

# Application for Financial Assistance

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\$250.00



**Economic  
Development Center**

## Applicant Information

Company Name: ADK Hospitality, LLC \_\_\_\_\_

Address: 125 Main Street \_\_\_\_\_

City / Town: Buffalo State: NY Zip: 14203

Phone No.: 716-847-5457 Fax No.: 716-852-6100

Email Address: dmcnamara@phillipslytle.com Fed. Id. No. : Pending \_\_\_\_\_

SIC Code (<https://www.osha.gov/pls/imis/sicsearch.html>) : \_\_\_\_\_

NAICS Code (<http://www.naics.com>) : \_\_\_\_\_

Contact Person: Anthony J. Baynes \_\_\_\_\_

Principal Owners / Officers / Directors: (list owners with 15% or more in equity holdings with percentage ownership)

A.J. Baynes Group LLC (Managing Member 50%) \_\_\_\_\_  
Name & Title

KPF Development LLC (Member 25%) \_\_\_\_\_ Knappogue LLC (Member 25%) \_\_\_\_\_  
Name & Title

*Corporate Structure (attach schematic if Applicant is a subsidiary or otherwise affiliated with another entity)*

Form of Entity:  C Corp  S Corp  Partnership  LLC  
 LLP  Sole Proprietorship  Not for Profit

If a corporation, partnership, limited liability company/partnership or Not for Profit:

What is the date of the establishment 02/12/2015, Place of organization NY \_\_\_\_\_ and, if a foreign organization, is the Applicant authorized to do business in the State of New York? N/A \_\_\_\_\_

## Applicant's Counsel:

Name: Patrick Fitzgerald, Esq. \_\_\_\_\_

Address: 125 Main Street \_\_\_\_\_ City / Town: Buffalo State: NY Zip: 14203

Phone No.: 716-847-5408 Fax No.: 716-852-6100

## Project Information

A) Detailed Description of Project: 82 room hotel in a 4 story art deco structure to be constructed on property to be conveyed to applicant by Western Region Off Track Betting. Hotel will be connected by an enclosed passage way to Batavia Downs Gaming's facility and will serve as an important amenity to the gaming, restaurant, banquet and racing activities at Batavia Downs. \_\_\_\_\_

Is any of the information contained herein considered trade secrets?  Yes  No

Note: GCEDC will protect said trade secret information herein but reserves the right to disclose certain summary information from this application (i.e. total facility s/f, total capital investment, total job creation, top level wage information et. Al.) as a part of its project summary disclosure related to the GCEDC board's public vote required and resulting from said application.

B) Location of Project / Project Address: 8315 Park Road, Batavia, New York 14020 \_\_\_\_\_  
Address Town Zip

C) Current Assessed Value of Property \$ To be established \_\_\_\_\_ Tax Map # To be established \_\_\_\_\_  
(not required if project is for equipment purchases only)

D) Square footage of existing building N/A \_\_\_\_\_ S/F  
Square footage of new / renovated build 24,600 \_\_\_\_\_ S/F  
Total Square Footage 24,600 \_\_\_\_\_ S/F

E) Project Employment Information:

**\*\*Note: Please use full time equivalents, approximately Two part time is equivalent to One full time.**

E1) Current number of full time equivalent employees (prior to project): 0

E2) Estimate how many full time/ part-time jobs will be retained as a result of this Project over the next three years:

Full Time (FT) 100 Part-Time (PT) 350 \*\* Total Full Time Equivalents (FTE) 350

E3) What is the average estimated (annual) salary range of jobs to be retained \* See attached excerpt from H&LA report, pp. C-13-14  
\* \_\_\_\_\_ to \_\_\_\_\_  
(at current market rates)

E4) Estimate how many full time/ part-time jobs will be created as a result of this Project over the next three years:

Full Time (FT) \* Part-Time (PT) \* \*\* Total Full Time Equivalents (FTE) \*

E5) What is the planned average hourly wage for the FTE jobs to be created \$ 1 \*

E6) What is the average estimated annual salary range of FTE jobs to be created \$ \* to \*

E7) What is the planned average annual benefits paid in \$\$ per FTE job to be created \*

E8) Estimate how many construction jobs will be created by this project: 80

E9) Estimate average length of employment for each construction job for this Project: 14 months

E10) Is the Project Commercial in nature (Sales Tax Generating for Community)? Yes

E11) What is the estimated annual total Sales Tax to be generated from this project at full build-out? See attached  
excerpt from H&LA report, p. C-10.

