



# CITY OF BUFFALO

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## Request for Proposals



### **Former School #78 321 Olympic Avenue**

**ISSUE DATE:**

Friday December 1<sup>st</sup>, 2017

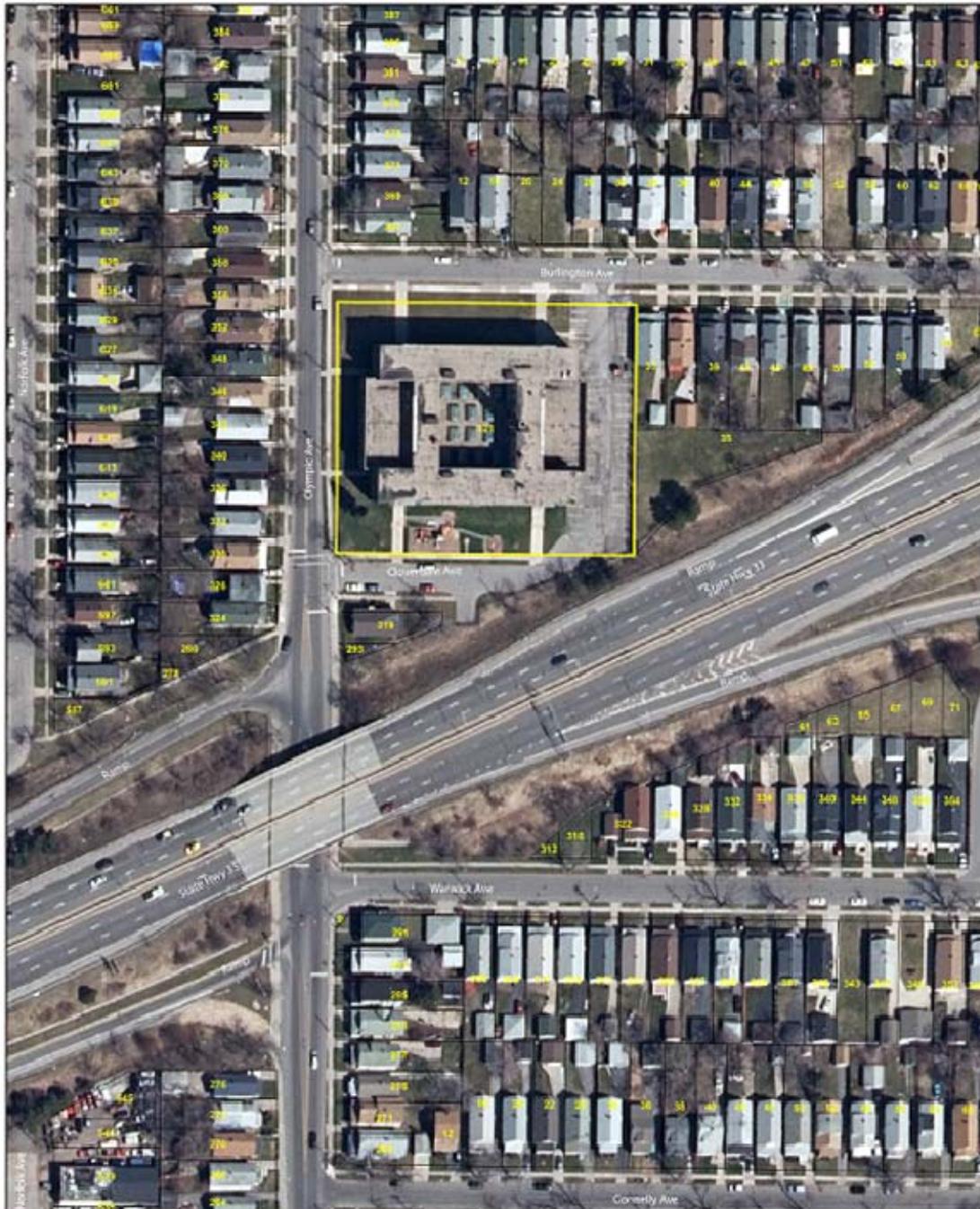
**PROPOSAL SUBMISSION DEADLINE:**

Friday January 12<sup>th</sup>, 2018 4:00pm(EST)

CITY OF BUFFALO  
OFFICE OF STRATEGIC PLANNING  
DIVISION OF REAL ESTATE

REQUEST FOR PROPOSAL TERMS AND CONDITIONS

The City of Buffalo (hereinafter referred to as “the City”) is issuing a Request for Proposals (RFP) for the sale and redevelopment of the former school #78 located at 321 Olympic Avenue Buffalo, New York. The former school is a 3 story structure, zoned R-2, site encompassing approximately 70,000square feet. Title to the property is currently held by the City of Buffalo.



