

INTERMUNICIPAL AGREEMENT

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BETWEEN

ERIE COUNTY,

THE CITY OF BUFFALO,

THE CITY OF LACKAWANNA

AND

THE CITY OF TONAWANDA

FOR THE CREATION OF THE

**BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION**

(a New York Land Bank)

6D-2

This Intermunicipal Agreement made and entered into this \_\_\_ day of \_\_\_\_\_, 2012("Agreement") under the New York Land Bank Act, Article 16 of the New York Not-for-Profit Corporation Law, between **ERIE COUNTY** (hereinafter the "County") and the **CITY OF BUFFALO**, (hereinafter "Buffalo"), the **CITY OF LACKAWANNA** (hereinafter "Lackawanna"), the **CITY OF TONAWANDA**, (hereinafter "Tonawanda") (hereinafter collectively referred to as the "Parties") for the purpose of establishing and creating the **BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION**, a type C not-for-profit corporation to administer and implement the purposes and objectives of this Agreement.

### RECITALS

WHEREAS, in enacting the New York Land Bank Act as Article 16 of the New York Not-for-Profit Corporation Law (hereinafter the "Land Bank Act"), the Legislature found that there exists in the state of New York a continuing need to strengthen and revitalize the economy of the state of New York and communities in this state and that it is in the best interests of the state of New York and communities in this state to confront the problems caused by vacant, abandoned and tax delinquent properties through the creation of land banks in a coordinated manner to foster the development of that property and to promote economic growth; and

WHEREAS, Section 1603 of the Land Bank Act permits any or any two or more foreclosing governmental units to enter into an intergovernmental cooperation agreement to establish a land bank; and

WHEREAS, the Parties herein agree that the establishment of a land bank would be beneficial to the Parties and to the citizens of the City of Buffalo, the City of Lackawanna, the City of Tonawanda and the County of Erie; and

WHEREAS, the Parties desire to create the Buffalo Erie Niagara Land Improvement Corporation as a type c not-for-profit corporation to operate as a land bank in accordance with the Land Bank Act and to exercise the powers, duties, functions, and responsibilities of a land bank under the Land Bank Act.

Accordingly, the Parties agree to the following:

### ARTICLE I DEFINITIONS

As used in this Agreement the following terms shall have the meanings provided in this Article.

**Section 1.01. "Board of Directors" or "Board"** means the Board of Directors of the Land Bank.

**Section 1.02. "Agreement"** means this intermunicipal agreement between the Parties.

**Section 1.03. "Effective Date"** means the date upon which all of the following are satisfied:

- (a) the Agreement is approved by resolution of the Erie County Legislature and signed by the County Executive;
- (b) the Agreement is approved by Ordinance of the Common Council of the City of Buffalo and signed by the Mayor; and
- (c) the Agreement is approved by Ordinance of the Common Council of the City of Lackawanna and signed by the Mayor; and
- (d) the Agreement is approved by Ordinance of the Common Council of the City of Lackawanna and signed by the Mayor; and
- (e) the creation of the Buffalo Erie Niagara Land Improvement Corporation is approved by the Empire State Development Corporation in accordance with Section 1603(g) of the Land Bank Act.

**Section 1.04. "Fiscal Year"** means the fiscal year of the Land Bank, which shall begin on January 1st of each year and end on the following December 31st.

**Section 1.05. "Land Bank Act"** means Article 16 of the New York Not-for-Profit Corporation Law and as it may be hereafter amended or replaced, subject to the provisions of Section 11.11 of this Agreement.

**Section 1.06. "Land Bank"** means the type c not-for-profit corporation established pursuant to and in accordance with the provisions of this Agreement and known as the Buffalo Erie Niagara Land Improvement Corporation.

**Section 1.07. "Party" or "Parties"** means either individually or collectively, as applicable, the County of Erie, City of Buffalo, City of Lackawanna and/or the City of Tonawanda.

**Section 1.08. "Person"** means an individual, authority, limited liability company, partnership, firm, corporation, organization, association, joint venture, trust, governmental entity, or other legal entity.

**Section 1.09. "Quorum"** means a majority of the members of the Board, not including vacancies.

**Section 1.10. "Real Property"** means all lands and the buildings thereon, all things permanently attached to land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

**Section 1.11. "Tax Delinquent Property"** means real property encumbered by an outstanding tax lien for a delinquent tax as defined in Section 1102 of the New York Real Property Tax Law, the Erie County Tax Act, or such other general, special or local laws as may be applicable to the property tax enforcement procedures of the Parties.

