

# **Preliminary Resolution**

**PRELIMINARY RESOLUTION**  
*(Burger Factory Niagara Falls Inc. Project)*

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 11<sup>th</sup> day of January, 2023 at 9:00 a.m., local time.

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

PRESENT:

Jerald I. Wolfgang	First Vice Chairman
Kevin McCabe	Second Vice Chairman
William L. Ross	Secretary
Jason Krempe	Member
Clifford Scott	Member
Robert B. Cliffe	Member
Scott Brydges	Assistant Secretary

ABSENT:

Mark A. Onesi	Chairman
Maria V. Lopez	Member

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Susan C. Langdon	Executive Director
Andrea Klyczek	Assistant Director
Michael Dudley	Manager of Finance
Caroline Caruso	Accounting Associate
Susan Barone	Grants & Operations Manager
Julie Lamoreaux	Administrative & Human Resource Officer
Jeremy Geartz	Project Manager
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by Mr. Scott, seconded by Mr. Krempe, to wit:

Resolution No. 8.1.1

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF BURGER FACTORY NIAGARA FALLS INC. WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW) TO BE UNDERTAKEN BY THE AGENCY FOR THE BENEFIT OF BURGER FACTORY NIAGARA FALLS INC. FOR ITSELF OR ON BEHALF OF AN ENTITY FORMED OR TO BE FORMED; (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE AGENCY TO TAKE CERTAIN ACTIONS UNDER ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW IN CONNECTION WITH THE PROJECT; (iv) PROVIDE SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND (v) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, **BURGER FACTORY NIAGARA FALLS INC.**, and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition (or retention) by the Agency of leasehold interest in a parcel of land located at 303 Rainbow Blvd., Niagara Falls, New York, (the "Land"), (B) the renovation of an approximately 2,200 square foot building into an A & W Restaurant (the "Improvements"); (C) the acquisition and installation in and around the improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility").

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate an agent agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, (ii) negotiate a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") and payment-in-lieu of tax mortgage (the "PILOT Mortgage") with the Company, (iii) take a leasehold interest in the

Land, Improvements, Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement, PILOT Agreement and PILOT Mortgage have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemptions consistent with the policies of the Agency, a partial real property tax abatement and a mortgage recording tax exemption with respect to a certain payment-in-lieu-of-tax mortgage; and

WHEREAS, the Agency scheduled a public hearing and provided notice of the public hearing pursuant to Section 850-a of the Act; and

WHEREAS, the Agency must determine whether the undertaking of the Project and the providing of the contemplated financial assistance with respect to the same will be in conformance with Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (said law and regulations hereinafter collectively referred to as "SEQR").

WHEREAS, pursuant to Section 862 of the Act, the Project constitutes a "retail" project and, as a result, in addition to the other requirements of the Act, prior to the Agency providing any financial assistance to the Project the Agency must determine if the Project is located in a "highly distressed area" as set term is defined in Section 862 of New York General Municipal Law.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

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

(A) By virtue of the Act, the Agency 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) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Niagara County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project 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 Project located within the State; and the Agency 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 Project occupants from removing

such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(E) Pursuant to Section 862 of the Act, the Project constitutes a "retail" project. Subject to documentation to be provided by the Company to the Agency, the Agency hereby finds that the Project is located in a highly distressed area as defined in Section 862 of the New York General Municipal Law.

Section 2. For purposes of investigating the advisability of undertaking a coordinated review under SEQR with respect to the Project and determining whether the Project may have a "significant effect on the environment" (as such term is defined under SEQR), the Executive Director of the Agency is hereby authorized and directed to take the following actions:

(A) To obtain an Environmental Assessment Form (the "EAF") with respect to the Project from the Company; and

(B) To review the EAF with counsel to the Agency and prepare proceedings to allow the Agency to comply with SEQR; and

(C) To contact all other "involved agencies" with respect to the Project for the purposes of ascertaining whether they are interested in undertaking a coordinated review with respect to the Project; and

(D) Upon completion of the foregoing, to report to the Agency at its next meeting on the status of the environmental review process with respect to the Project.

Section 3. Based upon the representations and warranties made by the Company in its application for financial assistance, 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 \$375,000.00, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$30,000.00. 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 New York General Municipal Law, 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, must (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. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to hold a public hearing in compliance with the Act and negotiate (but not execute or deliver) the terms of (A) an Agent Agreement, whereby the Agency appoints the Company as its agent to undertake the Project and to immediately provide sales tax exemption benefits for purchases and rentals related to the renovation, construction and equipping of the project, (B) a Lease Agreement, whereby the Company leases the Facility to the Agency, (C) a related Leaseback Agreement, conveying the Facility back to the Company, (D) a PILOT Agreement, whereby the Company agrees to make certain payments-in-lieu-of real property taxes, (E) a PILOT Mortgage, securing the payment of the amounts due under the PILOT Agreement and (F) related documents; *provided*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

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:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mark Onesi	[     ]	[     ]	[     ]	[ x   ]
Jerald I. Wolfgang	[ x   ]	[     ]	[     ]	[     ]
Kevin McCabe	[ x   ]	[     ]	[     ]	[     ]
William L. Ross	[ x   ]	[     ]	[     ]	[     ]
Scott Brydges	[ x   ]	[     ]	[     ]	[     ]
Clifford Scott	[ x   ]	[     ]	[     ]	[     ]
Robert B. Cliffe	[ x   ]	[     ]	[     ]	[     ]
Jason Krempa	[ x   ]	[     ]	[     ]	[     ]
Maria V. Lopez	[     ]	[     ]	[     ]	[ x   ]

The Resolutions were thereupon duly adopted.

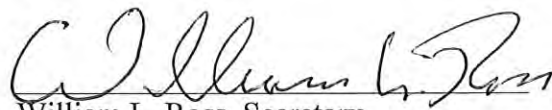
STATE OF NEW YORK    )  
                                  ) SS.:  
COUNTY OF NIAGARA    )

I, the undersigned Secretary of Niagara County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on January 11, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 11<sup>th</sup> day of January, 2023.

