



**Adams Street Infill Housing  
Initiative**

**REQUEST FOR PROPOSALS**

**for the**

**Development of New Home  
Ownership Opportunities**

**Proposal Due Date: 4:00 p.m. on August 31, 2022**



## I. INTRODUCTION

The Buffalo Erie Niagara Land Improvement Corporation (“BENLIC” or “the Land Bank”) is soliciting Requests for Proposal (“RFP”) from qualified developers for the construction of **up to ten (10) single family homes** on Adams Street in Buffalo’s Ellicott District. Proposals should demonstrate a high level of construction quality, construction experience, environmental sensitivity, and ability to match the aesthetics of the surrounding community. BENLIC’s Board of Directors, in collaboration with Evans Bank, will evaluate the RFPs submitted and may select more than one purchaser/developer, as determined by the Board of Directors in its sole discretion. All RFPs will become part of the Land Bank’s files without any obligation on the Land Bank’s part.

BENLIC is a New York not-for-profit corporation and New York Land Bank that seeks to confront and alleviate the problems distressed properties cause to communities by supporting municipal and regional revitalization efforts and strategically acquiring, improving, assembling, and selling distressed, vacant, abandoned, and/or tax-delinquent properties. Returning vacant lots to productive, tax paying use with new homeowners is consistent with BENLIC’s Mission.

This initiative is in partnership with the following organizations:

### **Evans Bank**

A community-based financial services company, Evans Bank has been strongly committed to the community for over 100 years. Founded as Evans National Bank of Angola in 1920, the bank has a “Outstanding” Community Reinvestment Act (CRA). Exceeding the \$2 Billion threshold in 2020, Evans Bank has nearly 400 employees. The company is headquartered in Williamsville, NY.

In 2021, Evans opened a branch at 419 Monroe Street. The branch is located within an 84-unit, senior housing complex financed by the bank. At that time, Evans Bank pledged to listen to residents to understand the neighborhood needs and add value and assistance where possible. Residents quickly made clear the need and desire for single family homes. As a result, Evans Bank convened the following public and non-profit partners to execute on the community request.

### **City of Buffalo**

The City of Buffalo (“City”) desires to create new housing and revitalize its neighborhoods, in particular neighborhoods of the East Side. The City, along with BENLIC and Evans Bank, are excited to collaborate and partner to produce new single-family infill housing in strategic neighborhoods such as Adams Street. In this partnership, the City will dispose of City-owned vacant lots to BENLIC in order to facilitate the residential development. The City’s Office of Strategic Planning has facilitated community meetings with Evans Bank and BENLIC to facilitate community feedback about the development and will continue to support the project in future phases.

The City of Buffalo is working to encourage equitable and inclusive neighborhood development in underinvested communities throughout the city. Through this infill housing initiative, the Mayor’s goals of increasing homeownership and closing the racial wealth gap will be advanced through the development of new single-family housing.

The City of Buffalo helped to guide recent discussions with neighborhood residents and understand their vision, to ensure community needs are being prioritized. Engagement took place in the community, at Evans Bank’s newly developed Westminster Commons facility, where residents expressed excitement about the focus in their community and voiced their desire for development to fit the character of the existing neighborhood.

### **MMB Realty Group**

Mootry Murphy Burgin Realty Group (MMB Realty Group) is a minority owned boutique real estate brokerage company that was created in July 2020. MMB’s goal is to educate buyers and sellers on the home buying process which in turn builds generational wealth in our communities that its owners live and work in. MMB Realty Group has a staff of almost 20 Realtors with a combined 45 years of experience. MMB serves Buffalo and the surrounding communities in the purchasing or selling of commercial and residential properties.

