

**60 Crossways/Hornell Brewing –  
Inducement/Approving Resolution**

A regular meeting of the Nassau County Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at Theodore Roosevelt County Executive & Legislative Building, 1550 Franklin Avenue, Suite 235, Mineola, New York on December 3, 2010, at 8:00 a.m., local time.

The meeting was called to order by the Secretary and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Jeffrey L. Seltzer	Chair
Louis Savinetti	Vice Chair
Bruce Ungar	Treasurer
Gary Weiss	Secretary
Christopher Fusco	Asst. Secretary

**THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:**

Joseph J. Kearney, Esq.	Executive Director
Colleen Pereira	Administrative Director
Andras D. Komaromi, Esq.	Special Counsel
Milan K. Tyler, Esq.	Special Counsel
Paul O’Brian, Esq.	Special Counsel
Edward A. Ambrosino, Esq.	Agency Counsel

The attached resolution no. 2010-29 was offered by Gary Weiss, seconded by Louis Savinetti:

Resolution No. 2010-29

RESOLUTION TAKING OFFICIAL ACTION TOWARD APPROVING A CERTAIN PROJECT AND FINANCIAL ASSISTANCE FOR 60 CROSSWAYS, LLC AND HORNELL BREWING COMPANY, INC., AND APPROVING THE AMENDMENT OF AN EXISTING PAYMENT IN LIEU OF TAXES AGREEMENT AND CERTAIN RELATED TRANSACTION DOCUMENTS AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of civic, manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, 60 Crossways, LLC a limited liability company organized and existing under the laws of the State of New York (the "Company"), and Hornell Brewing Co., Inc., a corporation organized and existing under the laws of the State of New York (the "Sublessee" and together with the Company, collectively, the "Applicants"), presented an application (the "Application") to the Agency, which application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 3 acre parcel of land located at 60 Crossways Park Drive, Woodbury, Town of Oyster Bay, County of Nassau, New York (collectively, the "Land"), (2) the construction of an approximately 100,000 square foot office building on the Land (collectively, the "Building"), together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Sublessee as its corporate headquarters (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (together with the Bonds, collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency and the sublease of the Project Facility by the Company to the Sublessee; and

WHEREAS, the Agency has appointed the Company as agent of the Agency to undertake the acquisition, renovation, construction and installation of the Project Facility and the Agency has leased the Project Facility to the Company, all pursuant to the terms and conditions set forth in the Lease Agreement dated as of July 1, 2007 between the Company and the Agency (as amended, modified, supplemented or restated to date, the "Lease"), the Sublease Agreement dated as of July 1, 2007 between the Company and the Sublessee (as amended, modified, supplemented or restated to date, the "Sublease"), the Project Agreement (appointing the Sublessee as such agent) dated as of January 1, 2007 between the Agency and the Sublessee (as amended, modified, supplemented or restated to date, the "Project Agreement") and the other Transaction Documents (as defined in the Lease); and

WHEREAS, on or about September 23, 2010, the Company and the Sublessee presented an application to the Agency (the "2010 Application"), which 2010 Application requested that the Agency consider undertaking an internal expansion of the Project (the "Expansion Project") consisting of the following: (A) the internal expansion and partial renovation of a not to exceed 35,000 square foot portion of the Building, including the acquisition and installation therein of certain furniture, fixtures, machinery and equipment, to serve as an executive and sales conference center, within the Sublessee's corporate headquarters, (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and real property taxes (but not including special assessments and ad valorem levies) in the form of an amendment to the existing Payment in Lieu of Taxes Agreement, dated July 1, 2007 by and among the Agency, the Company and the Sublessee (the "PILOT Agreement") (collectively, the "Additional Financial Assistance"); and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Expansion Project is contingent upon, *inter alia*, a determination by the members of the Agency to proceed with the Expansion Project following a determination by the Agency that (i) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Expansion Project have been satisfied, and (ii) the undertaking of the Expansion Project by the Agency and the granting of the Additional Financial Assistance are and will be in compliance with all other applicable requirements of SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Expansion Project (collectively, the "Applicable Laws"); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Expansion Project and the Additional Financial Assistance contemplated by the Agency with respect to the Expansion Project, to be mailed on November 22, 2010 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Project Facility is or is to be located, (B) caused notice of the Public Hearing to be published on November 22, 2010 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the Town of Oyster Bay and the County of Nassau, New York, (C) caused a public hearing to be held, which was conducted by the Chief Financial Officer of the Agency on December 2, 2010 at

8:00 a.m., local time, at the Town Hall, 54 Audrey Avenue, Town of Oyster Bay, Nassau County, New York, and (D) caused a report of the Public Hearing to be prepared (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, the proposed exemption from real property taxes would represent a deviation from the Agency's uniform tax exemption policy and guidelines; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on November 22, 2010 to the chief executive officer of each affected tax jurisdiction, and (B) conducted the IDA Meeting on December 3, 2010, and the Executive Director of the Agency and/or Chief Financial Officer of the Agency reviewed and responded to any comments or correspondence received from the affected tax jurisdictions at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy and approved the proposed deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Applicants and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted on the date hereof, the Agency decided to undertake an uncoordinated review of the Expansion Project, and determined that the Expansion Project will not have a significant effect on the environment; and