  
William L. Ross, Secretary



# **Final Resolution**

## FINAL RESOLUTION

*(Burger Factory Niagara Falls Inc. Project)*

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 8th day of February, 2023 at 9:00 a.m., local time.

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

### PRESENT:

Mark A. Onesi	Chairman
Kevin McCabe	Second Vice Chairman
William L. Ross	Secretary
Jason Krempa	Member
Clifford Scott	Member
Robert B. Cliffe	Member
Scott Brydges	Assistant Secretary
Maria V. Lopez	Member

### ABSENT:

### THE FOLLOWING PERSONS WERE ALSO PRESENT:

Susan C. Langdon	Executive Director
Andrea Klyczek	Assistant Director
Michael Dudley	Manager of Finance Manager
Caroline Caruso	Accounting Associate
Susan Barone	Grants & Operations Manager
Julie Lamoreaux	Administrative & Human Resource Officer
Jeremy Geartz	Project Manager
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by Mr. Ross, seconded by Mr. Krempa, to wit:

Resolution No. 7.1.1

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO (i) UNDERTAKE A CERTAIN PROJECT FOR THE BENEFIT OF BURGER FACTORY NIAGARA FALLS INC. AND/OR AN INDIVIDUAL(S) OR AFFILIATE, SUBSIDIARY, OR ENTITY FORMED OR TO BE FORMED ON ITS BEHALF (AS MORE FULLY DEFINED BELOW); (ii) DETERMINE THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; (iii) NEGOTIATE AND EXECUTE A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT, PILOT MORTGAGE AND RELATED DOCUMENTS; AND (iv) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT AND (B) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, **BURGER FACTORY NIAGARA FALLS INC.**, and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition (or retention) by the Agency of leasehold interest in a parcel of land located at 303 Rainbow Blvd., Niagara Falls, New York, (the "Land"), (B) the renovation of an approximately 2,200 square foot building into an A & W Restaurant (the "Improvements"); (C) the acquisition and installation in and around the improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, on January 11, 2023, the Agency adopted a resolution (the "Preliminary Resolution") accepting the Application and directing that a public hearing be held; and

WHEREAS, it was contemplated that the Agency would hold a public hearing and (i) negotiate an agent agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, (ii) negotiate a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") and payment-in-lieu of tax mortgage (the "PILOT Mortgage") with the Company, (iii) take or retain fee title to, leasehold or other interest in the Land, Improvements, Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement, PILOT Agreement and PILOT Mortgage have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemption benefit related to the Project and a partial real property tax abatement benefit all consistent with the policies of the Agency (collectively, the "Financial Assistance"); and

WHEREAS, on the 30<sup>th</sup> day of January, 2023, at 1:00 p.m. at the Niagara Falls City Hall, 745 Main Street, Room 117, Niagara Falls, New York 14302 the Agency held a 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 Minutes of the Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions prior to said Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Agency has determined that under Section 862 of the New York General Municipal Law, that the Project will be used to make retail sales of goods or services to customers who personally visit the Project facilities to obtain such goods or services and that more than one-third of the total Project costs will be allocated for such retail purposes; and

WHEREAS, the Agency also found that, based year 2019 Census data, the poverty rate was 45.50% and the unemployment rate was 2.31 times the state average, for the year to which the date related, with respect to the census tract in which the Project is located enabled the Agency to determine that the Project is located in a "highly distressed area" as said term is defined in Section 862 of the New York General Municipal Law; and

WHEREAS, the Company has submitted to the Agency a Short Environmental Assessment Form (the "EAF") in compliance with Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQR") with respect to the Project, a copy of which is attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented the Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency's written cost-benefit analysis satisfactorily identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project; the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency 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) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities and retaining existing jobs in Niagara County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project 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 Project located within the State; and the Agency 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 Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(E) The Project qualifies for Agency Financial Assistance as it meets the Agency's evaluative criteria established by the Agency as required under General Municipal Law Section 859-a (5),

(F) The Project involves an "unlisted action" (as said quoted term is defined under SEQR). The review is "uncoordinated" (as said quoted term is defined under SEQR). Based upon the review by the Agency of the Short Environmental Assessment Form (the "EAF") and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a "significant effect on the environment" (as said quoted term is defined under SEQR) ; and (iii) no "environmental impact statement" (as said quoted term is defined under SEQR) need be prepared for this action. This determination constitutes a "negative declaration" (as said quoted term is defined under SEQR) for purposed of SEQR. The Agency's findings are incorporated in Part II of the EAF.

Section 2. The Agency has now found that, based year 2019 Census data, the poverty rate was 45.50% and the unemployment rate was 8.80%, or 2.31 times the state average, for the year to which the date related, with respect to the census tract in which the Project is located enabling the Agency to determine that the Project is located in a “highly distressed area” as said term is defined in Section 862 of the New York General Municipal Law.

Section 3. Subject to the Company executing an Agent Agreement by and between the Agency and the Company 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, 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 Agent Agreement shall expire on the date as indicated in the Agent Agreement (*unless extended for good cause by the Chief Executive Officer of the Agency*).

Section 4. Pursuant to Section 875(3) of the New York General Municipal Law, 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, constants, 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 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 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, must (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 5. The Agency hereby confers on the Company in connection with the Project the Financial Assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility and (b) a partial abatement from real property taxes benefit conferred through a certain 5 year Payment in Lieu of Tax Agreement.