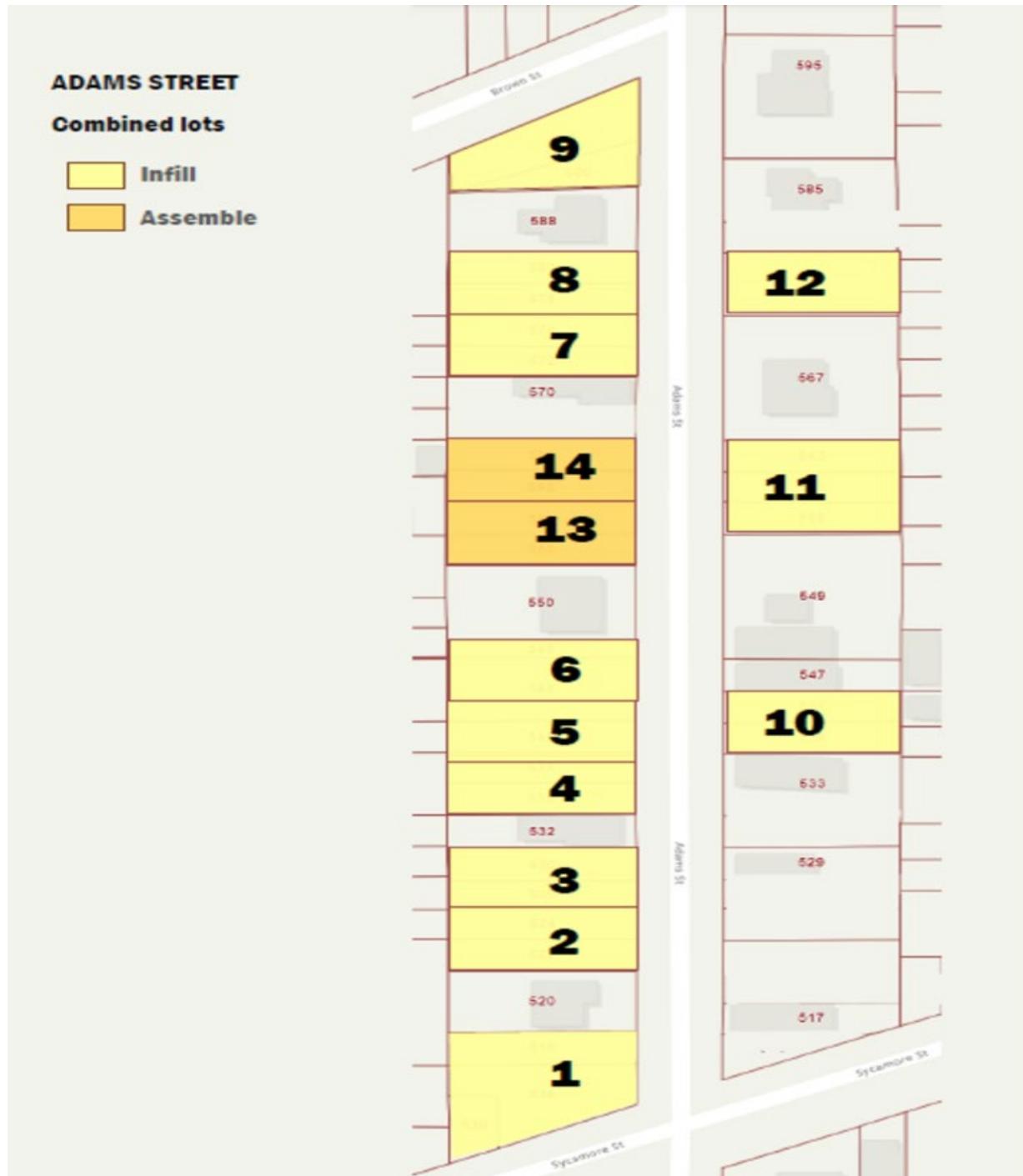
MMB Realty Group would like to see with the Adam Street project is for these new single-family homes to cause an influx of economic development into the community and nearby neighborhoods which includes the building of supermarkets, libraries, other businesses and a park and walkable green space. MMB Realty will market and operate as the selling agent for the properties upon completion.

## **II. PROGRAM DESCRIPTION**

BENLIC is committed to bringing vacant properties back to productive use.

The goal of this infill project is to build and sell up-to ten (10) single family homes on vacant lots on Adams Street adjacent to Westminster Commons. The additional two (2) lots **may** be made available to the developer if the developer provides a unique reuse strategy intended to complement the existing community and new housing development, that creates a community benefit and fosters interaction amongst residents. During engagement residents expressed the strong desire for open community space with placemaking aspects that offer health benefits and improve community aesthetics.

Development Site Map



This pilot program has secured 100% of the budgeted project cost. This includes a 5% Developer Fee for construction of the properties. Please see Financial Terms for additional details. Given that the project is fully funded, without any equity contribution required by the developer and a guaranteed developer fee, selection will depend heavily on the quality of construction, the ability to connect the properties into the existing fabric of this community, and creative utilization of the additional lots for community benefit.