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Buffalo has one of the lowest effective tax rates in New York State, one of the strongest municipal bond ratings and fiscal health, and the City continues to revamp its development framework to better encourage investment and expedite the approval process. Adding to the positive environment for investment, New York Governor Andrew Cuomo committed \$1 Billion to the Buffalo area to further economic development.

The RFP is seeking a qualified developer or development team with the expertise, development credentials, financial capacity, and experience to prepare redevelopment concepts for the development of the Property in accordance with the overall plan for the area. The RFP instructs prospective developers and/or development teams to submit development proposals for former school #78. The proposal requires a description of the proposed use, a plan for the purchase, rehabilitation, financing together with the developer or development teams experience. All proposals must comply with federal and state laws and city ordinances. Depending on the number of proposals received, the City may request more detailed information by selecting some proposals for further consideration in a short list of finalists and/or for presentation in the community.

**SUBMISSION REQUIREMENTS**

Prospective purchasers must not owe the City of Buffalo any debt or have violations on any property in the City and are encouraged to visit the property and surrounding area prior to submitting their proposal.

Six (6) copies of the proposal must be submitted on 8/12 x 11 bound document format as well as an electronic file on disc or "flash" drive. If submitted under separate cover, appended studies and graphics should be clearly labeled to identify the project and developer.

**Proposals must be received by registered mail or hand delivered and registered at the reception desk at the address below by 4:00 p.m., January 12<sup>th</sup>, 2018**

Rebecca Gandour, Director of Development  
Mayor's Office of Strategic Planning  
901 City Hall  
Buffalo, NY 14202  
Re: Former School #78

***All proposals must be accompanied by a \$100.00 non-refundable application fee***

All questions or inquiries regarding the RFP must be submitted in writing to [rgandour@city-buffalo.com](mailto:rgandour@city-buffalo.com). Questions and inquiries will be accepted from all interested parties until December 22<sup>nd</sup>, 2017 at 4:00 p.m. (EST). No responses will be provided for questions and inquiries received after this time.

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**PROPOSAL RULES**

**Reservations**

1. The City reserves the right to stop the selection process at any time if it is considered to be in the best interest of the City. The City also reserves the right to reject any or all proposals submitted.
2. The City reserves the right to seek additional information from respondents and related entities.
3. All decisions related to this RFP are subject to all applicable federal, state and local laws and regulations, and the policies and procedures of the City of Buffalo.
4. All costs associated with the preparation of the proposal, as well as any other related materials, will be borne by the respondent.
5. The determination for eligibility for various incentive programs is the responsibility of the developer or development team.
6. Proposals are to be submitted with a non-refundable application fee of \$100.00 in the form of Cashier's check or money order.

**Evaluation Criteria**

The City will enter into agreements for the transfer of the Property to those applicants whose proposals best meet the following selection criteria and offer the greatest prospects of successful completion.

**1. Quality of the plan:**

- Completeness of Application Proposal – all required documents have been submitted and the project is presented in a clear and concise manner.
- Quality of the Proposed Development
  - Consistency with local plans
  - Community impact - to the extent to which the project will be an asset to neighborhoods, the City and the region.
- Project Readiness - Overall reasonableness and feasibility of executing the developer's proposed development plan. The likelihood of timely progress toward closing on a property transfer agreement leading to the positive redevelopment of the site.
- MBE/WBE Utilization Plan – Proposal includes participation of certified Minority and Women-Owned Business Enterprise (M/WBE) at all project levels, including financing, management, design and construction.
- Minority/Women Workforce goals
- Willingness to develop M/WBE Mentor/Protégé relationship. City of Buffalo Executive Order is available upon request.