**Section 1.12. "State"** means the state of New York.

## **ARTICLE II** **PURPOSE**

**Section 2.01. Purpose.** The purpose of this Agreement is to create the Buffalo Erie Niagara Land Improvement Corporation to help address the Parties' problems regarding vacant and abandoned property in a coordinated manner and to further foster the development of such property and promote economic growth through the return of vacant, abandoned, and tax-delinquent properties to productive use.

**Section 2.02. Powers and Functions.** The Buffalo Erie Niagara Land Improvement Corporation shall have all of those powers, duties, functions, and responsibilities authorized pursuant to the Land Bank Act.

## **ARTICLE III** **CREATION OF LAND BANK**

**Section 3.01. Creation and Legal Status of Land Bank.** The Land Bank is established pursuant to the Land Bank Act as a type c not-for-profit corporation to be known as the "Buffalo Erie Niagara Land Improvement Corporation".

**Section 3.02. By-Laws, and Policies and Procedures.** The Board shall adopt by-laws consistent with the provisions of this Agreement and the Land Bank Act within forty-five (45) days of the Effective Date. The Board shall adopt policies and procedures consistent with the provisions of this Agreement and the Land Bank Act within ninety (90) days of the Effective Date.

**Section 3.03. Principal Office.** The principal office of the Land Bank shall be determined by the Board but shall always be in a location within the geographical boundaries of Erie County.

**Section 3.04. Title to Land Bank Assets.** All Real Property held in fee by the Land Bank shall be held in its own name.

**Section 3.05. Tax-Exempt Status.** The Parties intend the activities of the Land Bank to be governmental functions carried out by an instrumentality or political subdivision of the State as described in section 115 of Title 26 of the United States Internal Revenue Code, or any corresponding provisions of any future tax code. The Real Property of the Land Bank and all of

the Land Bank's income and operations shall be exempt from all taxation by the State of New York or any of its political subdivisions.

**Section 3.06. Extinguishment of Taxes and Assessments.** Upon the request of the Land Bank and for the purposes of fostering the goals and objectives of the Land Bank, any Party, at its option and in its discretion and subject to any necessary legal approvals, may extinguish any Real Property Taxes or special assessments levied by that Party against Real Property owned by the Land Bank.

**Section 3.07. Compliance with Law.** The Land Bank shall comply with all federal, State, and local laws, ordinances, rules, regulations, and orders applicable to this Agreement.

**Section 3.08. Relationship of Parties.** The Parties agree that the County shall not be responsible, in whole or in part, for the acts of the employees, agents, and servants of Buffalo, Lackawanna or Tonawanda, whether acting separately or in conjunction with the implementation of this Agreement, and that Buffalo, Lackawanna or Tonawanda shall not be responsible, in whole or in part, for the acts of the employees, agents, and servants of the County, whether acting separately or in conjunction with the implementation of this Agreement. The Parties shall only be bound and obligated under this Agreement as expressly agreed to by each Party. The Land Bank shall not obligate Buffalo, Lackawanna or Tonawanda or the County nor shall any obligation of the Land Bank constitute an obligation of Buffalo, Lackawanna or Tonawanda or the County.

**Section 3.09. No Third-Party Beneficiaries.** Except as otherwise specifically provided, this Agreement does not create, is not intended to create in any non-Party, by implication or otherwise, any direct or indirect benefit, obligation, duty, promise, right to be indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any Party's rights under this Agreement, and/or any other right or benefit.

**Section 3.10. Additional Parties to Agreement.** At any time subsequent to the Effective Date, the County of Niagara or an additional foreclosing governmental unit located in whole or in part within Erie or Niagara County may become a Party to this Agreement by completing the following requirements:

- (a) approval of the Board as it exists before the addition of the applicable foreclosing governmental unit and execution by the Board chairperson of a signature page annexed hereto;
- (b) approval from Erie County, the City of Buffalo, the City of Lackawanna, and the City of Tonawanda, and other foreclosing governmental units that are signatories to this Agreement before the addition of the additional foreclosing governmental unit;
- (c) adoption of a local law, ordinance, or resolution as appropriate to the applicable foreclosing governmental unit; and
- (d) execution by an authorized representative of the applicable foreclosing governmental unit of a signature page annexed hereto.