**III. FINANCIAL TERMS**

<u>Sources</u>		<u>Uses</u>	
Evans Bank Loan	\$2,000,000	Land Acquisition	\$50,000
Land Bank	\$500,000	Hard Cost	\$2,000,000
City of Buffalo	\$50,000	Soft Cost	\$210,000
Developer Equity	\$0	Interest Expense Reserve	\$40,000
		Contingency	\$125,000
		Developer Fee	\$125,000
<b>Total</b>	<b>\$2,550,000</b>	<b>Total</b>	<b>\$2,550,000</b>

RFP submissions should include a detailed breakdown of total project cost per structure, not to exceed \$250,000 per property or \$2.55MM in totality. Responses will be scored based upon the ability to provide up to 10 quality single-family homes with a \$2.5MM budget.

Evans Bank shall contribute a maximum of \$2,000,000 in the form of a construction loan at a below-market interest rate and with the commitment fee waived. Proposed terms and conditions from Evans Bank are attached. Utilization of the Evans Bank construction loan is not a requirement. This construction facility will be in the name of the developer and will be repaid with the sale proceeds of each home before the developer fee is realized. The proposed terms and conditions for the Evans Bank construction loan can be found in Exhibit B.

BENLIC shall contribute a maximum amount of \$500,000.00 to the Total Project Cost of each Project (“Land Bank’s Contribution”), ownership of the property will remain with the Land Bank throughout the construction period and the Developer will be engaged under a Developer Agreement (see Exhibit A) with the Land Bank. Under no circumstances whatsoever shall Land Bank be responsible for any contribution to the Total Project Cost of a Project above Land Bank’s Contribution. BENLIC can extend its local and state sales tax exemption to developers for materials purchased for the physical development of the homes.

**Any additional amounts required for completion of a Project above the Total Project Cost shall be the sole responsibility of Developer and shall be deemed part of Developer’s Contribution. The developer will be required to sign a Developer Agreement (see Exhibit A) and Guaranteed Price Contract.**

**IV. REVIEWS AND APPROVALS**

BENLIC and partners will assist the selected developer(s) with all reviews and

approvals. Developer shall submit a single-family residence development plan for each Property to the Land Bank for review and approval prior to the commencement of a Project (the "Development Plan"). The Development Plan will include a written description of all aspects of the Project, including a budget with all construction fees, costs, expenses and Developer profit for the completion of each Project ("Total Project Cost"), work specifications, a project pro forma statement and a relevant timeframe for completion. The Development Plan must be approved in writing by the Land Bank before Developer proceeds with a Project. Developer shall prepare, or cause to be prepared, detailed work specifications (including engineered, stamped plans when required by law) and shall procure all necessary building permits and zoning approvals for all Projects. Developer shall submit on an ongoing basis, but not less frequently than quarterly, up to date pro forma statements to the Land Bank for each Project.

## V. INSURANCE REQUIREMENTS

BENLIC will require insurance certificates that are consistent with the requirements in their programs. See Exhibit C.

## VI. PROPOSAL FORMAT

Applicants cannot:

- Owe any unpaid and past due local property taxes or any amounts for past due bills, fines or fees;
- Have a history of code violations;
- Have more than one nuisance abatement case or proceeding commenced against; or
- Have lost any property to foreclosure for tax delinquency.

### A. Respondent Information

1. Cover letter of interest
2. Identify Point of Contact for Proposal, including name, mailing address, emailaddress, phone and fax number
3. Brief history and description of firm
4. Resumes of key individuals including their roles and responsibilities for thisproject

*Note. Preference will be given to developers that are minority- and women-owned businesses. Please include information on whether firm is MWBE-certified.*

### B. Relevant Project Experience (up to 3 relevant completed projects)

1. Project name and location
2. Project description (partners, financing, project schedule/completion, etc.)
3. Project cost (budgeted and actual)

### C. Local or Regional Project Experience (up to 3 relevant completed projects)

1. Project name and location
2. Project description (partners, financing, project schedule/completion, etc.)
3. Project cost (budgeted and actual)

*Note. Preference will also be given to developers that are local or regional businesses. Please include information on where firm is located.*

**D. Financial Ability:** All applicants are required to provide sufficient documentation to verify the ability to secure either the Evans Bank construction loan or the ability to secure another construction loan instrument to complete the project.