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**2. Experience & Qualifications:**

- Respondent and any affiliated partners have successfully completed project(s) in similar size and scope.
- Background, qualifications, experience and expertise of the development team in like ventures or similarly sized development or completed similar project(s) but smaller in size and scope. Include developer's experience in working and partnering with communities as well as both public and private partners. In addition, it should detail previous success in engaging the participation of adjoining neighborhoods and communities in the development process.
- Neighborhood economic development/job creation and/or retention.
- Projects stressing diversity within development team, workforce and tenant/owners

**3. Financial Considerations:**

- *Proposed Purchase Price* – Unless otherwise permitted by law, the City of Buffalo is required to dispose of real property at the highest marketable value and that should be considered by the developer or development team in preparing the development costs. Proposals must clearly state the offer/bid for the property.
- Project budget is complete and all sources and uses of funds are clearly defined and documented with evidence of commitments; costs are limited to amounts or percentages specified in the request for proposals.
- Cost Effectiveness - reasonableness of the development budget.
- The financial feasibility based on realistic development and operating pro formas.
- Reasonable certainty of prospective cash flows incorporated into team's analysis.
- Demonstrated financial capacity of the team and its individual members

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Final proposal selections will be available approximately 60 days after the submission deadline. All participants who submitted a proposal will be notified in writing whether their proposal was accepted or not.

The City will enter into an agreement with a preferred Redeveloper who will retain that status for a period of six (6) months. The designation will be subject to the following terms and conditions:

1. The successful negotiation of a Land Disposition Agreement (LDA) for approval by the City of Buffalo Common Council.
2. Payment of a designation fee of Five Hundred Dollars (\$500.00) per month by Redeveloper to the City payable within five (5) days from the date of designation – by Council - and due thereafter the first day of every month. In the event Redeveloper shall exercise its option to acquire said property pursuant to the LDA to be negotiated by Redeveloper and the City, said option fee shall be credited towards the purchase price. In the event that Redeveloper shall not proceed with the redevelopment of the property within the designation period, Redeveloper shall forfeit all monies paid on account and the City shall retain all such monies.
3. Redeveloper is responsible for performing any soil test borings and soil investigations, as per license agreement to be granted by the City, for the purpose of determining, to developer's satisfaction, the suitability of the site for its intended use, and the presence or absence of hazardous substances as such term is used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (C.E.R.C.L.A) 42 U.S.C.§ 9601 *et seq.*; The Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801 *et seq.*; The Resource Conservation and Recovery Act, as amended , 42 U.S.C § 6901 *et seq.*; Articles 15 and 27 of the New York State Environmental Conservation Law or any other federal, state, or local law, regulation, rule, ordinance, by-law, policy guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.
4. Individuals and/or corporations having outstanding taxes, water bills, parking tickets, user fee and/or demolition liens or any other liens or obligations owed to the City of Buffalo, or code violations existing on any property owned by them, are not eligible for designation.
5. Upon signing of a LDA, payment by the Redeveloper to the City of a non-refundable deposit, in the amount of ten percent (10%) of the agreed to selling price.
6. Submission by the developer or development team of monthly progress reports to the Office of Strategic Planning, Division of Real Estate.
7. Developer or development team will sign a full indemnity and release prior to conveying title.

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The LDA will provide the following time frames (or such other time frames to which the parties may agree):

**Execution of LDA** – Redeveloper will have thirty (30) days from the date the City approves LDA to execute.

**Construction Plans** - One hundred eighty (180) days from the date of the execution of the LDA to submit construction plans.

**Equity Capital and Mortgage Financing** - Two hundred forty (240) days from the date of the execution of the LDA to submit evidence of equity capital and mortgage financing.

**Building Permit** - Two hundred forty (240) days from the date of the execution of the LDA to apply for a building permit

**Commencement and Completion of Construction** – One hundred twenty (120) days after the delivery of the deed to commence construction and twenty four (24) months to complete the project

All periods of time in which the Redeveloper has to perform its obligations under the LDA are stated and granted on the basis of “Time is of the Essence.”

The City may request additional information prior or upon designation.

**PURCHASER TAKES BUILDING “AS IS.”  
PURCHASER WILL SIGN A FULL INDEMNITY AND RELEASE.**

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**PROPOSAL REQUIREMENTS**

Proposals must include the following information in a brief and concise format – *not to exceed five (5) pages of narrative*. The City of Buffalo reserves the right to request additional information during the evaluation of responses and to reject any or all proposals.