**ARTICLE IV**  
**BOARD, EXECUTIVE DIRECTOR AND STAFF**

**Section 4.01. Board Composition.** The Land Bank shall be governed by a Board of Directors as described in the Certificate of Incorporation. Each member shall serve without compensation. Each member shall continue to serve until the appointment and qualification of his or her successor. Vacancies in the Board occurring otherwise than by expiration of term shall be filled for the unexpired term.

**Section 4.02. Initial Members.** The first term of the first Board members shall commence on the date of the first Board meeting. The initial Members of the Board of the Land Bank shall be:

1. Brendan R. Mehaffy, Executive Director of Strategic Planning of the City of Buffalo	920 City Hall Buffalo, New York 14202
2. Timothy A. Ball Corporation Counsel of the City of Buffalo	1100 City Hall Buffalo, NY 14202
3. James Comerford, Jr. Commissioner of Permit and Inspection Services of the City of Buffalo	324 City Hall Buffalo, NY 14202
4. Janet Penksa Commissioner of Administration, Finance, Policy and Urban Affairs for the City of Buffalo	203 City Hall Buffalo, NY 14202
5. David P. Comerford General Manager, Buffalo Sewer Authority	1038 City Hall Buffalo, NY 14202
6. Marie R. Whyte Commissioner of Erie County Department of Environment and Planning	Edward A. Rath Building 95 Franklin Street, 10th Floor Buffalo, New York 14202
7. Joseph L. Maciejewski Director, Erie County Department of Real Property Tax Services	Edward A. Rath Building 95 Franklin Street, 1st floor, Room 100 Buffalo, New York 14202
8. Michael A. Siragusa Erie County Attorney Department of Law	Edward A. Rath Building 95 Franklin Street, Suite 1634 Buffalo, New York 14202
9. Frank E. Krakowski, City Assessor-City of Lackawanna	Lackawanna City Hall 714 Ridge Road Lackawanna, New York 14218

10. Joseph M. Hogenkamp City Treasurer City of Tonawanda	City of Tonawanda 200 Niagara Street Tonawanda, New York 14150
11. Christina Orsi Empire State Development – Western New York Regional Director	95 Perry Street Suite 500 Buffalo, New York 14203

The qualifications, manner of appointment, and terms of members of the Board of Directors, after the initial terms, shall be as follows:

1. The Executive Director of Strategic Planning of the City of Buffalo;
2. The Corporation Counsel of the City of Buffalo;
3. The Commissioner of Permit and Inspection Services of the City of Buffalo
4. Commissioner of Administration, Finance, Policy and Urban Affairs for the City of Buffalo;
5. General Manager, Buffalo Sewer Authority;
6. Commissioner of Erie County Department of Environment and Planning;
7. Director, Erie County Department of Real Property Tax Services;
8. The Erie County Attorney (Erie County Department of Law);
9. The City Assessor of the City of Lackawanna;
10. The City Treasurer of the City of Tonawanda
11. Western New York Regional Director, Empire State Development Corporation

**Section 4.03 Term of Office.** Members of the Board of Directors shall serve by virtue of office and they shall serve so long as he or she shall hold the office.

**Section 4.04. Qualifications.** All members of the Board of the Land Bank shall be residents of the County of Erie, except such member who serves as an officer of a foreclosing governmental units located outside of Erie County shall be residents of the County in which the foreclosing governmental unit is located.

**Section 4.05. Removal.** The Board shall establish rules and requirements relative to the attendance and participation of members in its meetings, regular or special. Such rules and regulations may prescribe a procedure whereby, should any member fail to comply with such

rules and regulations, such member may be disqualified and removed automatically from office by no less than a majority vote of the remaining members of the Board, and that member's position shall be vacant as of the first day of the next calendar month. Any person removed under the provisions of this paragraph shall be ineligible for reappointment to the Board, unless such reappointment is confirmed unanimously by the Board.

**Section 4.06. Vacancies.** A vacancy among the members of the Board appointed under section 4.01, whether caused by the death, resignation, or removal of a Board member, shall be filled in the same manner as the original appointment for the balance of the unexpired term. Such vacancy shall be filled as soon as practicable.

**Section 4.07. Meetings.** The Board shall conduct its first meeting no later than thirty (30) calendar days after the Effective Date. The Board shall meet at least annually and hold such other meetings at the place, date, and time as the Board shall determine.

