of this application, including all attachments, has been mailed or delivered on 1/6/2015 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Lisa MG Mulligan, Chief Executive Officer of _____
 Name Title
Town of Brookhaven Industrial Development Agency hereby certify that the information
 Organization

on this application and accompanying papers constitutes a true statement of facts.

December 30, 2014
Date


Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

SIX ROSES LLC

and

CLARE ROSE, INC.

to

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF BROOKHAVEN, NEW YORK)

AMENDED AND RESTATED RECAPTURE AGREEMENT

Originally Dated as of August 1, 2009

Amended and Restated as of December 30, 2014

Town of Brookhaven Industrial Development Agency
(Amendment of Six Roses LLC/Clare Rose, Inc. Facility)

AMENDED AND RESTATED RECAPTURE AGREEMENT

THIS AMENDED AND RESTATED RECAPTURE AGREEMENT, made and entered into as of December 30, 2014 (this "**Amended and Restated Recapture Agreement**"), is from SIX ROSES LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its office at 72 Clare Rose Boulevard, Patchogue, New York 11772 (the "**Company**"), and CLARE ROSE, INC., a corporation duly organized and validly existing under the laws of the State of New York, having its office at 72 Clare Rose Boulevard, Patchogue, New York 11772 (the "**Sublessee**"), to the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "**Agency**").

WITNESSETH:

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

The aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**"); and

The aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

Pursuant to and in accordance with the provisions of the aforesaid act and Chapter 358 of the Laws of 1970 of the State, as amended (collectively, the "**Act**"), the Agency was created and is empowered to undertake the providing, financing and leasing of the Facility defined below; and

The Agency previously entered into a straight lease transaction on behalf of the Company consisting of the acquisition of an approximately 34 acre parcel of land located at the southwest corner of the Long Island Expressway and the William Floyd Parkway, Town of Brookhaven, Suffolk County, New York (further identified as Tax Map. No. 200-584-01-p/o 1.007) (the "**Land**"), and the construction and equipping thereon of an approximately 269,567 square foot building including, without limitation, the furnishing and equipping of corporate office and warehouse space (the "**Improvements**" and "**Equipment**"; and, together with the Land, the "**Original Facility**"), leased by the Agency to the Company and subleased by the Company to, and used by the Sublessee in its business as a distributor of

alcoholic and non-alcoholic beverages to major and independent chain grocery stores, local and chain restaurants and as a wholesale distributor for Anheuser-Busch products; and

The Agency leased the Original Facility to the Company pursuant to and in accordance with a certain Lease Agreement, dated as of August 1, 2009 (the "**Original Lease Agreement**"), between the Agency and the Company, and a Memorandum of Lease Agreement was to be recorded in the Suffolk County Clerk's office; and

The Company subleased the Original Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated July 20, 2009 (the "**Sublease Agreement**"), between the Company and the Sublessee, and a Memorandum of Sublease Agreement was to be recorded in the Suffolk County Clerk's office; and

In connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of August 1, 2009 (the "**PILOT Agreement**"), whereby the Company and the Sublessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

In connection with the leasing and the subleasing of the Original Facility, the Agency, the Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of August 1, 2009 (the "**Environmental Compliance and Indemnification Agreement**"), whereby the Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

The Agency previously consented to a request from the Company and the Sublessee related to the sub-subleasing by the Sublessee of a portion of the Original Facility to Environmental Resource Recycling, Inc., a New York business corporation (the "**Tenant**"); and

The Company and the Sublessee have now requested the Agency's assistance in connection with the improvement, reconstruction, repair, refurbishing, installation, furnishing and equipping of the Original Facility consisting of the acquisition, installation and equipping of a photovoltaic system on the roof of the Original Facility (the "**2014 Facility**"); and together with the Original Facility, the "**Facility**"; and

In connection with the 2014 Facility, the Agency and the Company intend to amend the Original Lease Agreement pursuant to the terms of the Amendment of Lease Agreement, dated as of December 30, 2014 (the "**Amendment to Lease Agreement**", and, together with the Original Lease Agreement, the "**Lease Agreement**") to reflect (i) that the definition of "Facility" in the Original Lease Agreement now includes the 2014 Facility, (ii) the extension of the term of the Original Lease Agreement; and (iii) the provision of sales and use tax exemptions with respect to the 2014 Facility; and