E12) Expected Break ground date for project (if any) July 2015 \_\_\_\_\_ (mo / year)

E13) Expected timeframe for project to achieve full build-out? 10 months \_\_\_\_\_ (in months)

**Detailed Company Info: (Confidential – will not be shared publicly) – information required in order to perform direct economic impact analysis as justification for GCEDC participation in this project**

E14) Current Annual Wages / Payroll (w/n Genesee County): \$N/A \_\_\_\_\_

E15) Current Annual Benefits Paid (w/n Genesee County) or % of wages: \$ N/A \_\_\_\_\_

E16) Average annual growth rate of annual wages: % N/A \_\_\_\_\_

E17) Average annual growth rate of benefits costs: % N/A \_\_\_\_\_

E18) Company Average Yearly Production Related Purchases (COGS / Inventory) from vendors within NYS (Gen County Ops): \$ N/A \_\_\_\_\_

E19) Company Average Yearly Non-Production Purchases (Supplies, Materials, Equipment) non-capitalized from vendors within NYS (Gen County Ops): \$ N/A \_\_\_\_\_

E20) Company Average Annual Sales / Use Taxes paid (Gen County Ops): \$ N/A \_\_\_\_\_

E21) Company Planned Property Taxes Paid for current calendar year (Genesee County Ops): \$N/A \_\_\_\_\_

E22) Company Current Year Expected EBT (Earnings B4 Taxes or Profit B4 Taxes) for Genesee County Ops: \$ N/A \_\_\_\_\_

E23) Company expected average annual growth rate for EBT: % N/A \_\_\_\_\_

E24) Company Current Year Expected NYS Income Taxes paid for Genesee County Ops: \$ N/A \_\_\_\_\_

**Proposed Hotel at Batavia Downs  
Estimate of Hotel Performance and Direct Impact**

**C-10**

Batavia Downs Gaming Facility											
	Bed Tax, Sales Tax, and Real Estate Tax Revenue from Hotel Development										
County Bed Tax	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total
Proposed Hotel Rooms Revenue	\$1,484,000	\$1,625,000	\$1,750,000	\$1,793,000	\$1,838,000	\$1,884,000	\$1,931,000	\$1,980,000	\$2,029,000	\$2,080,000	
County Bed Tax at 3%	\$44,520	\$48,750	\$52,500	\$53,790	\$55,140	\$56,520	\$57,930	\$59,400	\$60,870	\$62,400	\$551,820
<b>NY State Sales Tax</b>											
Proposed Hotel Rooms Revenue	\$1,484,000	\$1,625,000	\$1,750,000	\$1,793,000	\$1,838,000	\$1,884,000	\$1,931,000	\$1,980,000	\$2,029,000	\$2,080,000	
Other Misc. Hotel Revenue (Vending, etc.)	\$35,000	\$37,000	\$39,000	\$40,000	\$41,000	\$42,000	\$43,000	\$44,000	\$45,000	\$46,000	
Incremental Revenue (non-gammat)	\$810,433	\$854,373	\$899,909	\$922,407	\$945,467	\$969,104	\$993,332	\$1,018,165	\$1,043,619	\$1,069,709	
Total Revenue Eligible for Sales Tax	\$2,329,433	\$2,516,379	\$2,688,909	\$2,755,407	\$2,824,467	\$2,895,104	\$2,967,332	\$3,042,165	\$3,117,619	\$3,195,709	
Sales Tax at 8.0%	\$186,355	\$201,310	\$215,113	\$220,433	\$225,957	\$231,608	\$237,387	\$243,373	\$249,410	\$255,657	\$2,266,602
<b>Real Estate Tax</b>											
Real Estate Tax	\$67,000	\$69,000	\$70,000	\$72,000	\$74,000	\$76,000	\$78,000	\$80,000	\$82,000	\$84,000	\$752,000
<b>Combined Tax Revenue</b>	<b>\$297,875</b>	<b>\$319,060</b>	<b>\$337,613</b>	<b>\$346,223</b>	<b>\$355,097</b>	<b>\$364,128</b>	<b>\$373,317</b>	<b>\$382,773</b>	<b>\$392,280</b>	<b>\$402,057</b>	<b>\$3,570,422</b>

Source: Hotel & Leisure Advisors

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spurred other tourist-friendly development in the area and incited existing properties to renovate their facilities.

**Job Creation**

We forecasted the amount of additional payroll that will be necessary due to the opening of the subject hotel. The following table highlights our payroll related expense forecast.

<b>Batavia Downs Gaming Facility Estimated Payroll Created Due to the Proposed Hotel</b>	
First Year Subject Hotel Total Revenue	\$1,519,000
% of Total Revenue for Payroll	22.5%
Estimated Hotel Payroll (rounded)	\$342,000
First Year Incremental Batavia Downs F&B Revenue	\$810,433
% of Total Revenue for Payroll	45.0%
Estimated Incremental Batavia Downs Payroll (rounded)	\$365,000
Total Additional Payroll Estimate	\$707,000
Source: Hotel & Leisure Advisors, PKF Hospitality Research, and Bureau of Labor Statistics	

According to *PKF Trends in the Hotel Industry USA Edition 2014*, limited-service hotels like the proposed subject have total payroll costs (excluding payroll taxes, employee benefits, and employee meals) of 22.5% of total revenues. The same study indicates that F&B departments in hotels have total labor costs of 45% of total F&B revenue. The following table indicates the direct payroll impacts and number of jobs created from the operation of the subject in its first year in 2016 dollars.

