

Resolution 22-18

Finger Lakes Regional Land Bank Corporation Board of Directors

Moved by *Jill Henry, Les Marquart*

RESOLUTION AUTHORIZING CO-DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY FOR 33 TAYLOR AVENUE WATERLOO

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 the 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 market value by negotiation when the disposal is within the mission, purpose, or governing statute of the FLRLBC; and

WHEREAS, the FLRLBC owns 33 Taylor Avenue in the Village of Waterloo; and

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 build a new single family home on the once tax abandoned property that will be sold to a low to moderate income household; and

WHEREAS, the Land Bank and Habitat have entered into a previous and similar agreement to develop and sell a residential units at 156 Fall Street, Seneca Falls, NY ("Fall St.") and 1537 County Road 132, Town of Romulus ("Willard"); and

WHEREAS, The Land Bank was awarded a grant from Enterprise Community Partners, Inc. that must be committed to approved projects prior to the end of March 2022; and

WHEREAS, Enterprise Community Partners Inc. has confirmed that Fall St. and Willard are eligible for commitment of funds under the grant's approved work plan; and

WHEREAS, The Land Bank and Enterprise have estimated the amount to be committed to the above projects to be \$126,769; and

WHEREAS, The Land Bank and Habitat mutually wish to commit excess funds realized from the Fall Street Project and Willard Project to the new build at 33 Taylor; and

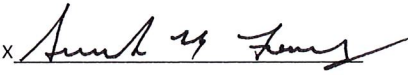
NOW, THEREFOR BE IT RESOLVED, by the Finger Lakes Regional Land Bank Corporation as Follows:

1. The recitals above are hereby incorporated into this resolution as if it fully set forth herein.

2. The members of the board hereby authorize the FLRLBC to commit remaining funds of the Enterprise Grant to the eligible projects at Fall Street and Willard.
3. The members of the board hereby authorize the FLRLBC to transfer 33 Taylor Avenue to Habitat for Humanity of Seneca County in accordance with the terms and conditions of the co-development agreement.
4. 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.
5. The other officers, employees and agents of the FLRLBC are hereby authorized and directed for and in the same 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.
6. This Resolution shall take effect immediately.

I, Amanda Forney, 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 on March 22nd, 2022, 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 22 day of March, 2022. The Corporation has no corporate seal.

x 
Amanda Forney, Secretary

Resolution 22-18

RESOLUTION AUTHORIZING CO-DEVELOPMENT AGREEMENTS WITH HABITAT FOR HUMANITY FOR 33 TAYLOR AVENUE WATERLOO

Moved:

	Yes	Nay	Abstain	Absent
Frank Sinicropi	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ernie Brownell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jill Henry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Les Marquart	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Don Northrup	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kyle Barnhart	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Wood	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Schedule A:

AGREEMENT

THIS AGREEMENT is made this _ day of March 2022 by and between:

Finger Lakes Regional Land Bank Corporation (the "Land Bank ")
1 DiPronio Drive
Waterloo, NY 13165; and

Habitat for Humanity of Seneca County, Inc. ("Habitat")
20 E. Bayard Street
Seneca Falls, NY 13148

RECITALS

WHEREAS, the Land Bank and Habitat have entered into agreement to rehabilitate and sell a residential unit at 156 Fall Street, Seneca Falls, NY ("Fall St."); and

WHEREAS, the Land Bank and Habitat have entered into agreement to build and sell a new residential unit at 1537 County Road 132, Town of Romulus ("Willard"); and

WHEREAS, The Land Bank was awarded a grant from Enterprise Community Partners, Inc. that must be committed to approved projects prior to the end of March 2022; and

WHEREAS, Enterprise Community Partners Inc. has confirmed that Fall St. and Willard are eligible projects under the grant's approved work plan; and

WHEREAS, The Land Bank and Enterprise have estimated the amount to be committed to the above projects to be \$126,769; and

WHEREAS, the Land Bank and Habitat desire to continue collaborating on future projects including a new build at 33 Taylor Avenue, Waterloo ("33 Taylor"); and

WHEREAS, Habitat has long been interested in a new build at 33 Taylor and has submitted a purchase offer to the Land Bank for \$14,000; and

WHEREAS, The Land Bank and Habitat mutually wish to commit excess funds realized from the Fall Street Project and Willard Project to the new build at 33 Taylor; and

NOW THEREFORE, the parties agree as follows:

I. FALL STREET AND WILLARD STREET PROJECTS

In addition to agreements of the parties already in place pertaining to Fall St. and Willard the parties state as follows:

1. FUNDING SOURCES

- a. The Land Bank expects to have approximately \$126,769 available to reimburse Habitat for expenses incurred for the Fall St. and Willard projects committed from the Enterprise Community Partners Inc. grant (“Committed Funds”). If Enterprise Community Partners Inc. grants a greater or lesser amount, those funds shall also be known as the Committed Funds.