The Agency will provide the Company with Project incentives totaling \$142,077.00 as presented within the Application and cost benefit analysis, comprised of real property tax exemption benefits, in the estimated amount of \$112,077.00 and sale and use tax exemption benefits of approximately \$30,000.00. To effectuate this Resolution, the Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement with real property tax exemption benefits; provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

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:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mark Onesi	[ x ]	[ ]	[ ]	[ ]
Kevin McCabe	[ x ]	[ ]	[ ]	[ ]
William L. Ross	[ x ]	[ ]	[ ]	[ ]
Scott Brydges	[ x ]	[ ]	[ ]	[ ]
Clifford Scott	[ x ]	[ ]	[ ]	[ ]
Robert B. Cliffe	[ x ]	[ ]	[ ]	[ ]
Jason Krempa	[ x ]	[ ]	[ ]	[ ]
Maria V. Lopez	[ x ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

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

I, the undersigned Secretary of Niagara County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 8, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 8<sup>th</sup> day of February, 2023.

[SEAL]

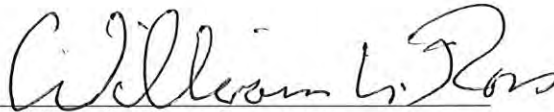
  
William L. Ross, Secretary



EXHIBIT A

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York General Municipal Law will be held by the Niagara County Industrial Development Agency (the "Agency") on the 30<sup>th</sup> day of January, 2023, at 1:00 p.m., local time, at Niagara Falls City Hall, Room 117, 745 Main Street, Niagara Falls, New York 14302, in connection with the following matter:

**Burger Factory Niagara Falls Inc.**, and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition (or retention) by the Agency of leasehold interest in a parcel of land located at 303 Rainbow Blvd., Niagara Falls, New York, (the "Land"), (B) the renovation of an approximately 2,200 square foot vacant building to be transformed into an A & W Restaurant (the "Improvements"); (C) the acquisition and installation in and around the improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility").

The Agency will acquire a leasehold interest in the Facility and lease the Facility back to the Company. The Company will operate the Facility during the term of the lease. At the end of the lease term, the Company will purchase the Facility from the Agency, or if the Agency holds a leasehold interest, the leasehold interest will be terminated. The Agency contemplates that it will provide financial assistance (the "Financial Assistance") to the Company in the form of sales and use tax exemptions consistent with the policies of the Agency, and a partial real property tax abatement.


A representative of the Agency will be at the above-stated time and place to present a copy of the Company's project application and hear and accept written and oral comments from all persons with views in favor of or opposed to or otherwise relevant to the proposed Financial Assistance.

This public hearing is being conducted in accordance with Subdivision 2 of Section 859-a of the New York General Municipal Law.

DATED: January 11, 2023

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_

  
Susan C. Langdon  
Executive Director

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York General Municipal Law will be held by the Niagara County Industrial Development Agency (the "Agency") on the 30th day of January, 2023, at 1:00 p.m., local time, at Niagara Falls City Hall, Room 117, 745 Main Street, Niagara Falls, New York 14302, in connection with the following matter:

Burger Factory Niagara Falls Inc., and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition (or retention) by the Agency of leasehold interest in a parcel of land located at 303 Rainbow Blvd., Niagara Falls, New York, (the "Land"), (B) the renovation of an approximately 2,200 square foot vacant building to be transformed into an A & W Restaurant (the "Improvements"); (C) the acquisition and installation in and around the improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility").

The Agency will acquire a leasehold interest in the Facility and lease the Facility back to the Company. The Company will operate the Facility during the term of the lease. At the end of the lease term, the Company will purchase the Facility from the Agency, or if the Agency holds a leasehold interest, the leasehold interest will be terminated. The Agency contemplates that it will provide financial assistance (the "Financial Assistance") to the Company in the form of sales and use tax exemptions consistent with the policies of the Agency, and a partial real property tax abatement.

A representative of the Agency will be at the above-stated time and place to present a copy of the Company's project application and hear and accept written and oral comments from all persons with views in favor of or opposed to or otherwise relevant to the proposed Financial Assistance.

This public hearing is being conducted in accordance with Subdivision 2 of Section 859-a of the New York General Municipal Law.

DATED: January 11, 2023

**NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

Susan C. Langdon  
Executive Director

NI/311400

1/14/2023

Public Hearing for Burger Factory Niagara Falls Inc. dba A & W Franchise Restaurant  
January 30, 2023 at 1:00 p.m.  
Niagara Falls City Hall – 745 Main Street

Andrea Klyczek: Welcome. This public hearing is now open; it is 1:04 p.m. My name is Andrea Klyczek. I am the Assistant Director of the Niagara County Industrial Development Agency, and I have been designated by the Agency to be the hearing officer to conduct this public hearing. Notice of this public hearing was published in the Niagara Gazette on January 14, 2023.

We are here to hold the public hearing on Burger Factory Niagara Falls Inc. dba A & W Franchise Restaurant and/or Individual(s) or Affiliate(s), Subsidiary(ies), or Entity(ies) formed or to be formed on its behalf. The transcript of this hearing will be reviewed and considered by the Agency in determination of this project.

The proposed project (the "Project") includes the renovation of a vacant building at 303 Rainbow Boulevard to house an A & W Franchise Restaurant. The project location is in a highly distressed area as defined by Federal poverty rate and New York State unemployment rate. This factor makes the project eligible for assistance under New York State statute.

The proposed financial assistance contemplated by the Agency includes New York State and local sales and use tax exemption benefits and mortgage recording tax exemption benefits (in compliance with Agency's tax exemption policy), and a partial real property tax abatement.

The project application and project summary are posted on the Agency's website at [niagaracountybusiness.com](http://niagaracountybusiness.com) and I have copies with me today.

If you have a written comment to submit for the record, you may do so. Written comments may also be delivered to Agency at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 until the comment period closes on February 3, 2023.

If anyone is interested in making a comment, please, state your name and address; if you are representing a company, please identify the company. Please limit your comments to no more than 3 minutes in length.

Michael Casale:

My name is Michael Casale and I am the Commissioner of the Niagara County Department of Economic Development. In early October of last year, I had the pleasure of participating in a statewide conference at the Niagara Falls Convention Center, which as many of you know is located in the heart of the downtown Niagara Falls Tourism District.