Contemporaneously with the execution and delivery of the Amendment of Lease Agreement, the Agency, the Company and the Sublessee intend to amend the Original Environmental Compliance and Indemnification Agreement pursuant to the terms of an

Amendment to Environmental Compliance and Indemnification Agreement, dated as of December 30, 2014 (the "**Amendment to Environmental Compliance and Indemnification Agreement Agreement**"), to reflect that the definitions of "Facility" in the Original Environmental Compliance and Indemnification Agreement include the 2014 Facility; and

Contemporaneously with the execution and delivery of the Amendment of Lease Agreement, the Agency, the Company and the Sublessee intend to amend and restate the Original PILOT Agreement, pursuant to the terms of an Amended and Restated PILOT Agreement, dated as of December 30, 2014 (the "**Amended and Restated PILOT Agreement**"), to provide for payments-in-lieu-of-taxes by the Company and the Sublessee with respect to the 2014 Facility; and

Contemporaneously with the execution and delivery of the Amendment of Lease Agreement, the Agency, the Company and the Sublessee amended and restated the Original Recapture Agreement, pursuant to the terms of an Amended and Restated Recapture Agreement, dated as of December 30, 2014 (the "**Amended and Restated Recapture Agreement**"), to include the 2014 Facility; and

The Agency has conferred on the Company and the Sublessee in connection with the acquisition, construction, equipping, financing and leasing of the Facility certain benefits, tax exemptions and other financial assistance more particularly described in Section 1(c) hereof, consisting of, among other things, sales and use tax exemptions on the acquisition, construction and equipping of the Facility, real property tax abatements (pursuant to the Amended and Restated PILOT Agreement) and mortgage recording tax exemptions on the recording of the Mortgages; and

The Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Amended and Restated PILOT Agreement and the Lease Agreement, that the Company and the Sublessee provide assurances with respect to the recapture of benefits granted under the Amended and Restated PILOT Agreement, the Lease Agreement and the other Agency agreements on the terms herein set forth;

AGREEMENT

1. Recapture of Agency Benefits. (a) It is understood and agreed by the parties hereto that the Agency is entering into the Amended and Restated PILOT Agreement and the Lease Agreement in order to provide financial assistance to the Company and the Sublessee for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company and the Sublessee hereby agree as follows:

- (i) If there shall occur a Recapture Event after December 30, 2014 but before the end of two (2) years thereafter, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

- (ii) If there shall occur a Recapture Event after the end of two (2) years but before the end of four (4) years thereafter, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy-five percent (75%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event after the end of four (4) years but before the end of six (6) years thereafter, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event after the end of six (6) years but before the end of eight (8) years thereafter, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event after December [], 2022, the Company and/or the Sublessee shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and other financial assistance, if any, derived from the Agency's participation in the transaction contemplated by the Amended and Restated PILOT Agreement, the sales or use tax exemptions and the Lease Agreement including, but not limited to, the amount equal to 100% of: any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency, sales or use tax exemptions and real property tax abatements granted under the Amended and Restated PILOT Agreement which amounts from time to time shall be payable directly to the Agency.

(c) The term "Recapture Event" shall mean any of the following events:

(1) A default by the Company and/or the Sublessee under the Amended and Restated PILOT Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(2) A default by the Company under the Lease Agreement or the occurrence and continuation of an Event of Default under the Lease Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(3) Any significant deviations from the information and data provided to the Agency in the Company and/or the Sublessee's application for financial assistance which would constitute a significant diminution of the Sublessee's activities in or commitment to the Town of Brookhaven; or

(4) Sale or closure of the Facility and/or departure of the Company or the Sublessee from the Town of Brookhaven; or

(5) Significant employment reductions not reflective of the Sublessee's business cycles and/or local, national and international economic conditions or the failure of the Sublessee to materially fulfill its requirement to create or maintain one hundred seventy seven (177) full time equivalent ("FTE") employees at the Facility upon the completion of the Facility and at least on hundred seventy seven (177) FTE employees at the Facility commencing on the second anniversary of the completion of the Facility and continuing thereafter for the term of the Lease Agreement and the Amended and Restated PILOT Agreement. FTE shall mean the number of employees of the Sublessee calculated on a 37.5 hours per week basis.

