

FINAL RESOLUTION

(Darien Lake Holdings, LLC d/b/a Darien Lake Theme Park Resort Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, October 26, 2017.

The following resolution was duly offered and seconded, to wit:

Resolution No. 10/2017 - 05

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY ON OCTOBER 23, 2017, WITH RESPECT TO THE DARIEN LAKE HOLDINGS, LLC D/B/A DARIEN LAKE THEME PARK RESORT (THE "COMPANY") PROJECT (AS DEFINED BELOW), (ii) AUTHORIZING FINANCIAL ASSISTANCE FOR THE BENEFIT OF THE COMPANY IN THE FORM OF A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; AND (iii) AUTHORIZING THE EXECUTION BY THE AGENCY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, NYS FORM ST-60, BILL OF SALE AND 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 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **DARIEN LAKE HOLDINGS, LLC d/b/a DARIEN LAKE THEME PARK RESORT**, for itself or on behalf of an entity formed by it or on its behalf (the "Company"), previously submitted an application (the "Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project (the "Project") consisting of the acquisition and installation at the Company's existing recreational theme park and camping resort located at 9993 Allegheny Road, Genesee County, New York (the "Facility"), of a new ride and its related items of equipment, machinery and other tangible personal property (collectively, the "Equipment"); and

WHEREAS, pursuant to Article 18-A of the Act the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of undertaking the Project, (ii) negotiate and enter into an agent, financial assistance and project agreement (the "Agent Agreement") and related documents, and (iii) provide financial assistance (the "Financial Assistance") to the Company in the form of a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project; and

WHEREAS, on October 5, 2017, the Agency adopted a resolution (the "Initial Resolution") (i) accepting the Application, (ii) directing that a public hearing be held, (iii) making a determination pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), and (iv) determining that the Project constitutes a "tourism destination" as defined in Section 862(2) of the Act; and

WHEREAS, pursuant to Section 859-a of the Act, on Monday, October 23, 2017, at 4:00 p.m., local time, at the Darien Town Hall, 10569 Alleghany Road, Darien Center, New York 14040, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; a copy of the Notice of Public Hearing published in *The Daily News*, the affidavit of publication of such newspaper, and Minutes of the Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Agent Agreement and related documents have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Public Hearing held by the Agency on October 23, 2017, concerning the Project and the Financial Assistance was duly held in accordance with the Act, including but not limited to the giving of at least ten (10) days published notice of the Public Hearing (such notice also being provided to the Chief Executive Officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 2. The Agency is hereby authorized to provide to the Company the Financial Assistance in the form of a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project.

Section 3. Based upon representations and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project, that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$4,500,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$360,000.00**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being

provided with appropriate documentation detailing the additional purchases of property or services. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. Subject to the Company executing the Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, reconstruct, renovate and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on **December 31, 2018** (*unless extended for good cause by the President/CEO of the Agency*).

Section 5. The Chairman, Vice Chairman, President/CEO and/or the Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute the Agent Agreement, a NYS Form ST-60, "IDA Appointment of Project Operator or Agent", bill of sale (the "Bill of Sale") and related documents.

Section 6. 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 and to execute and deliver all such certificates, instruments 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, desirable and proper to effect the purposes of the foregoing

resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 7. These Resolutions shall take effect immediately upon adoption.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Paul Battaglia	[X]	[]	[]	[]
Peter Zeliff	[]	[]	[X]	[]
John L. Rizzo	[X]	[]	[]	[]
Michael Davis	[]	[]	[X]	[]
Todd Bender	[X]	[]	[]	[]
Craig Yunker	[X]	[]	[]	[]
Matthew Gray	[X]	[]	[]	[]

The Resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION

(Darien Lake Holdings, LLC d/b/a Darien Lake Theme Park Resort Project)

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

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

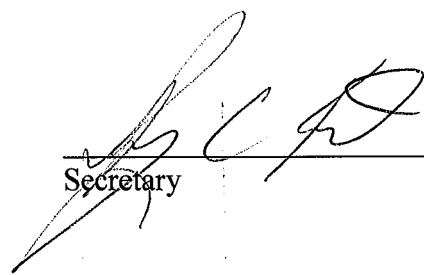
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on October 26, 2017, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 26th day of October, 2017.



Secretary