The convention center is a great facility with state-of-the-art meeting and event space, a beautiful outdoor area along Old Falls Street, located within walking distance of Niagara Falls State Park, and a natural wonder of the world, Niagara Falls.

For three days, while exhibiting at the statewide conference, I had numerous people approach me asking where they might go to get something to eat. They said they had walked the area around the convention center, but nothing was open.

The convention center is a facility that helps create that much needed economic impact in the tourism shoulder seasons, bringing groups and conventions to downtown Niagara Falls at a time where activity is sorely needed.

Being able to offer convention delegates and conference attendees a variety of dining options is an important selling point to win this important business for Niagara Falls.

Brett Stewart:

Good afternoon, my name is Brett Stewart. I'm the Vice President of Revenue Management for the Merani Hotel Group and our company is in full support of this project. We fully endorse it. Just a couple of facts that will piggyback off what you had mentioned in regards to the need. One of the largest complaints that customers have when coming into this area in the summer months is the lack of dining establishments.

I just want to put a couple of numbers out there for you. These are factual numbers. There are 14 hotels in the immediate downtown area. These 14 hotels represent just under 1,900 room nights a day. So if you take those 1,900 rooms a day with a family of 4, that is 2 adults and 2 children, you're talking about 7,500 people a day in the summer when we're running full occupancy in the months of July and August that are looking for breakfast, lunch and dinner.

Yes, it's nice that we get the breakfast business in our hotels, but people want to be outside to experience the area. We just don't have that capacity at this moment. This is a huge need for this area. We have the Red Coach, the Hard Rock, the Rain Forest Café and the Anchor Bar. After that, there's really no other viable options for a family to go to, so bringing this in as an option for the family is a huge need that will go a long way. It's competition for our properties, but I recognize the need and that it's going to help our community and the other businesses, and it's going to give a better feel for the area.

Frank Strangio:

Hi, my name is Frank Strangio. Our family owns Plati Niagara Inc., Quality Inn and Antonio's Banquet, the Wingate by Wyndham hotel and we are currently developing and building the Cambria Hotel Niagara Falls. I was born and raised in the City of Niagara Falls, so I'm well aware of the issues that we have here and I'm also well aware of the economic situation in the downtown area. I couldn't agree more that this is a distressed area that needs any spark it can get.

We're in the hotel business and I have to reiterate what the previous speaker Brett said. The number one need, complaint and comment that we hear from guests from all over the world is that we need more options for dining and for attractions. People want to stay here longer, but we don't give them enough reason to do that. So, in my opinion, incentives like this are tailor made for this type of project. This is exactly what we're looking for.

There is no question that the restaurants that are being proposed here would be a boost for tourism in our area and not only in the short term during the tourism months, but it would be long term. It would be a 12-month proposition. Having leasing space available in the downtown area, one of the things that we learned was convincing foodservice purveyors why they should be in our downtown area when they are only going to have 6 months of really strong business. So, it precludes them from going there because they're afraid of the off-season.

If we were to incentivize to bridge the gap so that we can more guarantee a positive result for some of these places so that they can survive. What you'll do is, it's an economics lesson, you incentivize them, they survive and they bring the critical mass. So now, when you go to Center Street in Lewiston, it's there all year round and people are not afraid to venture out there.

So if we have the food service establishments available here, people can go there all year long and now you're bringing people into the downtown area. The employees that are able to work in these new businesses will try to live in the downtown area and grow critical mass there and then you get to a point where you don't have to incentivize anymore because now I'm not afraid anymore because the critical mass is there. So this, to me, is exactly the route we're going.

I'll say two other quick things. Jobs are jobs. The people are talking about high paying jobs. We need jobs. It doesn't matter what they are. So if can incentivize to get that, it's a good thing.

I know the gentleman and the family that is doing these projects. I've met them. He's a gentleman and for me always with developers, it's about proven track record. Have you opened businesses and actually gotten things done, and this group has done that and we want more people like that in or area. Our family, who has invested heavily in thisCity is very much behind this incentive and more like it.

Andrea Klyczek: There are no other comments in person today, but the NCDA has had a number of comments submitted to us, which I will read for the record. The first comment is from Gary Siddall, President and CEO of the Aquarium of Niagara

“Safe and family friendly economic development opportunities in the City of Niagara Falls are important for the continued progress being made in our host community. Our visitors are known to ask for diversified retail and food service opportunities that complement the experience being offered by the Aquarium, as well as other cultural organizations and attractions. In addition to improving the amenities provided to our visitors, the Aquarium often seeks collaboration with recently established local businesses for philanthropy and creative partnerships that support the ongoing work of our mission. We recognize that fewer vacancies in the downtown district of the City of Niagara Falls is a positive reflection to current and potential visitors to the destination.”

Andrea Klyczek: The next letter is from Kory Schuler, President and CEO of Niagara USA Chamber

“On behalf of the Niagara USA Chamber, we support the proposed A&W Restaurant project on Rainbow Boulevard in Niagara Falls. This project will help bolster a family restaurant in an area that is sorely lacking places for families to find affordable accommodations for meals. This will also help create more year round opportunities in a community that faces a down turn in business outside of the tourist season.

While some have described the use of incentives on this project as "exploiting a loophole," the fact remains that this type of incentive is legal and meets the requirements within the state law. In fact, in 2013 the State made exceptions for these types of projects within tourist destinations as well as those within impoverished areas. Niagara Falls meets both of those requirements.

The Niagara County IDA has been a strong champion of this region and we respect their decision on this project. There are also many other community stakeholders that feel the same way. The Niagara USA Chamber supports this project, and we thank you for your support of it as well.”

Respectfully, Kory Schuler President & CEO Niagara USA Chamber

Andrea Klyczek: The next letter is from Paul Brown, Business Manager of Plasterers Local 9 and President of the Niagara County Building Trades

“My name is Paul Brown. I am the business manager of the Plasterers Local 9 and the President of the Niagara County Building Trades.