Please include the following documents:

1. 3 Years of Business Tax Returns
2. Personal Financial Statement on all individuals with over 20% ownership
3. 2022 Profit & Loss Statement
4. Balance Sheet

**E. Qualified References**

1. Contact information of at least two (2) qualified references.

**F. Supplemental Documents**

1. Copy of applicant's Photo ID
2. List of all properties owned in Erie County, if applicable
3. List of all members, partners and shareholders, if applicable
4. Articles of Incorporation or Articles of Organization, if applicable

**G. Construction Timeline**

1. Provide construction timeline that contemplates no longer than one year from construction start to completion

**H. Preliminary Designs**

Proposing builders must submit between two (2) and four (4) housing typologies and specifications ("Plan") from which BENLIC may choose, on a lot-by-lot basis, for construction of planned new homes. The home Plans submitted must be distinctly different. Plans differentiated only by a varied roofline, porch size, window style, or interior finish levels, for instance, will not be considered to have met this requirement. (Offering these and other things as options or alternatives to the various standard Plans is encouraged, however.)

The home Plans submitted should consider, and be compatible with, the physical and design context of the existing neighborhood housing stock.

At a minimum, respondents must provide a set of concept sketches of the proposed development, including streetscape renderings, that would convey the spirit of the completed project.

Based on the standards and community engagement feedback, all homes must be/have:

- 1 or 2 stories
- 1200-1800 square feet
- 3-5 bedrooms
- 1-3 bathrooms
- Raised foundation and crawl space (if slab on grade, define why)

- Covered front porch
- 1.5 - 2-car concrete garage at the rear of the lot, connected to the house by a concrete walkway
- Front foundation landscaping bed
- Suitable for a 40’-45’ lot

The following are desirable features that might be included as standard or as options in the Plans submitted:

- 2-car detached garage with electricity and door opener
- High-efficiency furnaces and water heaters
- Fixture, lighting, door, cabinetry and flooring upgrade(s)
- Alternative roof line/orientation
- Contemporary exterior design alternative
- Full front porch
- Rear wood deck
- Privacy fencing
- Landscaping upgrade
- “Green” or sustainable package that exceeds standard Building Code
- Utilization plan for the 2 additional lots for community benefit

## VII. QUESTIONS RELATING TO RFP

All questions pertaining to this RFP shall be submitted on or before 4:00 P.M. via email to Marjorie McAllister, BENLIC Program Manager at [m.mcallister@benlic.org](mailto:m.mcallister@benlic.org).

## VIII. SELECTION PROCESS

### A. Anticipated Timetable

BENLIC expects to undertake the selection process according to the following schedule:

RFP release date:	<b>July 13, 2022</b>
Q&A Zoom Session:	<b>August 1, 2022 @ 5:00 P.M. via Zoom</b>
Closing date for RFP questions:	<b>August 5, 2022 @ 5:00 P.M.</b>
Deadline for submission of proposals:	<b>August 31, 2022 @ 4:00 PM</b>
Developer Selection Announcement	<b>September 16, 2022</b>

*\*This schedule subject to change at the discretion of the BENLIC*

Note. Please visit the Land Bank’s website at [www.benlic.org](http://www.benlic.org) for Q&A Zoom meeting information.

**B. Proposal Evaluation**

Proposals will be evaluated and scored based on the following criteria:

Minority or Woman Owned Firm	Maximum 5 Points
Relevant Project Experience	Maximum 20 Points
Financial Strength	Maximum 5 Points
Local or Regional Project Experience	Maximum 10 Points
Highlights of Project Proposal: - Project Design - Quality of construction - Aesthetics - Suitability/community fit - Other positive community impact	Maximum 30 Points
Creative use of available 12 lots - Maximizing number of homes built on lots (not to exceed 10) - Utilization of the 2 community lots for community benefit/impact	Maximum 30 Points
Total Points	100

**IX. PROPOSAL SUBMISSION**

To be considered, respondents must submit a complete response to this RFP providing all the required information outlined in *Section VI, Proposal Format*.

Interested parties may submit one (1) hard copy but must submit one (1) electronic version\* of their proposal to the BENLIC office by hand or mail by 4:00 p.m. on August 31, 2022 to:

Marjorie McAllister, Program Manager  
Buffalo Erie Niagara Land Improvement Corporation  
The Brisbane Building  
403 Main Street Suite 602  
Buffalo, NY 14203

*\*Electronic versions must be submitted via email to [m.mcallister@benlic.org](mailto:m.mcallister@benlic.org) no later than 4:00 p.m. on August 31, 2022.*

The BENLIC is not liable for any costs incurred by respondents prior to naming the project’s preferred developer. The contents of the response of the selected individual or firm will become contractual obligations should a contract be entered as a result of the RFP.