**A. DEVELOPMENT DESCRIPTION / APPROACH**

On a separate sheet of paper attached to the proposal identified as: *Development Description* - explain, in detail the general approach to developing the Property including:

1. A brief description of the project
2. The proposed use or uses of the building including square footage mix of tenants, owners and services.
3. Outline a plan to work and partner with surrounding community, including collaboration with both public and private institutions, if applicable;
4. Discussions on market conditions that support the proposed uses;
5. Demonstrating a detailed knowledge of the district in which the property is located and how the proposed project will add to the character of the district.
6. Identify how the developer would ensure meaningful participation from certified Minority and Women-Owned Business Enterprise (M/WBE) at all project levels, including financing, management, design and construction.
  - Developer's experience with or consideration towards mentoring an MWBE firm

**B. PROJECT SUMMARY**

On a separate sheet of paper attached to the proposal identified as: *Project Summary* – provide the following information:

1. A letter of interest along with *Attachment (A)*.
2. A brief history of the developer which lists principals with at least 20% owner interest in the company.
3. A listing of team members, including the primary contact person and each team members' responsibilities with respect to the development project
4. The developer's or development team's qualifications and past experience relevant to the proposed redevelopment activity.

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**C. SALE PRICE/DEVELOPMENT COSTS**

Unless otherwise permitted by law, the City of Buffalo is required to dispose of real property at the highest marketable value, which should be considered by the developer in preparing the development costs. Proposals must clearly state the offer/bid for the Property. *Attachment (B)*

1. An appraisal establishing a sale price must be prepared if an acceptable proposal is selected, however, the developer or development team must include an estimated purchase offer payment amount in the proposal.
2. The determination for eligibility for various incentive programs is the responsibility of the developer or development team.
3. The purchase price is subject to review and approval of the City of Buffalo Appraisal Review Board and the City of Buffalo Common Council.

**D. DEVELOPER FINANCIAL INFORMATION**

As part of the review process the developer or development team must be prepared to submit financial information.

**Note:** The release of this information will be restricted subject to the City's compliance with the Freedom of Information Law and other State and Federal statutes.

The developer must be prepared to provide the following within a week of a request from the City of Buffalo. :

1. Current financial statements – Developer or development team should submit a current financial statement in addition to financial statements for the previous two years. In the case of a newly formed development entity, the proposal should include a financial statement of the general partners or corporate affiliate(s), prepared by a Certified Public Accountant and including the most recent audit of all parties. The statement should show the assets, liabilities, and net worth of the developer or development team.
2. Other disclosures - Include any prior negative financial history involving the proposed developer or development team and/or its owners, partners, shareholders and board members. In the body of the proposal, the developer or development team must address the following questions:
  - Has the developer or development team or any of the affiliated individuals listed defaulted on a real estate obligation? If so, please explain.
  - Has the developer or development team or any of the affiliated individuals listed been delinquent on a commercial or housing development debt? If so, please explain.
  - Has the developer or development team or any of the affiliated individuals listed been the defendant in any legal suit or action? If so, please explain.

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- Has the developer or development team or any of the affiliated individuals, listed declared bankruptcy or made compromised statements with creditors? If so, please explain.
- Are there any current legal proceedings or judgments recorded against the developer or development team or any of the affiliated individuals listed? If so, please explain.
- Has the developer or development team or any of the affiliated individuals ever been debarred or prohibited from bidding on work by any state or federal agencies such as the U.S. Department of Housing and Urban Development, U.S. Small Business Administration, Erie County or the Dormitory Authority of New York State? If so, please explain.

**E. PRELIMINARY DESIGN SUBMISSION**

As a separate attachment labeled Attachment E1, E2, E3 and E4, provide the following information:

1. Cost Estimate/Work Description – Construction cost estimate and detailed work description of all work items proposed to be accomplished and include basis for estimate, engineering estimate, etc.
2. Program summary tabulations including gross square footage (GSF) floor areas, parking spaces, parking ratios per unit/use, unit count and use categories by floor and totals and total FAR. Include amenities provided as part of the project (i.e. types of interior finishes, open floor plans, ceiling heights, balconies, etc.).

**Note:** The City reserves the right to request additional information i.e. renderings, in the case that construction will substantially change the site.

**F. CONSTRUCTION SCHEDULE**

Provide a schedule for the overall project detailing such milestones as design development, financing commitments, construction, project completion etc.