I am writing/speaking in favor of the A&W tax breaks from the Niagara County IDA. Senator Sean Ryan has no clue about Niagara County. People who are ignorant on a subject should just simply keep their mouths shut. The project being voted on will definitely keep people on our side of the falls longer, and that has been the goal for a long time. I am glad to see the IDA take some initiative instead of just being a roadblock like certain senators.”

Andrea Klyczek: The next letter is from Nirel Patel, President of Rupal Hospitality

“Good Morning Andrea. I am writing you to clarify our position on the NCIDA and the tools it has employed to facilitate the development of the City of Niagara Falls. The IDA has been instrumental in the continued transformation of long dormant and underutilized properties. Particularly these programs have been crucial to the tourism sector as the tourism industry is the primary economic generator for our city. My family and I have called Niagara Falls home for the past 25 years; and in this time due to the IDA’s financial support many otherwise unfeasible projects, largely due to the challenging economic environment, have been brought to life.

This has attracted the attention of lenders, investors, and developers whom are noticing the changing landscape of the city and seeking to invest their capital here. This is crucial to building a sustainable vibrant city we can all call home.

From my family to the number of other developers in our city, we thank you for your continued support of our community and look forward to the brighter future ahead.

Best Regards. Nirel Patel, President, Rupal Hospitality.”

Andrea Klyczek: The next letter is from Russell Petrozzi, Vice President of Capitol Cleaners

“As a small business owner within Niagara Falls, I was excited to hear of the arrival of a year round, affordable family restaurant coming to our City. I was dismayed that Albany politicians would try to derail the project by attacking lawful incentives offered by the Niagara County IDA. Niagara Falls needs businesses. An even passing glance at the city would reveal its depressed state, partly by decisions made by those in Albany. It is about time Albany respects home rule and lets those actually involved in the revitalization of City do their jobs instead of taking to the press and making comments against those trying to uplift the city and bringing businesses here. The A&W project is a good project and will serve this community well. I think it will benefit all business owners and I for one look forward to having them in our community.”

Thank you,

Russel Petrozzi Vice President Capitol Cleaners

Andrea Klyczek: Are ther any more comments? Hearing no further comments, I will now adjourn the meeting. It is now 1:19 p.m. Thank you.

**SIGN IN SHEET  
PUBLIC HEARING**

January 30, 2023 - 1 p.m.  
Niagara Falls City Hall

regarding:

**Burger Factory Niagara Falls Inc. dba A & W Franchise Restaurant. and/or Individual(s) or  
Affiliate(s), Subsidiary(ies),  
or Entity(ies) formed or to be formed on its behalf**

Name	Company and/or Address	X box to speak/ comment
JOHN SHOENAKER	59 PARK AVE LOCKPORT, NY 14094	
Brett Stewart	Meranti Hotel Group	
Michael Casale	Niagara Co. Econ. Development	
Frank Strangio	Plati Niagara Inc /Wingate/Quality Inn Antonio's - 7708 NF Blvd, NFBY 14304	

## Statement

Gary Siddall <gsiddall@aquariumofniagara.org>

Mon 1/30/2023 10:45 AM

To: Andrea L Klyczek <Andrea.Klyczek@niagaracounty.com>

Hi Andrea, See below – hope this helps! Gary

“Safe and family friendly economic development opportunities in the City of Niagara Falls are important for the continued progress being made in our host community. Our visitors are known to ask for diversified retail and food service opportunities that complement the experience being offered by the Aquarium, as well as other cultural organizations and attractions. In addition to improving the amenities provided to our visitors, the Aquarium often seeks collaboration with recently established local businesses for philanthropy and creative partnerships that support the ongoing work of our mission. We recognize that fewer vacancies in the downtown district of the City of Niagara Falls is a positive reflection to current and potential visitors to the destination.”



**gary siddall**

president and ceo

m. 716.421.2270

o. 716.285.3575 ext 202

gsiddall@aquariumofniagara.org

701 whirlpool street  
niagara falls, new york 14301  
aquariumofniagara.org





January 30, 2023

To Whom it May Concern,

On behalf of the Niagara USA Chamber, we support the proposed A&W Restaurant project on Rainbow Boulevard in Niagara Falls. This project will help bolster a family restaurant in an area that is sorely lacking places for families to find affordable accommodations for meals. This will also help create more year round opportunities in a community that faces a down turn in business outside of the tourist season.

While some have described the use of incentives on this project as "exploiting a loophole," the fact remains that this type of incentive is legal and meets the requirements within the state law. In fact, in 2013 the State made exceptions for these types of projects within tourist destinations as well as those within impoverished areas. Niagara Falls meets both of those requirements.

The Niagara County IDA has been a strong champion of this region and we respect their decision on this project. There are also many other community stakeholders that feel the same way. The Niagara USA Chamber supports this project, and we thank you for your support of it as well.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Kory Schuler', is written over a horizontal line.

Kory Schuler  
President & CEO  
Niagara USA Chamber



## *Plasterers & Cement Masons Union*

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**Local #9**  
**Buffalo, New York**

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January 30, 2023

Sue Langdon:

My name is Paul Brown. I am the business manager of the Plasterers Local 9 and the President of the Niagara County Building Trades.

I am writing/speaking in favor of the A&W tax breaks from the Niagara County IDA.

Senator Sean Ryan has no clue about Niagara County. People who are ignorant on a subject should just simply keep their mouths shut.

The project being voted on will definitely keep people on our side of the falls longer, and that has been the goal for a long time. I am glad to see the IDA take some initiative instead of just being a roadblock like certain senators.

