

# Resolution 20-12

## Finger Lakes Regional Land Bank Corporation Board of Directors

### RESOLUTION AUTHORIZING ENTERING INTO A CO-DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY OF SENECA COUNTY

Moved By *Barnhard, 2<sup>nd</sup> Northrup*

**WHEREAS**, New York Not-for-profit Corporation Law 1609(D) authorizes the FLRLBC to convey, exchange, sell, or transfer any of its interests in, upon or to real property; and

**WHEREAS**, New York Not-for-profit Corporation Law 1605(i)(5) requires that a sale of real property be approved by a majority vote of the Board of Directors; and

**WHEREAS**, the FLRLBC's Real Property Disposition Policy permits the FLRLBC to dispose of property for less than fair value by negotiation when the disposal is within the mission, purpose, or governing statute of the FLRLBC; and

**WHEREAS**, the FLRLBC owns 16 Barker Street located in the Town of Seneca Falls, and

**WHEREAS**, 16 Barker Street's current appraised fair market value is \$39,900 and its estimated fair market value when renovations are fully completed will be \$99,600;

**WHEREAS**, the FLRLBC and Habitat for Humanity of Seneca County have drafted a Co-Development Agreement (Attachment A) for the purpose of working together to renovate 16 Barker Street which was once a tax abandoned property and will be sold to a low to moderate income family; and

**WHEREAS**, in order to facilitate the development of 16 Barker Street the Co-Development agreement provides that the transfer of the deed to Habitat will occur at the beginning of the renovation activities and payment or consideration to the Land Bank will occur when the property is transferred to an income qualified family; and

**WHEREAS**, the Co-Development agreement provides that the eventual sale price will be split 80% for the Land Bank and 20% for Habitat; and

**WHEREAS**, the Governor of New York has issued Executive Order 202.1 which reads "Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed;" and

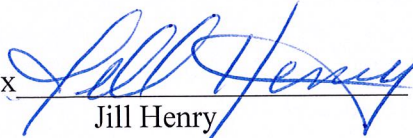
**WHEREAS**, this meeting was held on a publicly advertised and available conference call line in compliance with Executive Order 202.1

**NOW, THEREFORE BE IT RESOLVED**, by the Finger Lakes Regional Land Bank Corporation as Follows:

1. The recitals above are hereby incorporated into this Resolution as if fully set forth herein.
2. The members of the board hereby authorize the FLRLBC to transfer 16 Barker Street to Habitat for Humanity of Seneca County in accordance with the terms and conditions of the Co-Development Agreement.
3. The Chairman, CEO/President, and Secretary of the FLRLBC are hereby authorized and directed to execute all documents on behalf of the FLRLBC which may be necessary and desirable to further the intent of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.
4. The other officers, employees and agents of the FLRLBC are hereby authorized and directed for and in the name and on behalf of the FLRLBC to execute and deliver all such certificates, instruments, and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting desirable and proper to effect the purposes of the foregoing Resolution.
5. This Resolution shall take effect immediately.

I, Jill Henry, Secretary of the Finger Lakes Regional Land Bank Corporation, a corporation organized and existing under the laws of the State of New York (the "Corporation"), do hereby certify that the above is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of the Corporation duly held and convened under a State and County declared State of Emergency on March 24<sup>th</sup>, 2020, at which meeting a duly constituted quorum of the Board of Directors was present and acting throughout, and that such resolution has not been modified, rescinded, or revoked, and is at present in full force and effect.

IN WITNESS THEREOF, the undersigned has affixed their signature this 24<sup>th</sup> day of March, 2020. The Corporation has no corporate seal.

x   
 Jill Henry  
 Corporation Secretary

## Resolution 20-12

### Finger Lakes Regional Land Bank Corporation Board of Directors

#### RESOLUTION AUTHORIZING ENTERING INTO A CO-DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY OF SENECA COUNTY

Moved: Barnhart, 2<sup>nd</sup> Northrup

	Yes	Nay	Abstain	Absent
Cindy Garlick-Lorenzetti	[✓]	[ ]	[ ]	[ ]
Robert Hayssen	[✓]	[ ]	[ ]	[ ]
Jill Henry	[✓]	[ ]	[ ]	[ ]
Don Northrup	[✓]	[ ]	[ ]	[ ]
Melissa Nesbit	[✓]	[ ]	[ ]	[ ]
Frank Sinieropi	[✓]	[ ]	[ ]	[ ]
Kyle Barnhart	[✓]	[ ]	[ ]	[ ]

