

## FINAL RESOLUTION

*(Six Flags Darien, LLC Project – New Attraction for 2020 Season)*

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, October 3, 2019.

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

Resolution No. 10/2019 - 01

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 2, 2019, WITH RESPECT TO THE SIX FLAGS DARIEN, LLC PROJECT (AS DEFINED BELOW), (ii) AUTHORIZING FINANCIAL ASSISTANCE FOR THE BENEFIT OF SIX FLAGS DARIEN, LLC IN THE FORM OF A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE PROJECT; AND (iii) AUTHORIZING THE EXECUTION BY THE AGENCY OF A 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, **SIX FLAGS DARIEN, LLC** (the "Company") previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of the acquisition and installation of certain machinery, equipment and other items of tangible personal property (the "Equipment") at the Company's existing recreational theme park and camping resort at 9993 Alleghany Road, Genesee County, New York, for the purpose of constructing a waterslide ride where up to four (4) riders board a tube and plummet down a twisting slide (the "Facility"); 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 a Project Agreement (the "Project 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 and installation of the Equipment; and

WHEREAS, by resolution adopted by the Agency on September 5, 2019, the Agency adopted a resolution (the "Initial Resolution") (i) authorizing a Public Hearing (as defined below) with respect to the Project, (ii) making a determination under 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 (iii) determining that the Project constitutes a "tourism destination" as defined in Section 862(2) of the Act; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on Wednesday, October 2, 2019, at 4:00 p.m., local time, at Darien Town Hall, 10569 Alleghany Road, Darien Center, New York 14040, the Agency held a public hearing (the "Public Hearing") with respect to the Project and the proposed Financial Assistance being contemplated by the Agency, whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of the Public Hearing together with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions ten (10) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, pursuant to Article 18-A of the Act the Agency desires to adopt a resolution approving the Project and the Financial Assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, the Project Agreement, NYS Form ST-60 and Bill of Sale 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 Wednesday, October 2, 2019, at 4:00 p.m., local time, at Darien Town Hall, 10569 Alleghany Road, Darien Center, New York 14040, 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 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 the representation and warranties made by the Company the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **\$1,575,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$126,000**. 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, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. 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; (iv) the Company has made a material false statement on its application for financial assistance; (v) 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; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and 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 (collectively, items (i) through (vi) hereby defined as a "Recapture Event").

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits, if applicable, and/or real property tax abatements abatement benefits, if applicable, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. Subject to the Company executing the Project Agreement and delivering to the Agency 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 undertaking of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct 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 Project Agreement shall expire on **June 30,**

2020 (unless extended for good cause by the President/CEO of the Agency).

Section 6. 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 execute the Project Agreement, a NYS Form ST-60, "IDA Appointment of Project Operator or Agent", and bill of sale (the "Bill of Sale") and related documents in connection with the Project for the purposes of providing the Company with the Financial Assistance.

Section 7. 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 8. 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 ]	[ ]	[ ]	[ ]
Craig Yunker	[ X ]	[ ]	[ ]	[ ]
Matthew Gray	[ X ]	[ ]	[ ]	[ ]
Todd Bender	[ ]	[ ]	[ X ]	[ ]
Andrew Young	[ X ]	[ ]	[ ]	[ ]
Amy Vanderhoof	[ X ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

CERTIFICATION

*(Six Flags Darien, LLC Project – New Attraction for 2020 Season)*

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:

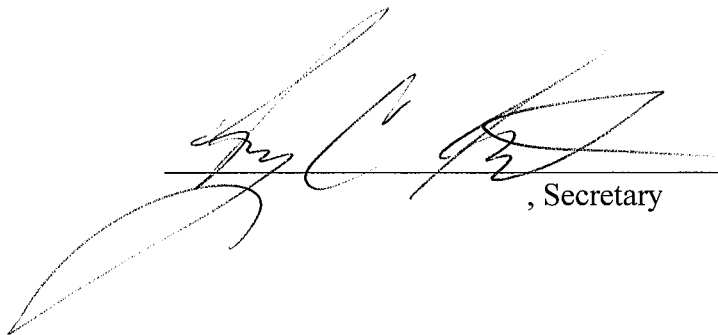
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on October 3, 2019, with the original thereof on file in the Agency's offices, 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 3<sup>rd</sup> day of October, 2019.

  
\_\_\_\_\_, Secretary

**Exhibit A**

[Notice Documents with Respect to Public Hearing Held by the Agency  
on October 2, 2019]

- Notice of Public Hearing and Notice Letter
- Evidence of Mailing Notice of Public Hearing and Notice Letter
  - Affidavit of Publication of the *Daily News*
    - Minutes of Public Hearing