Respondents may be asked to make an oral presentation to the BENLIC Board of Directors. The purpose of this would be to provide respondents an opportunity to elaborate their qualifications and ensure mutual understanding of the project.

***The BENLIC reserves the right to reject any or all responses as a result of this RFP for any reason or to negotiate with any or all responding firms.***

**Exhibit A**  
**Developer Agreement**

**CO-DEVELOPMENT AGREEMENT**

**This Co-Development Agreement** (the "Agreement") is made as of this \_\_ day of \_\_\_\_\_, 2022 by and between the **Buffalo Erie Niagara Land Improvement Corporation**, a New York land bank duly organized under Article 16 of the New York Not-for-Profit Corporation Law, having an office for the transaction of business at The Brisbane Building, 403 Main Street, Suite 602, Buffalo, New York 14203 ("Land Bank") and \_\_\_\_\_, a New York \_\_\_\_\_ having an office for the transaction of business at \_\_\_\_\_, New York ("Developer").

**RECITALS**

**WHEREAS**, the Land Bank is the fee owner of, or intends to become the fee owner of, certain vacant, buildable parcels of real property located in the City of Buffalo, Erie County, State of New York as such parcels are specifically identified on Schedule A attached hereto and which parcels are or were tax-delinquent, vacant, abandoned, blighted and underutilized (collectively, the "Properties" and individually, a "Property"); and

**WHEREAS**, Developer and Land Bank desire to work together as co-developers to complete the construction of new single family homes on the Properties (collectively, the "Projects" and individually, a "Project") as each has distinct, yet complementary, areas of expertise that, together, will bring about the successful completion of the Projects including the redevelopment and occupancy of the Properties by owner occupants; and

**WHEREAS**, the Land Bank and Developer desire to enter this Agreement setting forth their respective rights and obligations associated with the Projects.

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Projects.** Land Bank and Developer shall work cooperatively for the purpose of completing the Projects on the Properties in accordance with the terms and conditions of this Agreement. Land Bank shall hold fee title to each Property during the Term of this Agreement.

2. **Term.** The term of this Agreement shall commence on the date set forth above and continue until all of the Projects on all of the Properties have been completed, unless sooner terminated as provided for herein.

3. **Project Development Plans.** Developer shall submit a single family residence development plan for each Property to the Land Bank for review and approval prior to the commencement of a Project (the "Development Plan"). The Development Plan will include a written description of all aspects of the Project, including a budget with all construction fees, costs, expenses and Developer profit for the completion of each Project ("Total Project Cost"), work specifications, a project pro forma statement and a relevant timeframe for completion. The Development Plan must be approved in writing by the Land Bank before Developer proceeds with a Project. Developer shall prepare, or cause to be prepared, detailed work specifications (including engineered, stamped plans when required by law) and shall procure all necessary building permits and zoning approvals for all Projects. Developer shall submit on an ongoing basis, but not less frequently than quarterly, up to date pro forma statements to the Land Bank for each Project.

4. **Project Financing.** The Land Bank shall contribute a maximum amount of \$50,000.00 to the Total Project Cost of each Project ("Land Bank's Contribution"). Developer shall contribute the Total Project Cost for each Project less Land Bank's Contribution ("Developer's Contribution"). Under no circumstances whatsoever shall Land Bank be responsible for any contribution to the Total Project Cost of a Project above Land Bank's Contribution. Any additional amounts required for completion of a Project above the Total Project Cost shall be the sole responsibility of Developer and shall be deemed part of Developer's Contribution.

5. **Procurement of Goods and Services.** Developer shall procure all goods and services required for the completion of the Projects in accordance with Developer's standard procurement standards. Developer shall provide Land Bank with a list of all contractors and service providers providing goods and services to the Projects for the Land Bank's approval in writing prior to commencement of each Project. Land Bank shall have the right, in its sole discretion, to reject the use of any contractor, subcontractor or service provider by Developer.