Attachment A:

## **AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between:

**Finger Lakes Regional Land Bank Corporation** (the “Land Bank”)

1 DiPronio Drive

Waterloo, NY 13165; and

**Seneca County Habitat for Humanity** (“Habitat”)

20 E. Bayard Street

Seneca Falls, NY 13148

### **RECITALS**

**WHEREAS**, the Land Bank, through a grant awarded by the Local Initiatives Support Corporation 28 Liberty Street, 34<sup>th</sup> Floor, New York, NY 10005 (“LISC”) has taken legal possession, conducted necessary environmental reviews, and has had engineered drawings drafted, and

**WHEREAS**, the Land Bank has received CDBG committed program income from Seneca County dedicated to the renovation of 16 Barker Street, and

**WHEREAS**, the Land Bank wishes to support Habitat in the rehabilitation and sale of this property to a qualified family prior to December 31<sup>st</sup>, 2020; and

**WHEREAS**, Habitat has the personnel, skill, and expertise required to undertake the rehabilitation and sale of the property.

**NOW THEREFORE**, in consideration of the premises and mutual covenants and conditions, the parties agree:

### **SECTION 1: FUNDING SOURCES**

Seneca County has committed CDBG Program Income from the New York State CDBG Revolving Loan Fund towards Land Bank activities at 16 Barker Street through Resolution 39-19 totaling \$41,453.69. Of those funds, \$5,500 was expended in environmental reviews. The balance remaining for renovations is \$35,953.69

The Land Bank also has LISC grant funds dedicated to this project totaling \$111,814.59.

Total amount equaling: \$147,767.59

### **SECTION 2: COMMITTED FUND AMOUNT**

The total funding committed to the project shall be the total funding sources of the LISC grant as well as the committed funds from the County CDBG NYS RLF.

**SECTION 3: USE OF COMMITTED FUND**

Funds shall be used to reimburse Habitat for eligible costs paid by Habitat in the construction of a single family home at the Property. Eligible costs include, without limitation, project design, materials, site-work, and general construction activities. Other expenses Habitat wishes to submit for reimbursement will require previous written approval from the Land Bank.

**SECTION 4: PRE-COMMENCEMENT REQUIREMENTS**

Prior to the expenditure of the Funds for which habitat shall request reimbursement under this agreement, Habitat shall submit to the Land Bank Certificates of Insurance evidencing the insurance coverages required by Section 5 of this Agreement, naming the Finger Lakes Regional Land Bank Corporation; Local Initiatives Support Corporation; and the County of Seneca as additional insureds.

**SECTION 5: INSURANCE**

Habitat, or Habitat's contractor, shall, at its sole expense, maintain the following insurance on behalf of Habitat, and on behalf of any contractors, subcontractors, or agents, with an insurance company or companies having an A.M. Best Rating of "A-:Class VII" or better and furnish to the Land Bank Certificates of Insurance evidencing same and reflecting the effective date such coverage as set for below.

- A. Workers' Compensation and Employers Liability Complying with the laws of the State of New York and elsewhere as may be required and shall include:
  - Bodily Injury by Accident: \$500,000 Each Accident
  - Bodily Injury by Disease: \$500,000 Each Employee
  - Bodily Injury by Disease: \$500,000 Policy Limit
  
- B. Commercial General Liability: (including Premises – Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability and Explosion, Collapse and Underground Coverages).

**Occurrence Form:**

General Aggregate:	\$1,000,000
Products/Completed Operations	\$2,000,000
Aggregate:	\$2,000,000
Each Occurrence:	\$1,000,000
Personal and Advertising Injury:	\$1,000,000
Fire Damage (any one fire):	\$50,000
Medical Expense (any one person):	\$5,000

Products and Completed Operations Coverage must be maintained for a period of at least five (5) years after the Term.

