

Motion By:

Seconded By:

L. Bolzner  
R. King

RESOLUTION

(Keeler Park Community Partners, L.P. Project)

OSC Code 2602-21-066A

A regular meeting of the County of Monroe Industrial Development Agency (the "Issuer"), was held via Zoom on December 21, 2021 at 12:00 p.m.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY (1) TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF UP TO \$70,000,000 PRINCIPAL AMOUNT TAX-EXEMPT REVENUE BONDS FOR THE PURPOSE OF FINANCING A CERTAIN PROJECT (AS SET FORTH BELOW) FOR THE BENEFIT OF KEELER PARK COMMUNITY PARTNERS, L.P.; (2) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE ISSUER WITH RESPECT TO SUCH PROJECT; AND (3) ACKNOWLEDGING A PUBLIC HEARING WITH RESPECT TO SUCH FINANCING AND THE UNDERTAKING OF SUCH PROJECT.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the County of Monroe Industrial Development Agency (the "Issuer") was created with the authority and power among other things, 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, the Act authorizes and empowers the Issuer to issue its tax-exempt revenue bonds to promote, develop, encourage and assist projects such as the Project (as hereinafter defined) and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, **KEELER PARK COMMUNITY PARTNERS, L.P.**, a New York limited partnership, for itself or an entity formed or to be formed, the general partner of which will be Keeler Park GP, LLC, a California limited liability company (collectively, the "Company") has requested that the Agency assist with a certain Project (the "Project"), consisting of: (A) the acquisition of a leasehold interest in an approximately 5.90-acre parcel of land located at 501-601 Seneca Manor Drive in the City of Rochester, Monroe County, New York 14621 (the "Land"), together with the two (2) existing sixteen (16) story, 526-unit affordable housing complexes thereon (the "Existing Improvements"); (B)(i) the renovation, refurbishment and upgrading of the Existing Improvements, including, but not limited to, new kitchens, bathrooms, flooring, lighting, roof and façade; and (ii) upgrades to the HVAC system, balconies and elevators; (iii) repaving of

the parking lot; and (iv) related amenities and improvements (collectively, the "Improvements"); (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment, fixtures, furniture and other incidental tangible personal property (collectively, the "Equipment", and together with the Land, the Existing Improvements and the Improvements, the "Facility"); (D) the payment of all or a portion of the costs of issuing the Bonds, credit enhancement fees relating to the Bonds, if any, funding a debt service reserve fund, if any, and capitalized interest, if any; and (E) the retention by the Issuer of a leasehold or other interest in the Facility and the lease or sale of the Issuer's interest in the Facility back to the Company pursuant to an agreement which shall require the Company to make payments sufficient to fund the debt service payments on the Bonds and make certain other payments. All of the facilities financed and/or refinanced with the Bonds are or will be owned and/or operated by the Company, and are or will be located at 501-601 Seneca Manor Drive in the City of Rochester, Monroe County, New York 14621; and

WHEREAS, the Issuer is contemplating providing financial assistance to the Company with respect to the Project (collectively, the "Financial Assistance") in the form of: (1) the issuance of the Bonds in an amount not to exceed \$70,000,000, (2) an exemption from all New York State and local sales and use taxes with respect to the qualifying personal property included within the Facility or used in reconstruction, renovation, refurbishment and equipping of the Facility, (3) a partial exemption from New York State and local mortgage recording taxes, as permitted by New York State law, with respect to any qualifying mortgage on the Facility (or such interest in the Facility as is conveyed to the Issuer) to secure the Bonds and (iv) a partial real property tax abatement, all consistent with the policies of the Issuer; and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Bonds will not be excluded from gross income for federal income tax purposes unless the issuance of the Bonds is approved by the "applicable elected representative" of Monroe County, New York (the "County") after a public hearing has been held on the Project (the "Public Hearing"); and

WHEREAS, prior to the Public Hearing, notice of the hearing was published in the Democrat and Chronicle on Sunday, December 5, 2021, as required by Section 147(f) of the Code and pursuant to Section 859-a and the Act, and such public notice complied with all requirements of the Code and the Act; and

WHEREAS, pursuant to Section 859-a of the Act, on Thursday, December 16, 2021, at 10:00 a.m., local time, at the Offices of the Issuer, 50 West Main Street, Business Center, Rochester, New York 14614, the Issuer held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Issuer, whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, the Company has agreed to indemnify the Issuer against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the issuance of the Bonds and the financing of the Project; and

WHEREAS, the Issuer reasonably expects that it will (1) pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Bonds, (2) use funds from sources other than proceeds of the Bonds which are or will be available on a short-term basis to

pay for such capital expenditures, and (3) reimburse itself for the use of such funds with proceeds of the Bonds; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the New York Environmental Conservation Law and the regulations adopted pursuant thereto including those identified at 6 N.Y.C.R.R. Part 617.1 et seq., as amended (collectively referred to as "SEQRA"), the Issuer, as necessary, must undertake an environmental review of certain actions including funding of the Project to determine if same will have an impact on the environment prior to making a final determination as to whether to undertake the Project; and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Issuer desires to adopt a resolution describing the Project and the Financial Assistance that the Issuer is contemplating with respect to the Project.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. The Company has presented the Application in a form acceptable to the Issuer. Based upon the representations made by the Company to the Issuer in the Company's Application, the Issuer hereby finds and determines that:

(a) By virtue of the Act, the Issuer 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; and

(b) It is desirable and in the public interest for the Issuer to (i) acquire a leasehold (or other) interest in the Facility, (ii) lease or sell the Issuer's interest in the Facility to the Company pursuant to a lease agreement or sale agreement to be negotiated, (iii) issue the Bonds to pay all or a portion of the Project and (iv) appoint the Company as its agent for purposes of undertaking the Project; and