6. **Insurance.** Developer shall provide for itself and maintain at its own cost and expense until the completion of the Projects the following forms of insurance:

a. Commercial General Liability ("CGL") coverage with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence and not less than Two Million Dollars (\$2,000,000.00) annual aggregate. If CGL coverage contains a General Aggregate Limit, such General Aggregate Limit shall apply separately to each Property. CGL coverage shall be written on ISO occurrence form GC 00 01 (1093) or a substitute form providing equivalent coverage.

b. Commercial Liability Umbrella coverage with limits of liability not less than Two Million Dollars (\$2,000,000.00).

c. Comprehensive Automobile Liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident.

d. **Workers' Compensation and Employers' Liability** in form and amounts required by law.

The Land Bank shall be named as an additional insured on the policies required by subparagraphs (a) and (b) above. The Developer shall furnish certificates of insurance to the Land Bank and corresponding policy endorsements setting forth the required coverage hereunder prior to entering a Property or commencing a Project, and such policies shall contain an endorsement requiring the carrier to give at least ten days' prior notice of cancellation to the Land Bank. All insurance required by this Contract shall be primary and non-contributing to any insurance maintained by the Land Bank. The Contractors policy may not contain any exclusion for NY Labor Law, injury to employees or injury to subcontractors. The Developer shall ensure that any subcontractors hired carry insurance with the same limits and provisions provided herein. Subcontractors are required to have an unmodified Commercial General Liability policy without limitation with respect to Employers Liability and injury to Independent Contractors. Developer agrees to cause each subcontractor to furnish the Land Bank with copies of certificates of insurance and the corresponding policy endorsements setting forth the required coverage hereunder prior to any such subcontractor entering a Property or commencing a Project.

7. **Indemnification by Developer.** To the fullest extent permitted by law, Developer shall indemnify, defend and hold harmless the Land Bank and the Land Bank's agents and employees from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys', consultants' and experts' fees, expenses and disbursements) of any kind or nature including, without limitation, for death, personal injury and property damage and claims brought by third parties for personal injury and/or property damage incurred by Land Bank to the extent caused by (i) any breach of this Agreement by the Developer, its subcontractors, officers, directors, members, servants, agents, representatives, or employees, or (ii) the malfeasance, misfeasance, nonfeasance, negligence, unlawful act or omission, or intentional misconduct of the Developer, its subcontractors, officers, directors, members, servants, agents, representatives, or employees, arising out of or in connection with this Agreement or the Projects. This paragraph shall survive the termination or expiration of this Agreement.

8. **Additional Obligations of Developer.**

a. **Taxes and Utilities.** Developer shall be responsible for paying the cost of all utilities for each Project. While the parties expect each Property owned by the Land Bank to be exempt from real property tax, special assessments, special ad valorem levies, sewer rent and user charges, Developer shall be responsible for all such taxes and costs if any are imposed upon a Property during the Term of this Agreement. Said costs shall become part of the Total Project Cost for each Project.

b. **Liens and Encumbrances.** Developer shall not, directly or indirectly, create or permit to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Properties or the Land Bank's interest therein without the Land Bank's prior written consent, whether such lien or encumbrance is based on the common law, statute or contract and including, but not limited to, mechanics', materialmen's, warehousemen's and carriers' liens and other similar encumbrances affecting real property on any of the Properties or on Land Bank's Contribution. Developer shall pay all costs, expenses and attorney fees incurred by Land Bank in defending any action with respect to any such lien or encumbrance affecting any Property. Upon Land Bank's request, Developer shall obtain and provide to Land Bank lien waivers duly executed by all contractors, subcontractors, materialmen and service providers who have contributed in any way to the improvements on any of the Properties in support of the Projects. Land Bank shall cooperate in pledging its interest in the Properties as collateral for a construction loan to Developer for the purpose of fulfilling Developer's obligations hereunder to complete the Projects on such terms as are reasonably agreeable to Land Bank.

c. **Compliance with Law.** Developer shall comply with all applicable laws, ordinances, rules and regulations which impact the Property and are imposed by applicable municipal authorities in completing the Projects including, by way of example but not limitation, obtaining any necessary permits, site plan approvals and variances.