- C. Automobile Liability Including:
  - a. All Owned Vehicles
  - b. Hired Vehicles

- c. Non-Owned Vehicles  
Per Accident Limit: \$1,000,000

D. Commercial Umbrella Liability:

Occurrence Limit: \$5,000,000  
Aggregate Limit (where applicable): \$5,000,000  
Policy to apply excess of the Commercial General Liability (following form Per Policy Limit), Commercial and Automobile and Liability and Employers Liability Coverages.

- E. Endorsements (CG 20 10 11 85 or its equivalent for Commercial General Liability, Automobile Liability and Commercial Umbrella Liability) must be furnished reflecting the inclusion of the interest of

Finger Lakes Regional Land Bank Corporation  
1 DiPronio Drive  
Waterloo, NY 13165

And its agents consultants, principals, partners, officers, trustees, directors and employees of each, and all other indemnities named in the Agreement and all affiliated or related entities that have a current or past insurable interest in the property, and

1. Local Initiatives Support Corporation  
28 Liberty Street, 34<sup>th</sup> Floor  
New York, NY 10005
2. County of Seneca  
1 DiPronio Drive  
Waterloo, NY 13165

and all its agents, consultants, principals, partners, officers, trustees, directors, and employees as ADDITIONAL INSUREDS.

- F. Coverage is to be endorsed to reflect that insurance is to be primary for the Land Bank, and all other additional insureds listed in section G below.

- G. The policy provided the above insurance shall be endorsed to contain the following:

“Finger Lakes Regional Land Bank Corporation, its affiliates, subsidiaries, successors, assigns, employees, officers, and directors are interested in the maintenance of this insurance and it is agreed that this insurance will not be cancelled, materially changed or non-renewed without at least thirty (30) days’ written notice.”

- H. The amount of insurance provided in the aforementioned insurance coverages shall not be construed to be a limitation of the liability on the part of Habitat.
- I. Any type of insurance or any increase in limits of liability not described above which Habitat requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
- J. The carrying of insurance described herein shall in no way be interpreted as relieving Habitat of its obligations under this Agreement.
- K. Habitat shall file Certificates of Insurance prior to the commencement of work with the Land Bank which shall be subject to the Land Bank's approval of adequacy of protection and satisfactory character of the insurer.
- L. In the event of a failure to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Land Bank shall have the right (but not the obligation) to take out and maintain the same for all parties and Habitat agrees to furnish all necessary information thereof and to pay the cost thereof together with the reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with or by reason of the failure to furnish and maintain said insurance or to furnish satisfactory evidence thereof to the Land Bank, as applicable, immediately upon presentation of an invoice thereafter.

#### **SECTION 6: CONDITIONS PRECEDENT TO DISBURSEMENT OF FUNDS**

- A. The Land Bank shall disburse funds to Habitat on a monthly schedule upon submission of invoices, receipts and other documentary proof, including without limitation copies of the front and back of cancelled checks, such proof to be reasonably satisfactory to the Land Bank.
- B. Prior to the disbursement of funds to Habitat, the Land Bank shall have the right to inspect and certify that construction is progressing in a workmanlike manner by a professional and certified engineer hired by and under contract with the Land Bank.
- C. Prior to the disbursement of any funds and the start of work, the Land Bank requires proof that Habitat has obtained all necessary zoning permits, building permits, licenses and/or certificates of appropriateness as well as any other items required by federal, state, county, or local laws, codes, or ordinances, for new construction on the Property.
- D. The Land Bank will only supply the Funds up to the amount committed by the County of Seneca for the Property in addition of any interest gained.

- E. Habitat shall complete the project and obtain a certificate of occupancy utilizing its own resources and funding if the project cost on the Property rises above the allotted committed funds from the Town and Land Bank.

#### SECTION 7: **CONVEYANCE OF THE PROPERTY**

1. **Conveyance of Property to Habitat.** The Land Bank shall convey the Property to Habitat prior to the commencement of construction. Habitat acknowledges that the Land Bank obtained title to the Property following a municipal tax foreclosure proceeding and, as such, the Land Bank makes no representations or warranties as to title to the Properties other than the Land Bank has not done or suffered anything whereby the Property has been encumbered in any way whatsoever.
2. **Consideration.** When the project is completed and the home is sold to a third party, the proceeds of the sale will be split between the Land Bank and Habitat at eighty and twenty percent respectively.
3. **Affordability Covenant.** The following shall be filed with sale deed at the time of transfer according to LISC requirements.

