

Date: April 19, 2017

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held at 1 Independence Hill, Farmingville, New York 11738 on the 19th day of April, 2017, the following members of the Agency were:

Present: Frederick C. Braun, III
Martin Callahan
Felix J. Grucci, Jr.
Michael Kelly
Gary Pollakusky
Ann-Marie Scheidt

Recused:

Absent: Scott Middleton

Also Present: Lisa M. G. Mulligan, Chief Executive Officer

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on the authorization of proposed mortgage financing and the execution of related loan documents in connection with a certain industrial development facility more particularly described below (Six Roses LLC/Clare Rose, Inc. Facility) and approving the execution and delivery of related documents.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

Braun

Callahan

Grucci

Kelly

Pollakusky

Scheidt

RESOLUTION OF THE TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A
MORTGAGE FINANCING AND THE EXECUTION AND
DELIVERY OF LOAN DOCUMENTS IN CONNECTION
THEREWITH FOR THE SIX ROSES LLC/CLARE ROSE, INC.
FACILITY AND APPROVING THE FORM, SUBSTANCE,
EXECUTION AND DELIVERY OF SUCH RELATED
DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as the same may be amended from time to time (collectively, the "**Act**"), the Town of Brookhaven Industrial Development Agency (the "**Agency**"), was created with the authority and power among other things, to assist with certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency has previously entered into a transaction with Six Roses LLC, a limited liability company organized and existing under the laws of the State of New York (the "**Company**"), in which the Agency assisted in 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 "**Facility**"), as leased by the Agency to the Company and subleased by the Company to, and used by Clare Rose, Inc., a corporation organized and existing under the laws of the State of New York (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 for further sub-sublease in part by the Sublessee to Environmental Resource Recycling, Inc., a New York business corporation (the "**Environmental Resource**"); and

WHEREAS, the Agency currently leases the Facility to the Company pursuant to a Lease Agreement, dated as of August 1, 2009, as amended by the Amendment to Lease Agreement, dated as of December 30, 2014 (collectively, the "**Lease Agreement**"), by and between the Agency, as lessor, and the Company, as lessee; and

WHEREAS, the Company currently subleases the Facility to the Sublessee pursuant to the Lease Agreement, dated as of July 20, 2009 (the "**Sublease Agreement**"), by and between the Company, as sublessor, and the Sublessee, as sublessee; and

WHEREAS, the Company and the Agency previously mortgaged their respective interests in the Facility to Wells Fargo Bank, National Association ("**Wells Fargo**"), as administrative agent for the benefit of Wells Fargo, JPMorgan Chase Bank, N.A. ("**Chase**"; and together with Wells Fargo, N.A., the "**Banks**") and certain other secured parties (the "**Secured Parties**"; and together with the Banks, the "**Lenders**") pursuant to (i) an

Acquisition Loan Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated August 25, 2009 (the "**Acquisition Loan Mortgage**"), from the Company and the Agency to Wells Fargo, securing an aggregate principal amount of \$8,650,000 (ii) a Building Loan Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated August 25, 2009 (the "**Building Loan Mortgage**"), from the Company and the Agency to Wells Fargo, securing an aggregate principal amount of \$25,550,000 and (iii) a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated August 25, 2009 (the "**Guaranty Mortgage**"; and, together with the Acquisition Loan Mortgage and the Building Loan Mortgage, the "**Prior Mortgages**"), from the Company and the Agency to Wells Fargo, securing an aggregate principal amount of \$10,300,000 which Mortgages were intended to be recorded in the office of the Clerk of Suffolk County, New York; and

WHEREAS, the Company has requested the Agency's consent to the Company obtaining a new loan in the approximate amount of \$7,000,000 (the "**2017 Loan**") and entering into such mortgage documents as may be required by the Lenders, or such other lender as may be determined (the "**2017 Lender**"), to finance the costs of the acquisition, construction and equipping the Facility; and

WHEREAS, further, the Company has requested the Agency's consent to enter into a refinancing with the 2017 Lender, with respect to the Facility including a new mortgage in the approximate amount of \$7,000,000 to be consolidated with the Prior Mortgages to form a consolidated mortgage in the amount of \$26,500,000 (the "**2017 Refinancing**"); and

WHEREAS, as security for such 2017 Loan being made to the Company by the 2017 Lender, the Company has submitted a request to the Agency that it join with the Company in executing and delivering to the 2017 Lender one or more mortgages and such other loan documents, satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably requested by the 2017 Lender (the "**2017 Loan Documents**"); and

WHEREAS, the Agency contemplates that it will not provide financial assistance to the Company in the form of exemptions from mortgage recording taxes; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York;

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the financing or refinancing of the Facility and the continued leasing and subleasing of the Facility.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.
- (b) The Facility continues to constitute a “project”, as such term is defined in the Act.
- (c) The refinancing of the acquisition, construction and equipping of the Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven, Suffolk County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.
- (d) The refinancing of the acquisition, construction and equipping of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.
- (e) Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.
- (f) It is desirable and in the public interest for the Agency to assist in the refinancing of the acquisition, construction and equipping of the Facility.
- (g) The 2017 Loan Documents will be effective instruments whereby the Agency and the Company agree to secure the 2017 Loan to the 2017 Lender.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) grant a mortgage on and security interest in and to the Facility pursuant to a certain mortgage and security agreement for the benefit of the 2017 Lender (the “**2017 Mortgage**”), provided, however, that the Agency shall not grant a mortgage recording tax exemption for the 2017 Mortgage to which the Agency is a party, (ii) execute, deliver and perform the 2017 Mortgage, (iii) execute, deliver the 2017 Loan Documents, and (iv) execute, deliver and perform such other related documents, that the Agency is a party, as may be necessary or appropriate to effect the 2017 Loan or any subsequent refinancing of the 2017 Mortgage.

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the 2017 Mortgage and the 2017 Loan Documents and such other related documents as may be necessary or appropriate to effect the 2017 Loan, or any subsequent refinancing of the 2017 Loan, and all acts heretofore taken by the Agency with respect to such financing or refinancing are hereby approved, ratified and confirmed.

Section 4. Subject to the provisions of this resolution and the Lease Agreement:

(a) the Chairman, Chief Executive Officer, and all other members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the 2017 Mortgage and the 2017 Loan Documents, together with such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval; and

(b) the Chairman, Chief Executive Officer, and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 5. Subject to the provisions of this resolution and the Lease Agreement, the officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 6. Any expenses incurred by the Agency with respect to the financing or refinancing of the Facility shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the financing or refinancing of the Facility.

Section 7. This resolution shall take effect immediately.

ADOPTED: April 19, 2017

ACCEPTED: _____ 2017

SIX ROSES LLC

By: _____
Name:
Title:

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

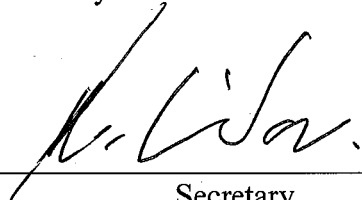
I, the undersigned Secretary of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on April 19, 2017, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings is in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 19th day of April, 2017.

By: 
Secretary