<b>Batavia Downs Gaming Facility Estimated Jobs Created Due to the Proposed Hotel</b>	
Total Additional Payroll Estimate	\$707,000
Average Regional Hospitality Wage	\$27,955
Direct Jobs Created	25
Source: Hotel & Leisure Advisors and Bureau of Labor Statistics	

The average hotel wage is an inflated average considering wages for general manager, sales manager, hotel clerks, food service workers, cleaners, lifeguards, office workers, maintenance workers, and other personnel. We calculated the average hotel wage by multiplying the typical hourly wage of \$13.44 (averaged from the Bureau of Labor Statistics Rochester and Buffalo data sets, since Batavia data was unavailable) by 2,080, which is the average number of hours worked annually.

Based on our analysis, we estimate that the development of the subject would result in approximately \$707,000 in payroll/household earnings. Utilizing the average annual accommodation/service industry wage estimate of \$27,955 for the region, we estimate that approximately 25 annual full-time equivalent direct jobs will be created. The actual number of jobs will be higher, since many hotel and service industry workers are part-time. Specifically, we estimate that the actual number of jobs (including part-time and full-time employment) will

be approximately two times the number of full-time equivalent jobs or 50 full- and part-time positions.

### **Visitor Draw of Project**

The proposed hotel is projected to draw overnight visitors from other regions in New York, Canada and surrounding states. According to Batavia Downs management, the property historically records visitors from all 50 states each year among its nearly one million visitors. Interstate 90 is a huge source of demand for the Batavia area throughout the year, and Six Flags Darien Lake boosts demand during the summer. Additionally, some travelers choose to stay in the Batavia area while visiting Niagara Falls, since the Niagara Falls hotels charge higher rates. Batavia Downs recently completed a \$27.8 million renovation and expansion of its entire facility. The gaming complex now boasts 13,000 square feet of flexible, modern meeting and event space onsite. With the addition of the subject hotel, Batavia Downs will be able to book more weddings, meetings, and other events in its meeting space, since many such groups require or prefer onsite lodging facilities.

We project more travelers will choose to stay in Batavia due to the inclusion of a hotel at Batavia Downs. We project a majority of new visitors will be overnight guests visiting for the purpose of enjoying the gaming activities.

### **OTHER BENEFITS**

The operation of the proposed subject hotel is anticipated to create other significant benefits that are less overt and more difficult to quantify. Additional benefits include:

- New hotel option for visitors to Genesee County
- Community pride and identity
- Improved image and status of Batavia Downs as a whole

The value and impact of these benefits have not been estimated in this study.

### **MUNICIPAL INCENTIVES**

In our opinion, the subject development should obtain municipal incentives from the city, county, or state to add a lodging component to the Batavia Downs gaming complex, which will boost tourism demand. These incentives could include tax abatement, municipal financing, tax incremental financing, or other incentives. We recommend incentives due to the high risk involved in developing a tourist-oriented project. We also considered the increased bed tax, sales tax, and real estate tax forecasted; additional out of region visitors, and jobs that will be created as a result of the subject hotel development.

Hotel developers may receive financial assistance for projects through a variety of municipal, state and federal tax credit incentives. Credits are often given for the redevelopment of historic buildings or the development of low-income or new market areas. Many cities approve tax abatements and similar incentives in exchange for the long-term benefits the development and job creation bring. Following are recent examples:

- A 152-room **Residence Inn** slated for downtown Jersey City, New Jersey, received a 20-year tax exemption in October 2014. Marriott developers would pay 2% of the project's \$21 million cost instead of traditional property taxes for the first six years. For

Next 5 years planned / conservative estimates for capital investment beyond this project (if available)

Year 1	Year 2	Year 3	Year 4	Year 5
\$	\$	\$3.5 million*	\$	\$

\*cost of possible 40 room expansion

- Is the company delinquent in the payment of any state or municipal property taxes?  Yes  No
- Is the company delinquent in the payment of any income tax obligation?  Yes  No
- Is the company delinquent in the payment of any loans?  Yes  No
- Is the company currently in default on any of its loans?  Yes  No
- Are there currently any unsatisfied judgments against the company?  Yes  No
- Are there currently any unsatisfied judgments against any of the company's principals?  Yes  No
- Has the company ever filed for bankruptcy?  Yes  No
- Have any of the company's principals ever personally filed for bankruptcy or in any way sought protection from creditors?  Yes  No

If the answer to any of the questions above is "Yes," please provide additional comments in the space below and on additional pages if necessary.