*This house was rehabilitated under a program to support affordable home ownership opportunities. Therefore, for a period of five (5) years following the recording of this deed ("Affordability Period"), the owner of this Property who, at the time of purchase shall make equal to or less than 100% of the Area Median Income, as determined by the U.S. Department of Housing and Urban Development and adjusted for family size, can only sell or transfer this Property to a purchaser whose makes equal to or less than 100% of such Area Median Income. This restrictive covenant is intended to run with the land during the Affordability Period, and the Grantor retains the right to enforce the affordability restriction set forth above against subsequent transferees of the Property.*

4. **Recording Expenses.** The Seneca County Clerk under the regulations in the Land Bank Act exempts recording taxes for Land Bank dispositions and acquisitions. The Land Bank shall convey title to the Property by way of a Bargain and Sale Deed with a covenant against grantor's acts. Upon the conveyance of the Property from Habitat to the homeowner, Habitat shall pay all costs for recording the deed and any related transfer documents including the Real Property Transfer Report (RP-5217) and Transfer Tax Return (TP-584). The Land Bank shall convey title to the Property by way of a Bargain and Sale Deed with a covenant against grantor's acts.

#### SECTION 8: **INDEMNIFICATION BY HABITAT**

To the fullest extent permitted by law, Habitat shall indemnify, defend and hold harmless the Land Bank and the Land Bank's agents and employees from and against all claims, damages,



losses and expenses, including but not limited to attorney's fees, resulting from third party claims arising out of: (a) any failure of Habitat to perform any of its obligations hereunder or (b) any malfeasance, misfeasance, nonfeasance or negligence or willful misconduct of Habitat, its agents or employees.

#### **SECTION 9: 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 Property renovations or construction in progress at the time of such notice of termination or the return of such unfinished Projects to the Land Bank in accordance herewith.

#### **SECTION 10: 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.

#### **SECTION 11: PROJECT RE-CONVEYANCE UPON TERMINATION**

Upon a termination of this Agreement at will or for cause, Habitat shall, within ten (10) days of such termination, return and re-convey to the Land Bank the Property previously conveyed to Habitat by the Land Bank under the terms of this Agreement, such re-conveyance to be by way of a Bargain and Sale Deed with a covenant against grantor's acts. The re-conveyance required herein is not meant to be the sole remedy of either party or a release by either party of the other and each party shall expressly retain all of its respective rights and remedies at law and in equity against the other which may arise from a premature termination of this Agreement.

#### **SECTION 12: SPECIAL OBLIGATION**

Notwithstanding any other provision of this Agreement, it is understood and agreed by Habitat 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 shall be payable solely out of the Funds actually received by the Land Bank from the Town of Romulus for the Property and this project.

#### **SECTION 13: GROUND FOR CANCELLATION OF CONTRACT BY THE LAND BANK; DISQUALIFICATION FOR FUTURE CONTRACTS WITH PUBLIC AUTHORITIES**

- A. Notwithstanding anything herein to the contrary, 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 Contractor, 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.
- B. 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.
- C. In the event of cancellation or termination of this Contract pursuant to this Paragraph, any monies owing by the Land Bank for Services completed prior to the cancellation or termination shall be paid to the Contractor.

#### **SECTION 14: IRAN DIVESTMENT ACT OF 2012 CERTIFICATION**

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 New York State Finance Law.

#### **SECTION 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 Habitat 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 Habitat.
- G. The parties agree to submit to the jurisdiction of the Courts of Seneca County, State of New York for the resolution of any actions commenced in the enforcement of this Agreement.
- H. This Agreement shall be governed by the laws of the State of New York.
- I. 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 attorneys' fees incurred in each and every such action, suit, arbitration or other proceeding, including any and all appeals therefrom. As used in this paragraph, attorneys' fees shall be deemed to include the full and actual costs of any legal services actually performed in connection with the matters involved calculated on the basis of the usual fee charged by the attorney performing such services and shall not be limited to mean "reasonable attorneys' fees" as defined in any statute or rule of court.
- J. 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.

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

Finger Lakes Regional Land Bank Corp.

Habitat for Humanity of Seneca County

By: \_\_\_\_\_  
Joseph P. McGrath  
CEO/President

By: \_\_\_\_\_  
Menzo Case  
President