**Section 4.08. Records of Meetings.** The Board shall maintain a written record of each meeting. All meetings of the Board shall comply with the provisions of Section 1612(a) of the Land Bank Act and be subject to the New York Open Meetings Law and the New York Freedom of Information Law.

**Section 4.09. Quorum and Voting.** Presence for both quorum and voting at a Board meeting may include electronic communication by which such member of the Board is both seen and heard by the members of the Board and any members of the public at the meeting. All actions of the Board shall be approved by the affirmative vote of a majority of the members of the Board present and voting; provided, however, no action of the Board shall be authorized on the following matters unless approved by a majority of the total Board membership:

- (a) Adoption of by-laws and other rules and regulations for conduct of the Land Bank's business;
- (b) Hiring or firing of any employee or contractor of the Land Bank. This function may, by a majority vote of the total Board membership, be delegated to a specific officer or committee of the Land Bank, under such terms and condition, and to the extent, that the Board may specify;
- (c) The incurring of debt;
- (d) Adoption or amendment of the annual budget; and
- (e) Acquisition, sale, lease, encumbrance, or alienation of real property, improvements, or personal property.

**Section 4.10. Board Responsibilities.** The Board shall have all powers necessary to carry out and effectuate the purposes and provisions of this Agreement and the Land Bank Act, including all of those powers set forth in Section 1607 of the Land Bank Act.

**Section 4.11. Fiduciary Duty.** The members of the Board are under a fiduciary duty to conduct the activities and affairs of the Land Bank in the best interests of the Land Bank,



including the safekeeping and use of all Land Bank monies and assets. The members of the Board shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

**Section 4.12. Compensation.** The members of the Board shall serve without compensation. The Board may reimburse any member for expenses actually incurred in the performance of duties on behalf of the Land Bank.

**Section 4.13. Executive Director.** The Board may select and retain an executive director. An executive director selected and retained by the Board shall administer the Land Bank in accordance with the operating budget adopted by the Board, general policy guidelines established by the Board, other applicable governmental procedures and policies, and this Agreement. The executive director shall be responsible for the day-to-day operations of the Land Bank, the control, management, and oversight of the Land Bank's functions, and supervision of all Land Bank employees. All terms and conditions of the executive director's length of service shall be specified in a written contract between the executive director and the Land Bank. The executive director shall serve at the pleasure of the Board. The Board may delegate to the executive director any powers or duties it considers proper, subject to the constraints of Land Bank Act, and under such terms, conditions and extent that the Board may specify.

**Section 4.14. Employees.** The Land Bank may employ or otherwise contract for the services of any staff deemed necessary to carry out the duties and responsibilities of the Land Bank. Such staff may be employed as employees of the Land Bank, or the services of such staff may be retained pursuant to contracts with any Party or other public or private entities.

**Section 4.15. Conflicts of Interest.** Subject to the provisions of section 1614 of the Land Bank Act, no Member of the Board, or employee of the Land Bank shall acquire any interest, direct or indirect, in Real Property of the Land Bank, in any Real Property to be acquired by the Land Bank, or in any Real Property to be acquired from the Land Bank. No Member of the Board, or employee of the Land Bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by the Land Bank. The Board shall establish policies and procedures requiring the disclosure of relationships that may give rise to a conflict of interest and may adopt ethical guidelines for Members of the Board and employees of the Land Bank. The Board shall require that any member of the Board with a direct or indirect interest in any matter before the Board disclose the member's interest to the Board before the Board takes any action on the matter.

## **ARTICLE V**

### **POWERS OF LAND BANK**

**Section 5.01. General Powers Under Land Bank Act.** The Land Bank shall have all those powers necessary to carry out and effectuate the purposes and provisions of the Land Bank Act including, but not limited to, all those powers specified under Section 1607 of the Land Bank Act, and all those other powers granted to Land Banks pursuant to the Land Bank Act or other statutory authority.

**Section 5.02. Purchase of Tax Liens.** The Land Bank may acquire liens relative to Tax Delinquent Property in accordance with Section 1616 of the Land Bank Act.

**Section 5.03. Execution of Legal Documents Relating to Real Property.** The terms of any contract or agreement concerning the sale, lease license, easement, encumbrance, or other alienation of any interest in Real Property, or improvements thereto, or personal property of the Land Bank, shall be approved by the Board. All contracts of the Land Bank shall be executed in the name of the Land Bank.