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**Estimated Project Costs / Project Capital Investment:**

- Building Cost \$4,000,000 (New Building Construction cost or Existing building expansion construction)
- Land and Building \$605,000 (Purchase Value of land and/or building incl. engineering, architect and blue print fees)
- Production Equipment \$N/A (\$ Value of Production Equipment – not sales taxable)
- Other Equipment \$884,000 (\$ Value of sales taxable equip = Furniture/Fixtures, Computers, Lockers..)
- Other \$ describe: \_\_\_\_\_
- Tot. Cap Invest: \$5,489,000 (Sum all lines above)

**Note:**

- Total Amount Financed \$3,689,000 describe:
- Owner evaluating possible mortgage financing to fund up to approximately 67% of total project cost.
- Mortgage Amount on this Project? \$3,689,000

Estimated Value of Goods and Services to be exempt from sales and use tax as a result of the GCEDC's involvement in the project. Please note these amounts will be verified and there is a potential for a recapture of sales tax exemptions (see "Recapture Provision" on page 4).

\$4,538,000 (to be used on the NYS ST-60)

262,720

**Representations by the Applicant**

The Applicant understands and agrees with the GCEDC as follows:

**Please initial each item where indicated**

**Job Listings** - In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the GCEDC, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act(Public Law 97-300) ("JPTA") in which the Project is located.

X  ASB Applicant's Initials

**First Consideration for Employment** - In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the GCEDC, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.

X  ASB Applicant's Initials

**Annual Sales Tax Filings** - In accordance with Section 874(8) of the General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the GCEDC, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, an Annual Report of Sales and Use Tax Exemptions (Form ST-340) by the last day of February following applicable calendar year (with a copy to the GCEDC), describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant.

X  ASB Applicant's Initials

**Employment Reports** - The Applicant understands and agrees that, if the Project receives any Financial Assistance from the GCEDC, the Applicant agrees to file, or cause to be filed, with the GCEDC, on quarterly basis, copies of form NYS-45-MN Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns filed with the Department of Labor applicable to the project site.

X  ASB Applicant's Initials

**GCEDC Reports** - The Applicant understands and agrees that, if the Project receives any Financial Assistance from the GCEDC, the Applicant agrees to file, or cause to be filed with the GCEDC, a certified Annual Project Report (to be mailed to the Applicant) due by the last day of February following applicable calendar year, for a period of time not to exceed 4 years post financial assistance.

X  ASB Applicant's Initials

**Absence of Conflicts of Interest** - The Applicant has received from the GCEDC a list of the members, officers, and employees of the GCEDC. No member, officers or employee of the GCEDC has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:

X  ASB Applicant's Initials

**Recapture Provision** - Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law, that any New York State and local sales and use tax exemption claimed by Applicant and approved by the Agency in connection with the Project may be subject to recapture by the Agency under such terms and conditions as will be set forth in the Agent Agreement to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of New York State and local sales and use tax exemption benefits, is true, accurate and complete.

X  ASB Applicant's Initials

Comments: \_\_\_\_\_

The Applicant and the individual executing this Application on behalf of the Applicant acknowledge that:

- A) The GCEDC will rely on the representations made herein when acting on this Application and hereby represent that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.
- B) Failure of the Applicant to file appropriate Sales Tax and Employment reports will result in the revocation of tax benefits and require repayment of benefits previously claimed.

Anthony J. Baynes  
(Applicant Signature)

Anthony J. Baynes \_\_\_\_\_  
(Print Name)  
Managing Member \_\_\_\_\_  
Title  
ADK Hospitality, LLC \_\_\_\_\_  
Company Name

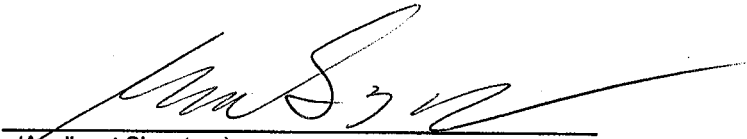
This Application should be submitted along with the items listed in Exhibit A to:

Genesee County Economic Development Center  
99 MedTech Drive, Suite 106  
Batavia, New York 14020  
(Attn: President & Chief Executive Officer)

## Hold Harmless Agreement

Applicant hereby releases Genesee County Economic Development Center and the members, officers, servants, agents and employees thereof (the "GCEDC") from, agrees that the GCEDC shall not be liable for and agrees to indemnify, defend and hold the GCEDC harmless from and against any and all liability arising from or expense incurred by (A) the GCEDC's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other assistance requested therein are favorably acted upon by the GCEDC, (B) the GCEDC's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the GCEDC with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the GCEDC or the Applicant are unable to reach final agreement with the respect to the Project, then, and in the event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the GCEDC, its agents or assigns, all costs incurred by the GCEDC in the processing of the Application, including attorneys' fees, if any.

Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law, that any New York State and local sales and use tax exemption claimed by Applicant and approved by the Agency in connection with the Project may be subject to recapture by the Agency under such terms and conditions as will be set forth in the Agent Agreement to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of New York State and local sales and use tax exemption benefits, is true, accurate and complete.

  
\_\_\_\_\_  
(Applicant Signature)

Anthony J. Baynes \_\_\_\_\_  
(Print Name)

Managing Member \_\_\_\_\_  
Title

ADK Hospitality, LLC \_\_\_\_\_  
Company Name

Sworn to before me this

15 day of May, 2015

  
\_\_\_\_\_  
Notary Public

MARLENE E. WAUHKONEN  
NOTARY PUBLIC, STATE OF NEW YORK  
REGISTRATION NO. 01WA6154123  
QUALIFIED IN ERIE COUNTY  
COMMISSION EXPIRES OCTOBER 23, 2018



## EXHIBIT A

(A copy of this list should be provided to applicant's legal Counsel)

### Please ensure that the following items are delivered with the application:

1. A \$250 Application Fee X  Yes  No
2. An EAF (Environmental Assessment Form) X  Yes  No
3. Have Financing arrangements been made? X  Yes  No
4. A copy of the bank commitment letter or personal / company financial statement  Yes  No
5. A copy of the most recent NYS MN-45 Quarterly Report  Yes  No

### Prior to the closing of this transaction applicant shall deliver the following documentation (where applicable to the project) to GCEDC's legal counsel

1. Insurance Certificates (please see exhibit B for additional information)  
Certificate of Worker's Compensation Insurance (GCEDC named as additional insured).  Yes  No  
Certificate of General Liability Insurance (GCEDC named as additional insured)  
Limits not less than \$1,000,000 per occurrence /accident and a blanket excess liability not less than \$3,000,000  Yes  No  
Certificate of insurance against loss/damage by fire, lightning or other casualties with a uniform standard extended coverage endorsement in an amount not less than the full replacement value of the Facility. (GCEDC named as additional insured).  Yes  No
2. Certificate of Incorporation/Articles of Organization together with all amendments or restatements thereto. X  Yes  No
3. By-Laws/Operating Agreement together with any amendments thereto X  Yes  No
4. Good Standing Certificate(s) issued by the State of Incorporation/Organization of the Company AND NYS. N/A  Yes  No
5. Resolutions of the Board of Directors/Members of the Company approving the Project. N/A  Yes  No
6. List of all Material Pending Litigation of the Company. None  Yes  No
7. List of all Underground Storage Tanks containing Hazardous Materials at the Project. None  Yes  No
8. List of all Required Environmental Permits for the Project. None  Yes  No
9. Legal Description of the Project Premises. X  Yes  No
10. Name and title of Person signing on behalf of the Company.  
Name: Anthony J. Baynes Title: Managing Member
11. Copy of the proposed Mortgage (if any). N/A  Yes  No
12. Company's Federal Tax ID Number (EIN). X  Yes  No
13. Tax Map Number of Parcel(s) comprising the Project. \*\*  Yes  No
14. Copy of the Certificate of Occupancy (as soon as available). N/A  Yes  No

\*\*Property to be subdivided by Town of Batavia.

**\*\*Note: All items in this application (including the application fee) must be completed and signed with all requested information before this application can be presented to the board for approval.**

## EXHIBIT B

### INSURANCE COVERAGE

1. Requirements. The Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting there from, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

2. Additional Provisions Respecting Insurance. (a) All insurance required shall name the Agency as a named insured and all other insurance required by Section 4 hereof shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

## Short Environmental Assessment Form

### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information		
Name of Action or Project: <b>Batavia Downs Hotel</b>		
Project Location (describe, and attach a location map): <b>8315 Park Road, Batavia, New York 14020</b>		
Brief Description of Proposed Action: <b>82 room hotel in a 4 story art deco structure to be constructed on property to be conveyed to applicant by Western Region Off Track Betting. Hotel will be connected by an enclosed passage way to Batavia Downs Gaming's facility and will serve as an important amenity to the gaming, restaurant, banquet and racing activities at Batavia Downs.</b>		
Name of Applicant or Sponsor: <b>ADK Hospitality, LLC</b>	Telephone: <b>716-847-5457</b>	
	E-Mail:	
Address: <b>125 Main Street</b>		
City/PO: <b>Buffalo</b>	State: <b>NY</b>	Zip Code: <b>14203</b>
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	<b>NO</b>	<b>YES</b>
	<b>X</b>	
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: <b>Zoning variance, site plan approval and building permits from Town of Batavia.</b>	<b>NO</b>	<b>YES</b>
		<b>X</b>
3.a. Total acreage of the site of the proposed action?	<b>.535</b>	acres
b. Total acreage to be physically disturbed?	<b>.535</b>	acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?	<b>0</b>	acres
4. Check all land uses that occur on, adjoining and near the proposed action.		
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)		
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____		
<input type="checkbox"/> Parkland		

		NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations?			X	
b. Consistent with the adopted comprehensive plan?			X	
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?		NO	YES	
		X		
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____		NO	YES	
		X		
8. a. Will the proposed action result in a substantial increase in traffic above present levels?		NO	YES	
		X		
b. Are public transportation service(s) available at or near the site of the proposed action?			X	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?			X	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____		NO	YES	
			X	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____		NO	YES	
			X	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____		NO	YES	
			X	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?		NO	YES	
		X		
b. Is the proposed action located in an archeological sensitive area?			X	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?		NO	YES	
		X		
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____			X	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban				
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?		NO	YES	
		X		
16. Is the project site located in the 100 year flood plain?		NO	YES	
		X		
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties?		NO	YES	
		X		
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <b>Project to be located in an area that is an existing paved parking lot with established runoff and storm drains.</b> _____ _____			X	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO X	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO X	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO X	YES
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>ADK Hospitality, LLC</u> Date: <u>May 14, 2015</u>		
Signature: <u>[Signature]</u> , Managing Member		

**Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2.** Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	X	
2. Will the proposed action result in a change in the use or intensity of use of land?	X	
3. Will the proposed action impair the character or quality of the existing community?	X	
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	X	
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	X	
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	X	
7. Will the proposed action impact existing:	X	
a. public / private water supplies?	X	
b. public / private wastewater treatment utilities?	X	
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	X	
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	X	

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	X	
11. Will the proposed action create a hazard to environmental resources or human health?	X	

**Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3.** For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation that the proposed action will not result in any significant adverse environmental impacts.

\_\_\_\_\_

Name of Lead Agency Date

\_\_\_\_\_

Print or Type Name of Responsible Officer in Lead Agency Title of Responsible Officer

\_\_\_\_\_

Signature of Responsible Officer in Lead Agency Signature of Preparer (if different from

**To be completed / calculated by GCEDC**

Type of Project:

- Attraction       Expansion       Retention  
 Infrastructure       Workforce

Offerings:

- SLB       Bond       Grant       EZ Certification       ZCC  
 RLF / Loan       Consulting       EZ B.A.       EZ Consulting

**Estimated Financial Assistance to be provided via GCEDC participation – subject to GCEDC Board Approval**

- |   |    |   |
|---|----|---|
| 1) Estimated Sales Tax Exemption (8%):          | \$ | <u>262,720</u>  |
| 2) Estimated Mortgage Tax Exemption (1.25%):    | \$ | <u>46,113</u>   |
| 3) Estimated Property Tax Abatement             | \$ | <u>329,358</u>  |
| 4) Estimated Total Tax Savings (1+3):           | \$ | <u>638,191</u>  |
| 5) Estimated Tax-Exempt Interest Cost Savings   | \$ | _____ (via Tax-Exempt Bond)   |
| 6) Empire Zone Benefits                         | \$ | _____   |
| 7) Grant  | \$ | _____   |
| Type or name of grant ( _____ )                 |    |   |
| 8) Land Sale Subsidy                            | \$ | _____   |
| Property ( _____ )                              |    |   |
| 9) Estimated total Company Savings (4+5+6+7+8): | \$ | <u>638,191</u>  |
| 10) Benefited Project Amount                    | \$ | <u>5,489,000</u> (the capital investment directly related to the benefits received) |
| 11) Bond Amount                                 | \$ | _____   |
| 12) Mortgage Amount                             | \$ | _____   |
| 13) GCEDC Revolving Loan Fund                   | \$ | _____   |
| 14) Loan Secured                                | \$ | _____   |
| Source of loan ( _____ )                        |    |   |
| 15) Total Amount Financed / Loan Funds Secured  | \$ | _____ (12+13+14)  |

Proposed PILOT structure: 50% for the first 6 years, 10% increase each year thereafter beginning in year 7 through year 10.

**Fees to be Paid by the Applicant:**

Genesee County Economic Development Center \$ 68,413 (Per the attached Pricing & Fee Policy the GCEDC will collect a 1.25 % fee. The GCEDC will collect its participation fee at the time of closing, based upon the company provided realistic capital investment costs of this project stated in this application. (Should the actual costs exceed those estimated, an additional fee will apply.)

\* Harris Beach, LLP \$ 20,000 + (Estimated fee for legal services required in connection with the financial assistance provided by the Genesee County Economic Development Center) Applicant may be required to pay additional out-of-pocket expenses and applicable filing or recording fees.