WHEREAS, the Agency now desires to make its determination to proceed with the Expansion Project and grant the Additional Financial Assistance and approve an amendment to the Lease, the Sublease, the Project Agreement, the PILOT Agreement and certain of the Transaction Documents; and

WHEREAS, the Applicants will execute and deliver, or cause to be executed and delivered, (A) a Second Amendment to Lease Agreement (the "Second Amendment to Lease") between the Agency, as lessor, and the Company, as lessee, (B) an Amendment to Sublease Agreement (the "Amendment to Sublease") between the Company, as sublessor, and Sublessee, as sublessee, (C) a Second Amendment to Project Agreement ("Second Amendment to Project Agreement") between the Agency and the Sublessee, (D) cause to be executed and delivered a certain Ratification and Reaffirmation of Environmental Compliance and Indemnification Agreement (the "Ratification of Environmental Indemnification") from the Applicants, (E) cause to be executed and delivered by the Sublessee ("Gurantor"), a Ratification and Reaffirmation of Guaranty – Lease Agreement (the "Ratification of Lease Guaranty") from the Gurantor in favor of the Agency, (F) cause to be executed and delivered by the Gurantor, a Ratification and Reaffirmation of Guaranty – Project Agreement (the "Ratification of Project Guaranty") from the Gurantor in favor of the Agency (G) execute and deliver an Amendment to Payment in Lieu of Taxes Agreement (the "Amendment to PILOT Agreement") between the Applicants and the Agency, and (H) execute and deliver other

certificates, documents, instruments and agreements related to the Expansion Project (collectively with the foregoing, the “Amended Transaction Documents”);

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency has reviewed the Application and the Report and based upon the representations made by the Applicants to the Agency, the Agency hereby makes the following findings and determinations with respect to the Expansion Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the beneficial economic and social effects of the Expansion Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Expansion Project, the Expansion Project will constitute a commercial facility and, therefore, the Expansion Project constitutes a “project” within the meaning of the Act;

(b) the granting by the Agency of the Additional Financial Assistance with respect to the Expansion Project will be an inducement to the Applicants to undertake the Expansion Project in Nassau County, New York;

(c) the completion of the Expansion Project at the Project Facility by the Agency, the lease thereof by the Agency to the Company, the subleasing thereof by the Company to the Sublessee, and the operation thereof by the Company and/or the Sublessee (i) will not result in the removal of a facility or plant of the Company, the Sublessee or any other lessee, sublessee or other proposed occupant of the Project Facility from one area of the State to another area of the State (other than relocations within the County), (ii) will not result in the abandonment of one or more plants or facilities of the Company, the Sublessee or any other lessee, sublessee or other proposed occupant of the Project Facility located in the State (other than in the County), and (iii) is reasonably necessary to discourage the Applicants from removing its facility or plant to a location outside the State;

(d) the Expansion Project does not and will not constitute a project where facilities or properties that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Expansion Project;

(e) the Expansion Project will serve the public purposes of the Act by preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Expansion Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Expansion Project to any group or organization that is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for

advertising or promotional materials which depict elected or appointed government officials in either print or electronic media; and

(g) the granting of the Additional Financial Assistance by the Agency with respect to the Expansion Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York and the State and improve their standard of living, and thereby serve the public purposes of the Act.

Section 2. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director, the Chief Financial Officer, and the staff of the Agency with respect to the Application, the Public Hearing and the IDA Meeting, including, without limitation, (i) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Expansion Project, and (ii) the appointment of the law firm of Harris Beach PLLC, New York, New York, as Special Counsel to the Agency with respect to all matters in connection with the Expansion Project.

Section 3. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Expansion Project.

Section 4. Having considered fully all comments received at or in connection with the Public Hearing, the Agency hereby further determines to proceed with the Expansion Project and the granting of the Additional Financial Assistance, subject to the terms hereof.

Section 5. The Agency hereby approves the Applicants as the recipients of the Additional Financial Assistance, provided that the Applicants and the Guarantor shall continue to guaranty the obligations of the Applicants under the Lease, Sublease and other Transaction Documents as set forth in the Guaranty and Environmental Indemnification.

Section 6. The Agency is hereby authorized to grant the Additional Financial Assistance and to do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 7. The form and substance of the Second Amendment to Lease, the Second Amendment to Sublease, the Second Amendment to Project Agreement, the Ratification of Environmental Indemnification, the Ratification of Lease Guaranty, the Ratification of Project Guaranty, the Amendment to PILOT Agreement, and the other Amended Transaction Documents, in the forms previously presented to the members of the Agency, together with such non-material changes as the Chair, the Vice Chair or the Executive Director may hereafter deem necessary or appropriate, are hereby approved. The Chair, the Vice Chair and the Executive Director are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Lease and the other Amended Transaction Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 8. The Chair, the Vice Chair and the Executive Director of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Lease) of the Agency.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, 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 Amended Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to 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, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Amended Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 10. The Chair, the Vice Chair and the Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicants and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 11. This Resolution shall take effect immediately.

ADOPTED: December 3, 2010

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Jeffrey L. Seltzer	VOTING	AYE
Louis Savinetti	VOTING	AYE
Bruce Ungar	VOTING	AYE
Gary Weiss	VOTING	AYE
Christopher Fusco	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted.



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

I, the undersigned Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 3, 2010 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 3rd day of December, 2010.

  
\_\_\_\_\_  
Secretary

(SEAL)