**G. REFERENCES**

Provide three (3) references from projects previously undertaken by the developer.

**Attach any supplemental documentation that you believe may assist us in the review of your application, including letters of commitment from funding sources and other evidence of financing commitments.**

**THE CITY OF BUFFALO RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS SUBMITTED**

**Attached is the Release and Indemnity Agreement that will be required to be signed by the developer or development team.**

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**ATTACHMENT (A)**

**Request for Proposal Form**

**Date of Submission:** \_\_\_\_\_

**Project Name (if applicable):**

\_\_\_\_\_

**Site Address:**

\_\_\_\_\_

Street

\_\_\_\_\_

City

State

Zip

**APPLICANT INFORMATION (Owner Entity)**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

Street

\_\_\_\_\_

City

State

Zip

**Contact:** \_\_\_\_\_

**Home Phone #:** ( ) \_\_\_\_\_ **Work Phone #:** ( ) \_\_\_\_\_ **Fax #:** ( ) \_\_\_\_\_

**E-Mail Address** \_\_\_\_\_

**2. Legal Ownership Entity:**

General Partnership

Individual

Not for Profit Organization

Corporations

Limited Partnerships

Other \_\_\_\_\_

**3. Legal Status of Organization:**

Currently Exists

To be Formed

Estimated Date of Filing \_\_\_\_\_



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**ATTACHMENT (A)**

**Attorney:** \_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(    ) \_\_\_\_\_ (    ) \_\_\_\_\_  
(Phone) (Fax)

**Owner:** \_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(    ) \_\_\_\_\_ (    ) \_\_\_\_\_  
(Phone) (Fax)

**Architect:** \_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip)

(    ) \_\_\_\_\_ (    ) \_\_\_\_\_  
(Phone) (Fax)





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**ATTACHMENT (B)**

**DEVELOPMENT COST**

**Proposed Acquisition Cost:** \$ \_\_\_\_\_

Land \$ \_\_\_\_\_

Buildings \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

**Construction Costs:**

**Hard Costs**

Site Work \$ \_\_\_\_\_

Fixtures, Furnishing & Equipment \$ \_\_\_\_\_

Plumbing, Electrical, Security System \$ \_\_\_\_\_

HVAC \$ \_\_\_\_\_

Foundation, Framing, Roofing, etc. \$ \_\_\_\_\_

Landscaping \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

**Soft Costs:**

Architectural/Engineering Fees \$ \_\_\_\_\_

Legal Fees \$ \_\_\_\_\_

Accounting Fees \$ \_\_\_\_\_

Administrative/Development Fees \$ \_\_\_\_\_

Survey \$ \_\_\_\_\_

Title Work \$ \_\_\_\_\_

Taxes \$ \_\_\_\_\_

Insurance \$ \_\_\_\_\_

Relocation \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

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**ATTACHMENT (B)**

**Miscellaneous Costs:**

Developer Fee \$ \_\_\_\_\_

Project Reserve \$ \_\_\_\_\_

**Subtotal \$ \_\_\_\_\_**

**Contingency:** \$ \_\_\_\_\_

Other Fees not mentioned (Please list) \$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**Total Costs \$ \_\_\_\_\_**

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**ATTACHMENT (C)**

**PROPOSED DEVELOPMENT FINANCING**

**SOURCES OF FUNDS**

<u>Source of Funds</u>	<u>Amount</u>	<u>Use of Funds</u>	<u>Status (Circle)</u>
1. _____	_____	_____	Secured/Pending
2. _____	_____	_____	Secured/Pending
3. _____	_____	_____	Secured/Pending
4. _____	_____	_____	Secured/Pending

**1. Total Financing**

Total Private Sources \$ \_\_\_\_\_

Total Public Sources \$ \_\_\_\_\_

Developer's Equity \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**TOTAL ALL SOURCES** \$ \_\_\_\_\_

(Public Funding – Developer or development team must identify any proposed or anticipated public funding requests including any request for infrastructure improvements, property tax exemptions, sales tax exemptions on building materials, and PILOT Agreements.)

Note: Total from all sources must match total Development Costs on previous page.