**\*\*Financial incentives are public information and will be released to the media upon board approval\*\***

↳ plans, disbursements

[Signature]  
(Applicant Signature)

Anthony J. Baynes  
(Print Name)

Managing Member  
Title

ADK Hospitality, LLC.  
Company Name



# Genesee County Economic Development Center Pricing & Fee Policy

Effective Date: June 1, 2014

## Financial Assistance - Tax Savings\*\*\*

Offering / Activity	Fees	Comments
<p><b>Lease - Lease Back (SLB) or similar</b> Including any / all of the following:</p> <ol style="list-style-type: none"> <li>1. PILOT</li> <li>2. Sales Tax Exemption</li> <li>3. Mortgage Tax Exemption</li> </ol> <p><b>Minimum fee of \$2,000</b></p>	<p><b>\$250 Non-Refundable Application Fee</b></p> <p><b>GCEDC Fees:</b> <b>Direct Sales Project:</b> 1.25% of total capital investment/ benefited project amount</p> <p><b>Legal Fees:</b> Legal transaction fees associated with a project will be estimated to each client on a case by case basis.</p>	<p>Eligible to businesses with Capital Investments of \$50,000 or greater which meet the following criteria:</p> <ol style="list-style-type: none"> <li>1.Allowable for assistance under the enabling legislation for IDA's.</li> <li>2.Create and/or retain quality jobs in Genesee County.</li> <li>3.Have an economic benefit to the community based on the Fiscal &amp; Economic Impact Analysis Model of at least a 10 to 1 ratio.</li> <li>4.General Liability Insurance coverage limit of not less than \$1,000,000 per occurrence/accident and a blanket excess liability not less than \$3,000,000.</li> </ol>
<p><b>Sales Tax Exemption Only</b></p> <p><b>Minimum fee of \$1,000</b></p>	<p><b>\$250 Non-Refundable Application Fee</b></p> <p><b>GCEDC Fees:</b> <b>Direct Sales Project:</b> 1.25% of total capital investment/ benefited project amount</p> <p><b>Legal Fees:</b> Legal transaction fees associated with a project will be estimated to each client on a case by case basis.</p>	<p>Eligible to businesses with Capital Investments of \$50,000 or greater which meet the following criteria:</p> <ol style="list-style-type: none"> <li>1.Allowable for assistance under the enabling legislation for IDA's.</li> <li>2.Create and/or retain quality jobs in Genesee County.</li> <li>3.Have an economic benefit to the community based on the Fiscal &amp; Economic Impact Analysis Model of at least a 10 to 1 ratio.</li> <li>4.General Liability Insurance coverage limit of not less than \$1,000,000 per occurrence/accident and a blanket excess liability not less than \$3,000,000 if the project involves construction. If equipment only, then \$1,000,000 per occurrence/accident and a blanket excess liability not less than \$1,000,000.</li> </ol>
<p><b>Mortgage Tax Exemption Only</b></p>	<p><b>\$250 Non-Refundable Application Fee</b></p>	<p>Eligible to businesses with Capital Investments of \$50,000 or greater</p>



<p><b>Minimum fee of \$2,000</b></p>	<p><b>GCEDC Fees:</b> 0.4% of amount financed</p> <p><b>Legal Fees:</b> Legal transaction fees associated with a project will be estimated to each client on a case by case basis.</p>	<p>which meet the following criteria:</p> <ol style="list-style-type: none"> <li>1. Allowable for assistance under the enabling legislation for IDA's.</li> <li>2. Create and/or retain quality jobs in Genesee County.</li> <li>3. Have an economic benefit to the community based on the Fiscal &amp; Economic Impact Analysis Model of at least a 10 to 1 ratio.</li> <li>4. General Liability Insurance coverage limit of not less than \$1,000,000 per occurrence/accident and a blanket excess liability not less than \$3,000,000.</li> </ol>
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## Financing\*\*\*

Offering / Activity	Fees	Comments
<p><b>Bond: Taxable or Tax Exempt</b></p> <ol style="list-style-type: none"> <li>1. Financing transaction only</li> <li>2. Financing included with SLB</li> </ol>	<p><b>\$250 Non-Refundable Application Fee</b></p> <p><b>Financing Transaction Only:</b> <b>Direct Sales Project:</b> 1.25% of total bond amount</p> <p>Applicant must pay NYS Bond Issuance cost plus legal fees.</p> <p><b>Legal Fees:</b> Legal transaction fees associated with a project will be estimated to each client on a case by case basis.</p>	<p>Range varies based on GCEDC involvement, term of bond (equip only vs. real property) and spread between taxable and tax exempt yield curves. The shorter the term and / or lower the spread between yield curves requires lower fees to remain competitive vs. commercial lending sources.</p>

\*\*\* NOTE – If a company wants to have a lease-leaseback transaction with a tax exempt financing component the total fee charged would be 1.75% of Capital Investment.