**Section 5.04. Civil Action to Protect Land Bank Real Property.** The Land Bank may institute a civil action to prevent, restrain, or enjoin the waste of or unlawful removal of any Real Property held by the Land Bank. The Land Bank may also institute any civil action to protect, clear title to, determine the rights of parties to, remove liens from, or that are otherwise related to the Real Property of the Land Bank.

**Section 5.05. Transfer of Interests in Real Property by Land Bank.** On terms and conditions, in a manner, and for an amount of consideration the Land Bank considers proper, fair, and reasonable, including for no monetary consideration, the Land Bank may convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of Real Property or rights or interests in Real Property in which the Land Bank holds a legal interest to any public or private Person subject to the Public Authorities Law, and any other statutory requirements.

**Section 5.06. Structure of Conveyances.** Transactions shall be structured in a manner that permits the Land Bank to enforce contractual agreements, real covenants, and the provisions of any subordinate financing held by the Land Bank pertaining to development and use of the Real Property.

**Section 5.07. Disposition of Proceeds.** Any proceeds from the sale or transfer of Real Property by the Land Bank shall be retained, expended, or transferred by the Land Bank as determined by the Board in the best interests of the Land Bank and in accordance with the Land Bank Act.

## **ARTICLE VI**

### **RESTRICTIONS ON POWERS**

**Section 6.01. Eminent Domain Prohibited.** The Land Bank shall neither possess nor exercise the power of eminent domain.

**Section 6.04. Limitation on Political Activities.** The Land Bank shall not spend any public funds on political activities. Subject to the foregoing, this section is not intended to prohibit the Land Bank from engaging in activities authorized by applicable law.

**Section 6.05. No Waiver of Governmental Immunity.** The Parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by any Party of any governmental immunity provided under any applicable law.

**Section 6.06. Non-Discrimination.** The Land Bank shall comply with all applicable laws prohibiting discrimination.

**Section 6.07. Building and Housing Codes.** The Land Bank shall maintain all Real Property held by the Land Bank in accordance with applicable State laws and local codes.

**ARTICLE VII**  
**POLICIES FOR ACQUISITION, USE AND**  
**DISPOSITION OF PROPERTY**

**Section 7.01. Compliance with Land Bank Act.** In its acquisition and disposition of property, the Land Bank shall be subject to the Land Bank Act.

**Section 7.02. Compliance with Municipal Building Codes, Zoning Laws, and Land Use Controls.** The Land Bank shall be subject to all applicable city, town and village building codes, zoning laws and land use controls in its use and disposition of real property owned by the Land Bank. The Mayor and the Executive Director of Strategic Planning for the City of Buffalo shall be responsible for confirming that any proposed land banking activity within the City of Buffalo is in accordance with said codes, zoning laws, and land use controls of the City of Buffalo and shall provide written confirmation of such accordance prior to any land banking activity taking place within the City of Buffalo.

**Section 7.03. Consultation with Municipalities.** The Land Bank shall actively consult with Erie County and the cities, towns and villages of Erie County in respect to the selection of properties to be acquired and policies, plans and procedures to the disposition of such properties.

**Section 7.04. Consent of Cities.** Recognizing that the Cities of Buffalo, Lackawanna and Tonawanda, as well as the County, possess their own tax liens on real property within their respective territories, the Land Bank will not foreclose on County tax liens or more generally exercise the powers granted by the Land Bank Act for acquisition of property at tax foreclosure sale within foreclosing governmental unit over the written objection of the Mayor of such City.

**Section 7.05. Requests for Foreclosure.** Any town or village in Erie County may request that (a) the County transfer to the Land Bank the County's tax lien on any tax delinquent real property within such town's or village's territory and (b) the Land Bank foreclose on such lien, provided that the Land Bank may require as a precondition to such foreclosure that the requesting town or village agree to submit a bid for the property at the foreclosure sale. The Land Bank may accept a deed in lieu of foreclosure on such property; and it may convey the property to the requesting town or village in exchange for payment of the amount of the lien, including interest, costs and penalties.

**Section 7.06. Redevelopment Plans.** Subject to Sections 7.02 and 7.03 above, and after consultation with the specific municipalities affected, the Board of Directors may adopt redevelopment plans for properties held or to be disposed of by the Land Bank within the respective territories of such municipalities.

**Section 7.07. Identification of Funds.** Prior to Board action by the Land Bank to acquire property or any property interest, the Land Bank Executive Director shall produce for board review information identifying the funds of the Land Bank or any other funding source

that will cover for the carrying and disposition costs associated with the property or property interested proposed for acquisition.