**2. Banking References**

**Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

(Street)

\_\_\_\_\_

(City)

(State)

(Zip)

**Contact Person:**

\_\_\_\_\_

**Phone:**

**Account Number:**

\_\_\_\_\_

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**Release and Indemnity Agreement**

This Release and Indemnity Agreement is given by \_\_\_\_\_, Buyer's Name to be inserted, (hereinafter "Grantee") to the City of Buffalo (the "City") as a condition to the delivery of, and as a material part of, a quit claim deed to certain real property commonly known as \_\_\_\_\_ in the City of Buffalo (the "Property").

**I. RELEASE PROVISION:** Grantee covenants and agrees at its sole cost and expense, to defend, release and save harmless City and its officers, employees, directors, agents and representatives from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, and/or expenses, including without limitation, all attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration or permanent acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted or otherwise incurred by Grantee, individually or collectively, at any time resulting from or arising out of:

(a) the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum based substances, in, on, above or under the Property or migrating to parcels now or hereafter owned by Grantee;

(b) any personal injury, wrongful death, or property or other damages arising under any statutory, common law or tort law theory, arising out of, or related to, the remediation of the Property or parcels now or hereafter owned by Grantee;

(c) Grantee's failure to promptly undertake and/or diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and/or other remedial actions with respect to a release or threat of release of any hazardous substance, including but not limited to petroleum or petroleum based products, on, at or from the Property or migrating off the Property to any and all other locations off-site;

(d) human exposure to any hazardous substance, including but not limited to petroleum or petroleum based products, noises, noxious fumes, vibrations, or nuisances of whatever kind from any condition on the Property resulting from Hazardous materials, or the ownership, use, operation, sale, transfer or conveyance thereof;

(e) a violation of any applicable state or federal statute or regulation with respect to any condition now or hereafter existing on the Property;

(f) any investigation, prosecution, enforcement, action, suit, request to negotiate or consent order or other action by any governmental body or office, including but not limited to the New York Department of Environmental Conservation ("DEC") or the Environmental Protection Agency ("EPA") related in any manner whatsoever to the Property;

(g) any and all costs in connection with any clean-up, removal and/or investigation of environmental contamination, deposited on or into the Property or migrating therefrom, whether from on or off site, for which legal requirements mandate be cleaned up at, or removed from, the Property or any other property contaminated from the migration of hazardous material off-site.

The release of City hereunder shall in no way be limited, abridged, impaired or otherwise affected by the following:

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- (i) the release of Grantee, the City and or any other person from the performance or observance of this agreement by operation of law, City's voluntary acts or otherwise;
- (ii) the invalidity or unenforceability of any of the terms or provisions of any of the Property purchase documents and or related documents;
- (iii) any applicable statute of limitations;
- (iv) any investigation or inquiry conducted by or on behalf of the City or any other indemnitee (and or releasee) or any information which City or any other indemnitee (and or releasee) may have or obtain with respect to the environmental or ecological condition of the Property;
- (v) the sale, transfer or conveyance of all or part of the Property;
- (vi) the release or discharge in whole or in part of Grantee in any bankruptcy, insolvency, reorganization, arraignment, readjustment, composition, liquidation or similar proceeding or;
- (vii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of Grantee.

Grantee, and its representatives, agents, employees, successors, predecessors and or assigns, shall be precluded now and in the future from asserting any and all claims (whether direct claims, cross-claims, third-party claims, defenses, counter-claims or other types of claims) against City, individually or collectively, including any claims under (without limitation) the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law, and or the New York State Navigation Law.

**II. REPRESENTATIONS AND WARRANTIES:** City makes no representations or warranties with respect to the past, present or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum based substances, in, on, above or under the Property, and/or migrating off the Property to any and all other locations off-site. City makes no representations or warranties as to any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon. Further, the City makes no representations and or warranties whatsoever as to the condition and or as to the permitted use of the Property, the improvements thereon, environmental conditions at the Property and or in connection with the title to the Property or any other matter with respect to the Property.