## Financing/ Grants/ Consulting

Offering / Activity	Fees	Comments
<p><b>Grants:</b></p>	<p><b>\$250 Non-Refundable Application Fee</b></p> <p><b>Program Administration Fees:</b> Allowable program administration and delivery fees associated with the grant will be collected by the GCEDC.</p> <p><b>Legal Fees:</b> Legal transaction fees associated with a project will be estimated to each client on a case by case basis.</p>	<p>Generally established and parameters set by Grantor. Negotiations, based on EDC involvement, occur on occasion.</p> <p>Project fee negotiated between grantee and GCEDC will be agreed to in a memorandum of understanding.</p>



## ATTACHMENT TO APPLICATION FOR FINANCIAL ASSISTANCE

### Local Labor Workforce Certification

Project applicants (the "Company"), with projected / committed capital investment for facility construction of greater than or equal to \$5,000,000, as a condition to receiving Financial Assistance (including a sales tax exemption, mortgage recording tax exemption, real property tax abatement, and/or bond proceeds) from the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), will be required to utilize qualified Local Labor, as defined below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the "Project Site").

#### Local Labor Defined

Local Labor is defined as individuals residing in the following Counties: Genesee, Orleans, Monroe, Wyoming, Livingston, Wayne, Ontario, Seneca, Yates, Niagara, Erie, Chautauqua, Cattaraugus and Allegany (collectively, the "Local Labor Area").

#### Local Labor Requirement

At least 90% of the total number of Project employees, excluding construction project management, of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively, the "Workers") working on the Project Site must reside within the Local Labor Area. Companies do not have to be local companies as defined herein, but must employ local Workers residing within the Local Labor Area to qualify under the 90% local labor criteria.

It is understood that at certain times, Workers residing within the Local Labor Area may not be available with respect to a Project. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Labor Requirement (the "Local Labor Waiver Request") based on the following circumstances: (i) warranty issues related to installation of specialized equipment or materials whereby the manufacturer requires installation by only approved installers; (ii) specialized construction for which qualified Local Labor Area Workers are not available; (iii) documented lack of Workers meeting the Local Labor Area requirement; or (iv) cost differentials in bids whereby use of local labor significantly increases the construction cost of the project. Prior to the granting of said waiver, the lowest bidding contractor which bid said construction project using local labor would have the right of first refusal to bid and match the lowest bid as a remedy to ensure compliance with this policy. Comprehensive documentation and justification will be required including documented evidence and verification by GCEDC staff or agents that the "right of first refusal" remedy has been effected unsuccessfully.

The Agency shall evaluate the Local Labor Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request.

### Local Labor Reporting Requirement

Companies authorized to receive Financial Assistance from the Agency will be required to file or cause to be filed a Local Labor Utilization Report (the "Report") on such form as made available by the Agency, and as directed by the Agency, which will identify, for each Worker, the city, town, or village and associated zip code that each such Worker is domiciled in. The Report shall be submitted to the Agency or its designated agents as follows: (i) immediately prior to commencement of construction activities; and (ii) on or by the next following quarterly dates of January 1, April 1, July 1, and October 1 and each quarterly date thereafter through the construction completion date.

The Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy the applicable books and records of the Company and to perform spot checks of all Workers at the Project site to verify compliance with the Local Labor Requirement throughout the construction period.

### Enforcement

If Agency staff determines that: (i) the Local Labor Requirement is not being met; or (ii) upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Labor Requirement, then written notice delivered by Certified Mail of said Local Labor Requirement violation (the "Notice of Violation") shall be provided to the Company.


The Company shall have 10 business days thereafter to either:

- (i) provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement;
- (ii) submit the Local Labor Waiver Request as described above; or
- (iii) confirm in writing its inability to meet the Local Labor Requirement.

If the Company does not respond to the Agency's Notice of Violation, or if the Company confirms its inability to meet the Local Labor Requirement then the Agency shall immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project. If a Local Labor Waiver Request is submitted and the Agency declines to issue the requester waiver, then the Company shall have 10 business days after receipt of the notice of the waiver request denial to provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement. If the Agency does not receive such confirmation, the Agency shall then immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project.

The foregoing terms have been read, reviewed and understood by the Company and all appropriate personnel. The undersigned agrees and understands that the information contained herein must be transmitted and conveyed in a timely fashion to all applicable subcontractors, suppliers and materialmen. Furthermore, the undersigned realized and understands that failure to abide by the terms herein could result in the Agency revoking all or any portion of Financial Assistance, whether already received or to be received by the Company, as it deems reasonable in its sole discretion for any violation hereof.

**COMPANY CERTIFICATION**

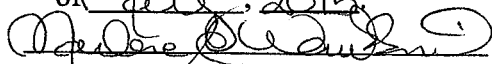
By: 

Name: Anthony J. Baynes

Title: Managing Member  
ADK Hospitality, LLC

Sworn to before me this 15 day

of July, 2015



Notary Public

MARLENE E. WAUHKONEN  
NOTARY PUBLIC, STATE OF NEW YORK  
REGISTRATION NO. 01WA6154123  
QUALIFIED IN ERIE COUNTY  
COMMISSION EXPIRES OCTOBER 23, 2018