## **ARTICLE VIII**

### **BOOKS, RECORDS, AND FINANCES**

**Section 8.01. Land Bank Records.** The Land Bank shall keep and maintain at the principal office of the Land Bank all documents and records of the Land Bank. All records of the Land Bank subject to any claimed privilege shall be made available to either Party, including the Erie County Comptroller. The records and documents shall be maintained until the termination of this Agreement and shall be delivered to any successor entity.

**Section 8.02. Financial Statements and Reports.** The Land Bank shall cause to be prepared, at the Land Bank's expense, audited financial statements (balance sheet, statement of revenue and expense, statement of cash flows, and changes in fund balance) on an annual basis. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm. The Land Bank shall be subject to audit by the office of the state comptroller in accordance with Section 1603(h) of the Land Bank Act.

**Section 8.03. Annual Budget.** The executive director, or other individual designated by the Board, shall prepare annually a budget for the Land Bank. The Board shall review and approve a budget for the Land Bank immediately preceding each Fiscal Year.

**Section 8.04. Deposits and Investments.** The Land Bank shall deposit and invest funds of the Land Bank, not otherwise employed in carrying out the purposes of the Land Bank, in accordance with an investment policy established by the Board consistent with laws and regulations regarding investment of Land Bank funds.

**Section 8.05. Disbursements.** Disbursements of funds shall be in accordance with guidelines established by the Board.

**Section 8.06. Performance Objectives.** Each Fiscal Year, the executive director, or other individual designated by the Board, shall prepare, for review and approval by the Board, objectives for the Land Bank's performance.

**Section 8.07. Real Property Inventory Records.** The Land Bank shall inventory all Real property owned, held, or disposed of by the Land Bank. The inventory shall be maintained as a public record and shall be available in accordance with Sections 1608(h) and (i), and Sections 1609(b) of the Land Bank Act.

## **ARTICLE IX**

### **FUNDING AND EXPENDITURES**

**Section 9.01. Budget Contributions.** While under no obligation, the Parties may contribute to the annual Land Bank budget in such manner as approved by the Party or Parties

**Section 9.02. Issuance of Bonds.** The Land bank may issue, sell, and deliver bonds in accordance with the provisions of Section 1611 of the Land Bank Act.

**Section 9.02. Tax Allocation.** Upon the adoption of a resolution by the County Legislature and / or the adoption of an ordinance by the Common Council of a City which is a party hereto, either party, or both parties collectively may provide for Fifty (50) percent of that Party's real property taxes collected on any specific parcel of real property identified in such resolution or ordinance (or both) to be remitted to the Land Bank for a period of five (5) years in accordance with the provisions of Section 1610(c) of the land Bank Act.

**Section 9.03. Management of Funds.** The Land Bank, shall designate a fiscal agent of the Land Bank to manage sales proceeds, monetary contributions made by the Parties', and other Land Bank funds. Standard accounting procedures shall be used in the management of Land Bank accounts.

**Section 9.04. Authorized Expenditures.** The Land Bank shall in its sole discretion and within its budget expend such funds as necessary to carry out the powers, duties, functions, and responsibilities of a land bank under the Land Bank Act consistent with this Agreement, and State law.

## **ARTICLE X**

### **DURATION OF AGREEMENT**

**Section 10.01. Duration.** This Agreement shall commence on the Effective date and shall remain in full force and effect for a period of five years. This Agreement shall thereafter be automatically renewed for successive five year periods until withdrawal of one of the parties in accordance with section 10.02 or dissolution of the Land Bank in accordance with the provisions of Section 10.03.

**Section 10.02. Withdrawal by Party.** Either Party may withdraw from this Agreement upon six (6) months notice to the other Party, and to the Land Bank. The withdrawing Party shall have no rights to funds or other assets of the Land Bank. If at the time of withdrawal the requirements of the Land Bank Act provide that some Real Property of the Land Bank be liquidated, any sums received from the sale of such properties shall remain the funds of the Land Bank. Upon the withdrawal of any Party to this Agreement, the provisions of this Agreement shall remain in force for any remaining Parties to the Agreement.

**Section 10.03. Dissolution.** The Land Bank may only be dissolved pursuant to the requirements of Section 1613 of the Land Bank Act.