2. USE OF COMMITTED FUNDS

- a. The Committed Funds shall be used by Habitat for eligible costs for the Fall Street and Willard projects. 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.
- b. Monies saved by Habitat on the Fall St. and Willard projects by virtue of receiving Committed Funds from the Land Bank will be reserved by Habitat for costs associated with the 33 Taylor St. project. 33 Taylor is anticipated to begin during 2022.

3. CONDITIONS PRECEDENT TO DISBURSEMENT OF COMMITTED FUNDS

- a. The Land Bank shall disburse funds to Habitat in one lump sum 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 determined to be available under the Enterprise Community Partners Inc. grant

- e. If the project cost on Fall St. and Willard St. exceeds the Committed Funds, Habitat shall complete the projects, and obtain a certificate of occupancy, utilizing its own resources and funding.

II. CO-DEVELOPMENT OF 33 TAYLOR AVENUE

1. FUNDING SOURCES

- a. Habitat shall utilize savings referenced in paragraph I.2.b. to fund the 33 Taylor Ave. project (“33 Taylor Funds”)

2. USE OF FUNDS

- a. The 33 Taylor Funds shall be used by Habitat for eligible costs paid by Habitat in the construction of a single-family home at 33 Taylor Avenue in Seneca Falls. 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.

3. PRE-COMMENCEMENT REQUIREMENTS

- a. Habitat shall submit to the Land Bank Certificates of Insurance prior to the commencement of construction evidencing the insurance coverages required by Subsection 4 of this Agreement, naming the Finger Lakes Regional Land Bank Corporation; Enterprise Community Partners, Inc; and the County of Seneca as additional insureds.

4. INSURANCE

- a. 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.
- b. 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

- c. 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.

d. Automobile Liability Including:

- i. All Owned Vehicles
 - ii. Hired Vehicles
 - iii. Non-Owned Vehicles
- Per Accident Limit: \$1,000,000

e. 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.

f. 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

“Enterprise Community Partners, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044”

“County of Seneca
1 DiPronio Drive
Waterloo, NY 13165

and all its agents, consultants, principals, partners, officers, trustees, directors, and employees”

as ADDITIONAL INSUREDS.

g. 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.

h. 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.”

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

“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.”

j. 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.

k. The carrying of insurance described herein shall in no way be interpreted as relieving Habitat of its obligations under this Agreement.

l. 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.

m. 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.

5. CONVEYANCE OF THE PROPERTY

- a. Prior to the conveyance of 33 Taylor Avenue, the Land Bank will apply for and receive zoning approval from the Village of Waterloo transferrable to Habitat. Without zoning approval conveyance will not occur.
- b. The Land Bank shall convey the lot known as 33 Taylor St.(Tax Map #05-1-08) (“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 Property other than the Land Bank has not done or suffered anything whereby the Property has been encumbered in any way whatsoever.
- c. Habitat agrees to purchase the Property from the Land Bank for \$14,000 payable at the time of conveyance.
- d. When the project is completed and the improved Property is ultimately sold by Habitat to a third party, the proceeds of the sale will be split between the Land Bank and Habitat. Of the proceeds, Land Bank shall receive 60% and Habitat shall receive 40%.
- e. 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).
- f. Land Bank will have the property surveyed prior to conveyance.
- g. Land Bank will provide existing title search to Habitat. Any update will be at Habitat’s expense.
- h. Habitat agrees to accept the Property “as-is.”

6. INDEMNIFICATION BY HABITAT

- a. 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.

8. TERMINATION FOR CAUSE

- a. 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 unremedied 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.

- b. If this agreement is terminated, Habitat will provide an accounting of all 33 Taylor Funds used up to the date of notice of termination. Any excess funds will be transferred by Habitat to an escrow account and held until the parties undertake another project together where the funds can be utilized.

9. PROJECT RE-CONVEYANCE UPON TERMINATION

- a. 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.

10. SPECIAL OBLIGATION

- a. 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 33 Taylor Funds actually received by Habitat.

11. GROUND FOR CANCELLATION OF CONTRACT BY THE LAND BANK; DISQUALIFICATION FOR FUTURE CONTRACTS WITH PUBLIC AUTHORITIES

- a. Notwithstanding anything herein to the contrary, this agreement 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 Habitat, 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 agreement pursuant to this Paragraph, any monies owing by the Land Bank for Services completed prior to the cancellation or termination shall be paid to Habitat.

12. IRAN DIVESTMENT ACT OF 2012 CERTIFICATION

- a. 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.

13. 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 successors and 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 except prior agreements relating to the Fall St. or Willard St. project.
- 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 reasonable attorneys' fees incurred in each and every such action, suit, arbitration or other proceeding, including any and all appeals therefrom.

- 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.
Inc.

Habitat for Humanity of Seneca County,

By: _____

Joseph P. McGrath
CEO/President

By: _____

Menzo Case
President