(6) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date or the Company and the Sublessee shall close the Facility.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or part of the Facility, or (ii) the inability at law of the Company and/or the Sublessee after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company, the Sublessee or any of their respective affiliates so long as the Company, the Sublessee or any of their respective affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(d) The Company and the Sublessee covenant and agree to furnish the Agency with written notification within thirty (30) days of learning of any Recapture Event during the term of this agreement, which notification shall set forth the terms of such Recapture Event.

(e) In the event any payment owing by the Company and/or the Sublessee under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to ten percent (10%) per annum until the Company and/or the Sublessee shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(f) The Agency shall be entitled to deduct all expenses of the Agency, including without limitation, legal fees, incurred with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Agency pursuant to this Recapture Agreement.

2. Obligations Unconditional.

(a) The obligations of the Company and the Sublessee under this Amended and Restated Recapture Agreement shall be absolute and unconditional and shall remain in full

force and effect until the Amended and Restated PILOT Agreement and the Lease Agreement have expired or been terminated, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, whether or not with notice to or the consent of the Company and the Sublessee.

(b) It is hereby expressly agreed that the Sublessee's obligations under this Amended and Restated Recapture Agreement are not limited in any manner, and the Sublessee shall be liable for the payment of all recapture amounts with respect to the entire Facility.

(c) It is hereby also expressly agreed that the Company's obligations under this Amended and Restated Recapture Agreement are not limited in any manner, and the Company shall be liable for the payment of all recapture amounts with respect to the entire Facility.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Agency shall have no obligations to re-convey the Facility to the Company pursuant to the Lease Agreement until all payments to the Agency and the Town under Sections 5.3, 11.2 and 11.3 of the Lease Agreement, under the Amended and Restated PILOT Agreement and hereunder have been paid in full.

4. Recordation of Recapture Agreement. The parties hereto agree that this Amended and Restated Recapture Agreement shall be recorded as a lien against the Facility and as a covenant and restriction running with the Land until this Amended and Restated Recapture Agreement has been discharged by the Agency. The lien of this Amended and Restated Recapture Agreement shall be subordinate to the Mortgage and any and all modifications, amendments, renewals and extensions thereof with respect to all amounts other than the mortgage recording tax and property tax abatements.

5. Terms Defined. All of the capitalized terms used in this Amended and Restated Recapture Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

6. Directly or Indirectly. Where any provision in this Amended and Restated Recapture Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7. Survival. All warranties, representations, and covenants made by the Company and the Sublessee herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Amended and Restated Recapture Agreement to the Agency regardless of any investigation made by the Agency.

8. Binding Effect. This Amended and Restated Recapture Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

9. Notices. All notices, certificates and other communications under this Amended and Restated Recapture Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, return receipt requested, postage prepaid, and addressed as follows or to such other address as any party may specify in writing to the other:

To the Company:

Six Roses LLC
72 Clare Rose Boulevard
Patchogue, New York 11772
Attn: Sean Rose, Class A Manager

To the Sublessee:

Clare Rose, Inc.
72 Clare Rose Boulevard
Patchogue, New York 11772
Attn: Sean Rose, President

With copies for Company and Sublessee to:

William Garbarino, Esq.
40 Main Street
Sayville, New York 11782

To the Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attn: Chief Executive Officer

A duplicate copy of each communication hereunder by the Company or the Sublessee shall be given to the Agency.

10. Entire Understanding; Counterparts. This Amended and Restated Recapture Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. No amendment, change, modification, alteration or termination of this Amended and Restated Recapture Agreement shall be made except in writing upon the written consent of the Company, the Sublessee and the Agency.

12. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Amended and Restated Recapture Agreement or the

application thereof shall not affect the validity or enforceability of the remaining portions of this Amended and Restated Recapture Agreement or any part thereof.

13. Governing Law. This Amended and Restated Recapture Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

14. Section Headings. The headings of the several Sections in this Amended and Restated Recapture Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Amended and Restated Recapture Agreement.

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