9. **Marketing and Sale of Properties.** Upon the completion of each Project, completion to be deemed to have occurred upon the issuance of a certificate of occupancy or equivalent by the applicable municipal authority, Land Bank shall market and sell each Property in accordance with its customary practices and procedures, including in compliance with the Land Bank's Property Disposition Guidelines as adopted by the Land Bank and as may be modified from time to time. The Developer shall cooperate and assist with the promotion and marketing of the Properties for sale. Upon the closing on a sale of a Property, the sale proceeds shall be disbursed in the following order until exhausted:

a. First, to pay that portion of Developer's Contribution secured by a lien against the Property; and then

b. Next, to pay all necessary and reasonable closing costs of the Land Bank upon the sale of the Property; and then

c. Next, to pay the remainder of Developer's Contribution which was not secured by a lien against the Property to Developer; and then

d. Next, to pay Land Bank's Contribution to Land Bank; and then

e. Last, 50% to Land Bank and 50% to Developer of all remaining sale proceeds.

Land Bank shall make a good faith effort and endeavor to sell each Property for a purchase price which is not less than Developer's Contribution to such Property plus an amount necessary to pay all reasonable closing costs of Land Bank upon the sale of the Property. In the event a Property has been marketed for sale in accordance with the Land Bank's customary practices and procedures, including its Property Disposition Guidelines, for a period of no less than ninety (90) calendar days without the Land Bank receiving a bona fide purchase offer in an amount sufficient to pay Developer's Contribution and the necessary and reasonable closing costs of the Land Bank, then Land Bank shall be permitted to sell a Property for less than such amount, but under no circumstance shall the purchase price for such Property be less than an amount sufficient to pay Developer's Contribution as reduced to provide a Developer's profit for the Property of no less than 5% without Developer's written consent.

10. **Termination at Will.** This Agreement may be terminated by either party for any reason or for no reason upon the giving of written notice to the other of such termination at least ninety (90) calendar days in advance of such date of termination. The parties shall work with each other in good faith during such notice period for the purpose of completing their respective obligations hereunder, including the completion of any Project in progress at the time of such notice of termination or the return of such unfinished Projects to the Land Bank.

11. **Termination for Cause.** This Agreement may be terminated by either party for cause if the other party is in material breach of its obligations under this Agreement and such breach continues un-remedied for more than ten (10) days after the defaulting party receives written notice stating the specific item or items of material breach under this Agreement from the other party, provided that, if such breach is capable of cure but cannot be cured within such ten (10) day period, as long as the defaulting party commences a cure within such ten (10) day period and prosecutes the same with due diligence, there shall be no termination for cause.

12. **Projects Upon Termination.** Upon a termination of this Agreement at will or for cause, Developer shall immediately vacate any and all Properties and Land Bank shall expressly retain all of its rights and remedies at law and in equity against Developer which may arise from a premature termination of this Agreement.

13. **Special Obligation.** Notwithstanding any other provision of this Agreement, it is understood and agreed by Developer that in the performance of the agreements of the Land Bank herein contained and any obligation that the Land Bank may incur for the payment of money shall not constitute, create or give rise to a general pecuniary liability of the Land Bank, but any such obligation so incurred shall be a special obligation of the Land Bank and under no circumstances shall exceed Land Bank's Contribution.

14. **Public Authority Provisions**

a. This contract may be cancelled or terminated by the Land Bank without penalty or damages of any kind upon (1) refusal by an owner, shareholder, member,

manager director or officer of the party providing the goods or services hereunder, when called before a grand jury, head of state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, or (2) refusal of such person to sign a waiver of immunity against subsequent criminal prosecution, or (3) refusal of such person to answer any relevant question with respect to such transaction or contract. Further, such person, and any firm, partnership, limited liability company or corporation of which such person is a shareholder, member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal.

b. By signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law.

c. All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreements known as the "Automotive Products Trade Act of 1965" or any amendments thereto. All contracts in excess of one hundred thousand dollars for the construction, reconstruction, alteration, repair, maintenance or improvement of public works shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this section shall not apply if the governing board or body of such public authority, in its discretion, determines that such provisions would result in unreasonable costs or that such steel products or steel components cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design.

d. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting

competition, as to any matter relating to such prices with any other bidder or with any competitor; and

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

15. **Miscellaneous.**

a. The waiver by each party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.

b. This Agreement may not be assigned by either party without the other party's prior written consent.

c. This Agreement is binding upon and inures to the benefit of the parties, their respective successors and approved assigns.

d. If any one or more of the provisions of this Agreement shall be held invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement shall not be affected thereby.

e. This is the entire agreement between the Land Bank and Developer as to the subject matter hereof and supersedes any agreement heretofore entered into.

f. This Agreement may be amended only by a writing signed by the Land Bank and Developer.

g. The parties agree to submit to the jurisdiction of the Courts of Erie County, State of New York for the resolution of any actions commenced in the enforcement of this Agreement and this Agreement shall be governed by the laws of the State of New York.

h. If any action, suit, arbitration or other proceeding is instituted to remedy, prevent or obtain relief from a default in the performance by a party of its obligations under this Agreement, the prevailing party shall be entitled to recover all of such party's reasonable attorneys' fees incurred in each and every such action, suit, arbitration or other proceeding, including any and all appeals therefrom.

i. Headings of sections are for convenience of reference only and shall not be construed as a part of this Agreement, or as limiting or defining the scope of any section.