## **ARTICLE XI**

### **MISCELLANEOUS**

**Section 11.01. Notices.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party via certified mail, return receipt requested, and by regular US mail. All correspondence shall be

considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the United States Postal Service. All such written notices, including any notice of withdrawal under Article IX, shall be sent to the Parties the addresses below, or any subsequent address provided by either Party:

To: Erie County

Office of the County Executive  
Attn: County Executive  
Edward A. Rath County Office Building  
95 Franklin Street, 16th Floor  
Buffalo, New York 14202

With a copy to:

County Attorney  
Erie County Department of Law  
95 Franklin Street, Suite 1634  
Buffalo, New York 14202

To: City of Buffalo

Office of the Mayor  
Attn: Mayor  
201 City Hall  
Buffalo, New York 14202

With a copy to:

Corporation Counsel  
1100 City Hall  
Buffalo, New York 14202

City of Buffalo  
Office of City Clerk  
1308 City Hall  
Buffalo, New York 1420 2

To: City of Lackawanna

Office of the Mayor  
Attn: Mayor  
714 Ridge Road  
Lackawanna, New York 14218

With a copy to:

Lackawanna City Attorney  
714 Ridge Road  
Lackawanna, New York, 14218

To: City of Tonawanda

Office of the Mayor  
Attn: Mayor  
200 Niagara Street  
Tonawanda, New York 14150

With a copy to:

Tonawanda City Attorney  
200 Niagara Street  
Tonawanda, New York 14150

**Section 11.02. Entire Agreement.** This Agreement sets forth the entire Agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other contracts, understandings, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

**Section 11.03. Interpretation of Agreement.** The Parties intend that this Agreement shall be construed liberally to effectuate the intent and purposes of this Agreement and the

legislative intent and purposes of the Land Bank Act as complete and independent authorization for the performance of each and every act and thing authorized by this Agreement and the Land Bank Act. All powers granted to the Land Bank under this Agreement and the Land Bank Act shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

**Section 11.04. Severability of Provisions.** If any provision of this Agreement, or its application to any Person, Party, or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons, Parties, or circumstances is not affected but will be enforced to the extent permitted by law.

**Section 11.05. Governing Law.** This Agreement is made and entered into in the State of New York and shall in all respects be interpreted, enforced, and governed under the laws of the State of New York without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its plain and fair meaning, and not construed strictly for or against any Party.

**Section 11.06. Captions and Headings.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning or to be interpreted as part of this Agreement.

**Section 11.07. Terminology.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

**Section 11.08. Cross-References.** References in this Agreement to any article include all sections, subsections, and paragraphs in the article, unless specifically noted otherwise. References in this Agreement to any section include all subsections and paragraphs in the section.

**Section 11.09. Jurisdiction and Venue.** In the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved between the Parties, shall be submitted to the courts of Erie County.

**Section 11.10. Amendments to Agreement.** This Agreement may be amended or an alternative form of this Agreement adopted only upon written amendment approved by all Parties.

**Section 11.11. Amendments to Land Bank Act.** The Land Bank shall have any powers authorized pursuant to any amendments, replacements, or substitutions to the Land Bank Act, unless the Agreement is amended by the Parties to provide otherwise.

**Section 11.12. Certificate of Incorporation.** The Certificate of Incorporation of the BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION are attached to this Agreement as Exhibit "A" and incorporated herein by reference.

**Section 11.13. Effective Date.** This Agreement shall become effective as of the Effective Date as that term is defined in Section 1.03. of this Agreement.

*[The remainder of this page is intentionally left blank, with the signature pages immediately following on the next page.]*



IN WITNESS WHEREOF the County of Erie, the City of Buffalo, the City of Lackawanna and the City of Tonawanda have caused this Agreement to be executed by their authorized representatives on the date indicated, to be effective upon the Effective Date as that term is described within this Agreement.

ERIE COUNTY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mark C. Poloncarz  
Erie County Executive

Dated: \_\_\_\_\_

CITY OF BUFFALO

By: Byron W. Brown  
Mayor

ATTEST:

By: \_\_\_\_\_  
Gerald Chwalinski  
Buffalo City Clerk

Dated: \_\_\_\_\_

CITY OF LACKAWANNA

By: \_\_\_\_\_  
Geoffrey M. Szymanski  
Mayor

Dated: \_\_\_\_\_

CITY OF TONAWANDA

By: \_\_\_\_\_  
Ronald Pilozzi  
Mayor