Paul Brown

Paul Brown, Business Agent  
168 Robinson St.  
North Tonawanda, NY 14120  
Phone: (716) 432-1294

Eric Brown, Financial Secretary  
153 Christiana St.  
North Tonawanda, NY 14120  
Phone: (716) 525-1299

## Coleen Duncan

---

**From:** Andrea L Klyczek <Andrea.Klyczek@niagaracounty.com>  
**Sent:** Monday, January 30, 2023 12:43 PM  
**To:** Coleen Duncan  
**Subject:** Fwd: NCIDA Letter of Support

Get [Outlook for iOS](#)

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**From:** Nirel Patel <Nirel.Patel@RupalHospitality.com>  
**Sent:** Monday, January 30, 2023 12:39 PM  
**To:** Andrea L Klyczek <Andrea.Klyczek@niagaracounty.com>  
**Subject:** NCIDA Letter of Support

Good Morning Andrea,

I am writing you to clarify our position on the NCIDA and the tools it has employed to facilitate the development of the City of Niagara Falls. The IDA has been instrumental in the continued transformation of long dormant and underutilized properties. Particularly these programs have been crucial to the tourism sector as the tourism industry is the primary economic generator for our city. My family and I have called Niagara Falls home for the past 25 years; and in this time due to the IDA's financial support many otherwise unfeasible projects, largely due to the challenging economic environment, have been brought to life.

This has attracted the attention of lenders, investors, and developers whom are noticing the changing landscape of the city and seeking to invest their capital here. This is crucial to building a sustainable vibrant city we can all call home.

From my family to the number of other developers in our city, we thank you for your continued support of our community and look forward to the brighter future ahead.

Best Regards,

Nirel Patel  
PRESIDENT  
RUPAL HOSPITALITY  
O 716.285.0904  
M 310.502.8895

Notice: This electronic transmission is intended for the sole use of the individual or entity to which it is addressed and



1227 Main St Niagara Falls, NY 14301

January 30, 2023

To Susan Langdon,

As a small business owner within Niagara Falls, I was excited to hear of the arrival of a year round, affordable family restaurant coming to our City. I was dismayed that Albany politicians would try to derail the project by attacking lawful incentives offered by the Niagara County IDA. Niagara Falls needs businesses. An even passing glance at the city would reveal its depressed state, partly by decisions made by those in Albany. It is about time Albany respects home rule and lets those actually involved in the revitalization of City do their jobs instead of taking to the press and making comments against those trying to uplift the city and bringing businesses here. The A&W project is a good project and will serve this community well. I think it will benefit all business owners and I for one look forward to having them in our community.

Thank you,

Russel Petrozzi  
Vice President  
Capitol Cleaners



January 31, 2023

Susan Langdon  
Executive Director  
Niagara County Industrial Development Agency  
6311 Inducon Corporate Drive  
Samuel M. Ferraro Center, Suite One  
Sanborn, NY 14132

Dear Susan:

On behalf of Destination Niagara USA, I am writing to extend my support of Niagara Falls International Cuisine, Inc., Burger Factory Niagara Falls, Inc. and Muhammad Shoaib's plans to open a Moe's Southwest Grill and A&W Restaurant in Niagara Falls. We welcome the expansion of dining options for visitors to downtown Niagara Falls, and it is especially beneficial to have nationally recognized brands open year-round within the destination. The opening of these two restaurants with consistent hours will help the destination meet the needs of tourists and convention attendees during the offseason.

Sincerely,

A handwritten signature in black ink, appearing to read "John Percy", with a long, sweeping underline.

John Percy  
President and CEO  
Destination Niagara USA



EXHIBIT B

617.20

*Appendix B*

*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.

<b>Part 1 - Project and Sponsor Information</b> Burger Factory Niagara Falls Inc				
Name of Action or Project: A&W Restaurant				
Project Location (describe, and attach a location map): 303 Rainbow Blvd, Niagara Falls, NY, 14303				
Brief Description of Proposed Action: We are opening a Franchise Restaurant National Chain, Which is called A&W. It will be a fantastic opportunity for the Tourist Section of the Business.				
Name of Applicant or Sponsor: Muhammad Shoalb		Telephone: 7165440122		
		E-Mail:		
Address: 303 Rainbow Blvd				
City/PO: Niagara Falls,		State: NY	Zip Code: 4303	
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.			NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
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:			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, adjoining and near the proposed action.				
<input checked="" 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): <u>Tourist Section</u>				
<input type="checkbox"/> Parkland				



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	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>ASMAN</u>	Date: <u>01-03-23</u>	
Signature: <u>Muhammad S HOAIB</u>		

**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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>



	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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**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.

<input type="checkbox"/>	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.
<input checked="" type="checkbox"/>	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.
NCIDA	11/6/23
Name of Lead Agency	Date
S. LANGDON	ED
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
<i>Susan Langdon</i>	
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

**PRINT**

# **PILOT Agreement**

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**BURGER FACTORY NIAGARA FALLS INC.**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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Relating to the Premises located at  
303 Rainbow Boulevard  
in the City of Niagara Falls,  
Niagara County, New York

Affected Tax Jurisdictions:  
Niagara County  
City of Niagara Falls  
Niagara Falls School District

Tax Map No:

159.53-1-1

**Dated as of February 1, 2023**

## **PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "PILOT Agreement"), dated as of the 1<sup>st</sup> day of February, 2023, is by and between the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices at 6311 Inducon Corporate Drive, Suite 1, Sanborn, New York 14132 (the "Agency") and **BURGER FACTORY NIAGARA FALLS INC.** a business corporation formed and existing under the laws of the State of New York, with offices located at 303 Rainbow Blvd., Niagara Falls, New York 14303 (the "Company").