(c) The Issuer has the authority to take the actions contemplated herein under the Act; and

(d) The public hearing held by the Issuer on December 16, 2021, concerning the issuance of the Bonds was duly held in accordance with the requirements of the Code, including but not limited to the giving of public notice of the hearing a reasonable time before the hearing and affording a reasonable opportunity for persons with differing views on the issuance of the Bonds to be heard; and

(e) The action to be taken by the Issuer will induce the Company to undertake the Project, thereby increasing employment opportunities in Monroe County, New York, and otherwise furthering the purposes of the Issuer as set forth in the Act; and

(f) Pursuant to SEQRA, the Project constitutes a "Type II Action" as said term is defined in SEQRA, and therefore no further action is required to be taken under SEQRA; and

(g) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Facility from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State; and the Issuer hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Company from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Company in its industry.

Section 2. (a) The financing of the Project by the Issuer, through the issuance of the Bonds pursuant to the Act, and the provision of other Financial Assistance in connection therewith pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Monroe County and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act; and

(b) It is desirable and in the public interest for the Issuer to issue the Bonds for the purposes of financing the costs of all or a portion of the Project, together with necessary incidental expenses in connection therewith as reflected in the Company's application to the Issuer, as amended from time to time prior to the issuance of the Bonds. The aggregate principal amount of the Bonds shall not exceed \$70,000,000.

Section 3. Subject to the approval of the issuance of the Bonds by the County Executive of Monroe County, New York, and the compliance with any other applicable provisions of the Code, the Issuer shall (i) issue the Bonds in an amount and with maturities, an interest rate, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer, (ii) lease or sell the Facility to the Company pursuant to the terms of a lease or other agreement whereby the Company will be obligated, among other things, to make rental payments to or for the account of the Issuer in amounts and at times so that such rental payments will be adequate to pay the principal of, premium, if any, and interest on the Bonds, and (iii) secure the Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate.

Section 4. The proposed Financial Assistance being contemplated by the Issuer includes (i) financing all or a portion of the costs of the Project by the issuance of the Bonds in an amount not to exceed \$70,000,000, (ii) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included within the Facility or used in the acquisition, construction and/or equipping of the Facility, (iii) an exemption from all New York State and local mortgage recording taxes with respect to any qualifying mortgage on the Facility (or such interest in the Land as is conveyed to the Issuer) to secure the Bonds, and (iv) a partial real property tax abatement, all consistent with the policies of the Issuer.

Section 5. Subject to the Company executing the Project Agreement and the delivery to the Issuer of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Issuer, the Issuer hereby authorizes the Company to proceed with the acquisition, renovation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Issuer to acquire, renovate and equip the Facility, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair

and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements, Land or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents for the Issuer, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as the Issuer could do if acting on its own behalf. As agent of the Issuer, the Company is authorized to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses; provided, however, the Project Agreement shall expire on **December 31, 2023** (unless extended for good cause by the Executive Director, Deputy Director, Chairman or Vice Chairman of the Issuer) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered. The Executive Director, Deputy Director, Chairman or Vice Chairman of the Issuer are authorized and directed to execute and deliver to said agent an appropriate letter on Issuer letterhead describing the authority granted under this resolution.

Section 6. Based upon the representation and warranties made by the Company in its application for financial assistance, the Issuer hereby authorizes and approves (i) 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 **\$12,343,414** which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$987,473**. The Issuer agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Issuer upon being provided with appropriate documentation detailing the additional purchases of property or services; (ii) a mortgage (or mortgages), in connection with the financing of the Facility or portions thereof and including any refinancing thereof, securing an aggregate principal amount not to exceed **\$70,000,000**, resulting in a mortgage tax exemption not to exceed **\$525,000**; and (iii) a partial real property tax abatement.

Section 7. Pursuant to Section 875(3) of the New York General Municipal Law, the Issuer 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 Issuer 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 Issuer 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 Issuer in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Issuer that the Issuer demands.

Section 8. The law firm of Harris Beach PLLC is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Bonds.

Section 9. Bond Counsel is hereby authorized to work with Counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Bonds.

Section 10. The Executive Director, Deputy Director, Chairman or Vice Chairman of the Issuer is hereby authorized and directed to (i) distribute copies of this resolution to the Company, (ii) request the County Executive of Monroe County, New York, to approve the issuance of the Bonds following the public hearing, (iii) to comply with the volume cap limitation set forth in Section 146 of the Code and with any applicable New York State law, such that interest on the Bonds shall not be included in gross income for purposes of Federal income taxation; and (iv) 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 constitute the adoption of "official intent" (within the meaning of the United States Treasury Regulations Section 1.150-2(d)) with respect to issuance of the Bonds and the original expenditures which are reasonably expected to be reimbursed from the proceeds of the Bonds.

Section 12. This resolution shall take effect immediately and shall be continuously available for inspection by the general public during normal business hours at the Issuer's offices.

*[Remainder of Page Intentionally Left Blank]*

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

	<i>Yea</i>	<i>Nav</i>	<i>Absent</i>	<i>Abstain</i>
Jay Popli	✓			
Anthony Meleo	✓			
Troy Milne	✓			
Lisa Bolzner	✓			
Joseph Alloco			✓	
Rhett King	✓			
Ann L. Burr	✓			

The Resolutions were thereupon duly adopted.

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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency (the "Issuer"), including the resolutions contained therein, held on December 21, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Issuer 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.

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 Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 21<sup>st</sup> day of December, 2021.



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Ana J. Liss, Executive Director