**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, the parties have executed this Co-Development Agreement as of the date and year first written above.

**Buffalo Erie Niagara  
Land Improvement Corporation**

By: \_\_\_\_\_  
Jocelyn Gordon, Executive Director

**DEVELOPER**

By: \_\_\_\_\_  
Name:  
Title:



**Exhibit B**  
**Evans Bank Proposed Terms & Conditions**

Mortgagor/Borrower: **TBD through BENLIC Request for Proposal Process**

Loan: **\$2,000,000**

<u>Sources</u>		<u>Uses</u>	
Evans Bank Construction Loan	\$2,000,000	Land Acquisition	\$50,000
BENLIC	\$500,000	Hard Cost	\$2,000,000
City of Buffalo	\$50,000	Soft Cost	\$161,000
		Contingency	\$172,500
		Developer Fee	\$127,500
		Interest Expense Reserve	\$39,000
<b>Total</b>	<b>\$2,550,000</b>	<b>Total</b>	<b>\$2,550,000</b>

Term: **12 Months**

Amortization: **Interest only payments during construction; principal due at maturity**

Purpose of Loan: **Construction of single approximately 10 single family homes**

Commitment Fee: **\$0.00**

Rate: **A fixed rate equal to 2.0% per annum, based on a year of 260 days**

Property: **Not Applicable**

Collateral: **First lien position UCC filing on all business assets**

Prepayment Premium: **None**

Appraisal: **Not Applicable**

Environmental: **An environmental assessment must be conducted by a bank approved engineer.**

Tax Escrow: **No**

Conditions: **1) Establish and fund an Evans Bank deposit account for interest expense reserve at closing from loan proceeds**

**2) Executed Developer Agreement with BENLIC**

**3) Submission of additional information to complete Evans Bank underwriting process including but not limited to:**

- **Property Insurance**
- **Updated Current Personal Financial Statement completed on Evans Bank For (attached)**
- **Two Years of Business Tax Returns**

**4) Evans Bank approval of the finalized construction budget**

**5) Executed Guarantee Price Contract**

**Exhibit C**  
**Insurance Requirements**

**Insurance.**

1. Developer shall provide for itself and maintain at its own cost and expense until the completion of the Projects the following forms of insurance:

a. Commercial General Liability ("CGL") coverage with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence and not less than Two Million Dollars (\$2,000,000.00) annual aggregate. If CGL coverage contains a General Aggregate Limit, such General Aggregate Limit shall apply separately to each Property. CGL coverage shall be written on ISO occurrence form GC 00 01 (1093) or a substitute form providing equivalent coverage.

b. Commercial Liability Umbrella coverage with limits of liability not less than Two Million Dollars (\$2,000,000.00).

c. Comprehensive Automobile Liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident.

d. Workers' Compensation and Employers' Liability in form and amounts required by law.

The Land Bank shall be named as an additional insured on the policies required by subparagraphs (a) and (b) above. The Developer shall furnish certificates of insurance to the Land Bank and corresponding policy endorsements setting forth the required coverage hereunder prior to entering a Property or commencing a Project, and such polices shall contain an endorsement requiring the carrier to give at least ten days' prior notice of cancellation to the Land Bank. All insurance required by this Contract shall be primary and non-contributing to any insurance maintained by the Land Bank. The Contractors policy may not contain any exclusion for NY Labor Law, injury to employees or injury to subcontractors. The Developer shall ensure that any subcontractors hired carry insurance with the same limits and provisions provided herein. Subcontractors are required to have an unmodified Commercial General Liability policy without limitation with respect to Employers Liability and injury to Independent Contractors. Developer agrees to cause each subcontractor to furnish the Land Bank with copies of certificates of insurance and the corresponding policy endorsements setting forth the required coverage hereunder prior to any such subcontractor entering a Property or commencing a Project.