### **WITNESSETH:**

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition (or retention) by the Agency of leasehold interest in a parcel of land located at 303 Rainbow Blvd., Niagara Falls, New York, (the "Land"), (B) the renovation of an approximately 2,200 square foot building into an A & W Restaurant (the "Improvements"); (C) the acquisition and installation in and around the improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated on or about the date hereof (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments-in-lieu-of-taxes by the Company to the Agency for the benefit of Niagara County (the "County"), the City of Niagara Falls (the "City"), the Niagara Falls School District (the "School District" and, collectively with the County and City, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the taxable status date (**March 1, 2023**) (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3 hereof. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the City, County and School. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Agency has fee title to or leasehold or other interest in the Facility, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment-in-lieu-of-taxes, on or before October 1 of each calendar year for School taxes and on or before January 1 of each calendar year for County and City taxes (collectively, the "Payment Date"), commencing on November 1, 2023 and January 1, 2024, respectively, an amount equal to the PILOT Payment, as described on Schedule A attached hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. To the extent the Agency receives any PILOT Payment, the Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, City and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For school district purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, other than the Project, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2023/2024 School tax year through the 2027/2028 School tax year, and (ii) the 2024 County and City tax year through the 2028 County and City tax year. This PILOT Agreement shall expire on **December 31, 2028**; provided, however, the Company shall pay the 2028/2029 School tax bills and the 2029 County and City tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees

that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

## Section II - Special Assessments and Service Charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

## Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

## Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

## Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

## Section VI - Events of Default and Remedies.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 Upon the occurrence of an Event of Default hereunder, the liability of the Company hereunder shall be all amounts due pursuant to Section I hereof through, but not including, the date on which the Facility is no longer exempt from Real Estate Taxes together with all other amounts due pursuant to Section 6.2 hereof and clause (a) of Section 7 of the PILOT Mortgage (as hereinafter defined).



6.4 Subject to the rights of the mortgagees set forth in Section VIII below, whenever any Event of Default under Section 6.1 hereof shall have occurred and be continuing with respect to this PILOT Agreement, the remedies of the Agency shall be limited to the rights hereunder, under the Leaseback Agreement and under the PILOT Mortgage, subject to the rights of any lenders to cure any such Event of Default as set forth in Section VIII hereof.

Section VII - Assignment.

7. No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII – Rights of Mortgagees.

8.1 For the purposes of this PILOT Agreement, the term “mortgages” shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments encumbering the Facility, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a mortgage may require, and the terms “holder of a mortgage” and “mortgage” shall mean the secured party under any of the foregoing instruments. ANY MORTGAGE SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR ANY OTHER AMOUNT SECURED BY ANY SUCH MORTGAGE.

8.2 So long as the mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Mortgagee to the Agency, the following provisions shall, subject to and unless otherwise prohibited by all applicable law including, but not limited to, the Act, apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) There shall be no renewal, cancellation, surrender, acceptance of surrender, amendment or modification of this PILOT Agreement, or the PILOT Mortgage by joint action of the Agency and the Company along, without, in each case, the prior consent in writing of the Mortgagee, nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates in the Facility.

(b) The Agency shall, at no cost to the Agency and at the sole cost of the Company, upon receipt of any notice or other communication, whether of default or any other matter, simultaneously serve a copy of such notice upon the Mortgagee, and no such notice of other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this PILOT Agreement for the giving of notice.

(c) Notwithstanding anything to the contrary herein, if the Agency serves a notice of default upon the Company, it shall, at no cost to the Agency and at the sole cost of the Company, also serve a copy of such notice upon the Mortgagee at the address set forth in Section 9.2 hereof.

(d) In the event of any default by the Company under this PILOT Agreement, the Mortgagee shall have fifteen (15) days for a monetary default and thirty (30) days in the case of any other default, after notice to the Mortgagee of such default (which notice shall be given in the manner set forth in Section 9.2 below), to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of the Mortgagee as if same had been done by the Company. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(e) If, before the expiration of the Mortgagee's cure period as provided in paragraph (3) above, the Mortgagee shall have notified the Agency in writing of its agreement to pay or cause to be paid, within fifteen (15) days after the expiration of mortgagor's cure period, all payments in this PILOT Agreement provided for and then in default, and/or in the case of non-monetary defaults, shall have agreed within forty-five (45) days to commence or cause to be commenced the cure of such non-monetary defaults, if any are then in default (other than defaults which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "extended cure period"), then the Agency shall not exercise any of its rights and remedies hereunder or under the PILOT Mortgage until expiration of the extended cure period.

(f) The Company (and not the Agency) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the parties hereto, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

(g) Except where the Mortgagee has succeeded to the interest of the Company in the Facility or assumed the right to cure as provided in this Section VIII, no liability for any payments to be made pursuant to this PILOT Agreement or the performance of any of the Company's covenants and agreements under this PILOT Agreement shall attach to or be imposed upon the Mortgagee, and if the Mortgagee or its nominee or designee succeeds to the interest of the Company in the Facility, all of the obligations and liabilities of the Mortgagee or its nominee or designee shall be limited to such entity's interest in the Facility and as otherwise imposed by this PILOT Agreement and shall cease and terminate upon assignment of this PILOT Agreement (any such further assignment to be approved by the Agency).

(h) Notwithstanding any provision of this PILOT Agreement, the Lease Agreement, the Leaseback Agreement or the PILOT Mortgage to the contrary, foreclosure of a mortgage or any sale of the Company's interest in this PILOT Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility to the Mortgagee or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of the Company's interest in this PILOT Agreement and/or the Facility by the Mortgagee or its

nominee or designee, shall not require the consent or approval of the Agency and shall not be a default or Event of Default hereunder.

Section IX -- Miscellaneous.

9.1 This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

9.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Niagara County Industrial Development Agency  
6311 Inducon Corporate Drive, Suite One  
Sanborn, New York 14132-9099  
Attn: Susan C. Langdon, Executive Director

With Copy To: Gabriele & Berrigan, P.C.  
800 Main Street, 4<sup>th</sup> Floor  
Niagara Falls, New York 14302  
Attention: Mark J. Gabriele, Esq.

To the Company: Burger Factory Niagara Falls Inc.  
303 Rainbow Blvd.  
Niagara Falls, New York 14303  
Attn: Muhammad Shoaib, President

With Copy To: William D. Berard, III, Esq.  
345 Buffalo Avenue  
Niagara Falls, New York 14303

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

9.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Niagara County, New York.