**III. GRANTEE ACKNOWLEDGEMENTS: GRANTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY SHALL CONVEY ITS INTEREST IN THE PROPERTY TO GRANTEE AND THAT GRANTEE SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS AND WITH ALL FAULTS" AND THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM GRANTOR, NOR ANY OFFICER, EMPLOYEE, ATTORNEY, AGENT OR BROKER OF CITY AS TO ANY MATTER WHATSOEVER CONCERNING THE PROPERTY INCLUDING, BUT NOT BY WAY OF LIMITATION:** (i) the quality, nature habitability, merchantability, use, operation value, marketability, adequacy or physical condition of the Property or any aspect or portion thereof, including, without limitation, structural elements, appurtenances, access, landscaping, parking,

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plumbing, sewage, and utility systems, facilities and appliances, soils, geology and/or groundwater, (ii) the dimensions or lot size of the Property, (iii) the development or income potential, or rights of or relating to, the Property, or the Property's use, habitability, merchantability, or fitness, or the suitability, value, or adequacy of the Property for any particular purpose, (iv) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property, (v) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any Governmental Authority or of any other person or entity (including, without limitation, the Americans with Disabilities Act), (vi) the ability of Grantee to obtain any necessary governmental approvals, licenses or permits for Grantee's intended use or development of the Property, (vii) the presence or absence of Hazardous Materials on, in, under, above or about the Property, (viii) the quality of any labor or materials used in any improvements, (ix) the condition of title to the Property, (x) City's ownership of the Property or any portion thereof, or (xi) the economics of or the income and expenses, revenue or expense projections or other financial matters, relating to, the operation of the Property. Without limiting the generality of the foregoing, Grantee expressly acknowledges and agrees that Grantee is not relying upon any representation or warranty of City, nor any officer, employee, attorney, agent or broker of City, whether implied, presumed or expressly provided at law or otherwise, arising by virtue of any statute, common law or other legally binding right or remedy in favor of Grantee. Grantee further acknowledges and agrees that City is under no duty to make any inquiry regarding any matter that may not be readily known by City and or by any officer, employee, attorney, agent or broker of City. This section and all provisions of this Agreement shall survive the delivery, acceptance and or recordation of the deed to which this Agreement is attached.

Any reports, repairs or work required by Grantee are the sole responsibility of Grantee, and Grantee agrees that there is no obligation on the part of City to make any changes, alterations or repairs to the Property or to cure any violations of law or to comply with the requirements of any insurer. Grantee, at Grantee's sole cost and expense, shall be responsible for obtaining any permits necessary for use of the Property and shall also be responsible for any repairs or alterations necessary for same, all at Grantee's sole cost and expense.

Grantee agrees to remediate any and all contamination deposited on to or into the Property or migrating therefrom as may be directed by any governing regulating agencies, including, but not limited to the DEC and/or EPA.

By executing this Release and Indemnity Agreement, Grantee acknowledges that Grantee has had the right and a full opportunity to conduct any testing or other investigation of the Property and has fully availed itself of such right or has otherwise waived such right and opportunity.

**IV. DEFINITIONS:** As used in this Agreement, the following terms shall have the following meanings:

"Hazardous substance" means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous waste, hazardous or toxic substances and any other material defined as a hazardous substance in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*; The Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 *et seq.*; The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.*; Articles 15 and 27 of the New York State Environmental Conservation Law or any other federal, state, or local law, regulation, rule, ordinance, by-law, policy, guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.

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“Environmental Law” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term “Environmental Law” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act, the Clean Water Act; the Clean Air Act, the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Law” also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

“Release” with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. Release shall also have the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., and the regulations promulgated thereunder and Articles 15 and 27 of the New York State Environmental Conservation Law, and the regulations promulgated thereunder.

“Remediation” includes but is not limited to any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to herein.

“Legal Action” means any claim, suit or proceeding, whether administrative or judicial in nature.

“Loss or Losses” includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminution in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys’ fees, engineers’ fees, environmental consultants’ fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards to the extent recoverable at law or in equity.

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“Fines” or “Penalties” means any levy imposed by a governmental body or office, including but not limited to the DEC or EPA, authorized by statute or regulation, that is not, directly or indirectly, compensation for, or reimbursement of, any actual cost incurred, liability imposed, or loss sustained by said governmental body or office or any other party. It is specifically understood that “fines” or “penalties” are levies imposed as a punitive or deterrent measure and do not include any other type of loss, except as otherwise defined by statute or regulation.

**V. THESE PROVISIONS TO RUN WITH THE LAND AND IMPROVEMENTS** All of the provisions contained in this Release and Indemnity Agreement shall run with the land and improvements constituting the Property and shall be binding upon Grantee and all its successors and assigns as well as upon subsequent purchasers or owners of the Property.

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Respondent's Signature