9.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

9.5 The Company hereby agrees that it shall, as security for its obligations hereunder, grant to the Affected Tax Jurisdictions a mortgage lien on the Facility pursuant to a certain PILOT Mortgage, dated as of February 1, 2023, from the Company and the Agency to the Agency, for the benefit of the Affected Tax Jurisdictions (the "PILOT Mortgage"), which PILOT Mortgage shall constitute a priority mortgage lien on and security interest in the Facility.

*[Remainder of Page Intentionally Left Blank]*


**[Signature Page to PILOT Agreement]**

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Susan C, Langdon  
Its: Executive Director

BURGER FACTORY NIAGARA FALLS INC.

By:   
Name: Muhammad Shoaib  
Title: President

**SCHEDULE A**

**TO PILOT AGREEMENT, DATED AS OF FEBRUARY 1, 2023 BETWEEN  
NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
AND  
BURGER FACTORY NIAGARA FALLS INC.**

Pursuant to the terms of Section 1.2 of this PILOT Agreement, Total PILOT Payment shall mean an amount per annum as follows:

<b><u>PILOT Year</u></b>	<b><u>School Tax Year</u></b>	<b><u>County and City Tax Year</u></b>	<b><u>Percentage of Normal Tax</u></b>
Year 1	2023/24	2024	15%
Year 2	2024/25	2025	30%
Year 3	2025/26	2026	45%
Year 4	2026/27	2027	60%
Year 5	2027/28	2028	75%
Year 6 and thereafter	2028/29	2029	100%

The payments in lieu of taxes to be paid by the Company to the Affected Tax Jurisdiction pursuant to the terms of this Payment-in-Lieu-of-Tax Agreement shall be computed separately for each Affected Tax Jurisdiction as follows:

1. First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Affected Tax Jurisdiction if the Land was owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Land as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Land if the Land was owned by the Company and not the Agency.
2. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Land shall be an amount equal to 100% of the Normal Tax due each Affected Tax Jurisdiction with respect to the Land for such tax year.
3. Next, determine the Normal Tax which would be payable to each Affected Tax Jurisdiction if the Improvements and any portion of the Equipment assessable as real property were owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Improvements and such assessable Equipment as determined by

the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Improvements and such assessable Equipment if the Improvements and such assessable Equipment was owned by the Company and not the Agency.

4. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Improvements and such assessable Equipment shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Improvements and such assessable Equipment shall be an amount equal to the applicable percentage of the Normal Tax due each Affected Tax Jurisdiction with respect to the Improvements and such assessable Equipment for such tax year, as shown in the table.
5. The Total PILOT Payment to be made by the Company to the Affected Tax Jurisdictions shall equal the sum of Number (2) and Number (4), above, for each tax year during the term of this PILOT Agreement.

# **Sales Tax Exempt Letter**



# Niagara County Industrial Development Agency

February 8, 2023

Burger Factory Niagara Falls Inc.  
303 Rainbow Blvd.  
Niagara Falls, New York 14303

***Re: Burger Factory Niagara Falls Inc.-- Sales Tax Exemption Letter  
Expiring December 31, 2023***

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on February 8, 2023, the **Niagara County Industrial Development Agency** (the "Agency") appointed **Burger Factory Niagara Falls Inc.** (the "Company") its true and lawful agent to undertake a certain project (the "Project") consisting of: (A) the acquisition (or retention) by the Agency of leasehold interest in a parcel of land located at 303 Rainbow Blvd., Niagara Falls, New York, (the "Land"), (B) the renovation of an approximately 2,200 square foot building into an A & W Restaurant (the "Improvements"); (C) the acquisition and installation in and around the improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any renovation, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the renovation and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with the renovation and equipping, and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property.

This agency appointment includes the power 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 including but not limited to the individuals and entities described on Schedule A attached hereto. The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. **The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form**

**ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment. Failure to comply with these requirements may result in loss of sales tax exemptions for the Facility.**

**In exercising this appointment, the Company and/or Project Operator should give the supplier or vendor "IDA Agent or Operator Exempt Purchase Certificate" (NYS Form ST-123) to show that the Company and/or Project Operator is acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon that the Agency or Agent or Project Operator of the Agency was the purchaser. The Company's agents, subagents, contractors and subcontractors should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase. In order to be entitled to use this exemption, your contractor should present to the supplier or other vendor of materials for the Facility, a completed "Contractor Exempt Purchase Certificate" (NYS Form ST-120.1), checking box "(a)" and "(d)".**

**In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent. Upon each such annual filing, the Company shall, within thirty (30) days of each filing, provide a copy of the same to the Agency; provided, however, in no event later than February fifteen (15<sup>th</sup>) of each year.**

**The agency created by this letter is limited to the Facility, and will expire on December 31, 2023; provided, however, the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property. You may apply to extend this agency authority by showing good cause.**

**This letter is being issued pursuant to the Agent and Financial Assistant and Project Agreement, dated February 1, 2023, by and between the Agency and the Company (the "Agent Agreement"). All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Agent Agreement and obtain a copy thereof.**

This letter is provided for the sole purpose of securing exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

With respect to registered vehicles acquired by the Company in name of the Agency, the Agency shall transfer title to such vehicles immediately back to the Company, or as soon thereafter as reasonably practicable; and any personal property acquired by the Company in the name of the Agency shall be located in the City of Niagara Falls, New York, except for temporary periods during ordinary use.

Except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

NIAGARA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Susan C. Langdon  
Title: Executive Director

**SCHEDULE A**

**LIST OF APPOINTED AGENTS<sup>1</sup>**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

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**<sup>1</sup> FOR EACH AGENT APPOINTED BY THE COMPANY, A FORM ST-60 MUST BE COMPLETED AND FILED WITH NYS DEPARTMENT OF TAXATION AND FINANCING INDICATING SUCH AGENT OF THE COMPANY.**