

**Agenda
City of Minnetonka
Economic Development Authority
Monday, February 10, 2025
6:00 PM
Council Chambers
14600 Minnetonka Blvd.**



1. Call to Order
2. Roll Call: Coakley, Foster-Bolton, Schack, Wilburn, Calvert, Ramaley, Wiersum
3. Approval of Agenda
4. Approval of Minutes:
 - A. [Jan. 13 EDA minutes](#)
5. Business Items:
 - A. [Mills Twin homes - Revised form of Contract for Private Redevelopment](#)
6. Adjournment

Minnetonka City Council meeting are broadcast live and available for replay on Comcast Channel 16 (SD)/859 (HD) and the city website.

**Economic Development Authority
Agenda Item 4.A
Meeting of February 10, 2025**



Title: Jan. 13 EDA minutes
Report from: Becky Koosman, City Clerk
Presenter: President Wiersum

Action Requested: Motion
Form of Action: Minutes
Votes needed: 4 votes

Recommended Action
Motion to approve minutes.

ATTACHMENTS:
[Minutes](#)

Minutes
Minnetonka Economic Development Authority
Monday, January 13, 2025

1. Call to Order

Wiersum called the meeting to order at 8:51 p.m.

2. Roll Call

Commissioners Paula Ramaley, Kissy Coakley, Patsy Foster-Bolton, Rebecca Schack, Kimberly Wilburn, Deb Calvert and President Brad Wiersum were present.

3. Approval of Agenda

Calvert moved, Foster-Bolton seconded a motion to approve the agenda, as presented.

All voted "yes". Motion carried.

4. Approval of Minutes:

A. Dec. 2, 2024 EDA meeting minutes

Calvert moved, Foster-Bolton seconded a motion to approve the minutes, as presented.

All voted "yes". Motion carried.

5. Business Items:

A. 2025 Election of EDA Officers

Community Development Director, Julie Wischnack discussed the item.

Wiersum moved, Calvert seconded a motion to amend the EDA Bylaws and elected officers for the 2025 EDA and adopt Res. 2025-001.

All voted "yes". Motion carried.

6. Adjournment

Wilburn moved, Ramaley seconded a motion to adjourn the meeting at 8:56 p.m.

All voted "yes". Motion carried.

Respectfully submitted,

Becky Koosman
City Clerk

**Economic Development Authority
Agenda Item 5.A
Meeting of February 10, 2025**



Title: Mills Twin homes - Revised form of Contract for Private Redevelopment

Report from: Alisha Gray, Economic Development and Housing Manager

Submitted Through: Julie Wischnack, FAICP, Community Development Director
Darin Nelson, Assistant Treasurer
Corrine Heine, City Attorney
Mike Funk, Executive Director

Presenter: Julie Wischnack, FAICP, Community Development Director

Action Requested: Motion

Form of Action: Resolution

Votes needed: 4 votes

Summary Statement

This action approves a change to form of the contract for private development, as previously approved by EDA Resolution 2024-001.

Recommended Action

Motion to adopt the resolution.

Strategic Profile Relatability

Livable & Well-Planned Development

Financial Consideration

No

Background

Project Status

Habitat for Humanity is requesting a revision to the Contract for Private Development previously approved by the EDA on May 6, 2024, by EDA Resolution 2024-001. Habitat has been working on title work relating to this transaction. The title work is complicated and has taken time to complete.

As approved, Section 4.3 of the contract required Habitat to commence construction by Sept. 1, 2024 and complete construction by Sept. 1, 2027. The contract as approved has not been executed by the parties, and Habitat has requested that the start and substantial completion dates be revised to Sept. 1, 2025 and Sept. 1, 2028, respectively.

Supplemental information

May 6, 2024 - Economic Development Authority

April 11, 2024 - EDAC Minutes

Neighborhood Meetings and Presentations

ATTACHMENTS:

Contract for Private Development

Resolution

DRAFT
January 30, 2025

CONTRACT
FOR
PRIVATE DEVELOPMENT

between

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF MINNETONKA, MINNESOTA

and

TWIN CITIES HABITAT FOR HUMANITY, INC.

Dated _____, 2025

This document was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
Telephone: 612-337-9300

TABLE OF CONTENTS

	<u>Page</u>
PREAMBLE	1
 ARTICLE I <u>Definitions</u>	
Section 1.1. Definitions.....	2
 ARTICLE II <u>Representations and Warranties</u>	
Section 2.1. Representations by the Authority.....	4
Section 2.2. Representations by the Developer	4
 ARTICLE III <u>Property Acquisition; Financing</u>	
Section 3.1. Status of Development Property	6
Section 3.2. Duties of the Developer	6
Section 3.3. Process for Selling Twin Homes.....	6
Section 3.4. Homes Within Reach	6
Section 3.5. AHTF Grant	6
Section 3.6. Purpose of Authority Assistance.....	7
Section 3.7. Reduction of AHTF Grant and Lookback	7
Section 3.8. Payment of Administrative Costs	7
 ARTICLE IV <u>Construction of Project</u>	
Section 4.1. Construction of Project	8
Section 4.2. Construction Plans	8
Section 4.3. Commencement and Completion of Construction	9
Section 4.4. Certificate of Completion.....	9
 ARTICLE V <u>Insurance</u>	
Section 5.1. Insurance	10
 ARTICLE VI <u>Financing</u>	
Section 6.1. Mortgage Financing.....	12
Section 6.2. Authority's Option to Cure Default in Mortgage	12
Section 6.3. Modification; Subordination.....	12
Section 6.4. Termination	12

ARTICLE VII
Events of Default

Section 7.1.	Events of Default.....	13
Section 7.2.	Remedies on Default.....	13
Section 7.3.	No Remedy Exclusive.....	13
Section 7.4.	No Additional Waiver Implied by One Waiver.....	14
Section 7.5.	Attorneys' Fees and Costs.....	14

ARTICLE VIII
Additional Provisions

Section 8.1.	Conflict of Interests; Authority Representatives Not Individually Liable.....	15
Section 8.2.	Equal Employment Opportunity.....	15
Section 8.3.	Restrictions on Use	16
Section 8.4.	Provisions Not Merged With Deed.....	16
Section 8.5.	Titles of Articles and Sections	16
Section 8.6.	Notices and Demands	17
Section 8.7.	Counterparts	17
Section 8.8.	Recording.....	18
Section 8.9.	Amendment.....	18

ARTICLE IX
Additional Provisions

Section 9.1.	Conflict of Interests; Authority Representatives Not Individually Liable.....	15
Section 9.2.	Equal Employment Opportunity.....	15
Section 9.3.	Restrictions on Use	16
Section 9.4.	Provisions Not Merged With Deed.....	16
Section 9.5.	Titles of Articles and Sections	16
Section 9.6.	Notices and Demands	17
Section 9.7.	Counterparts	17
Section 9.8.	Recording.....	18
Section 9.9.	Amendment.....	18

SIGNATURES	S-1
------------------	-----

EXHIBIT A	Development Property	A-1
EXHIBIT B	Form of Certificate of Completion	B-1
EXHIBIT C	Owner-Occupied Housing Form.....	C-1

CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the ____ day of _____, 2024 (the “Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and TWIN CITIES HABITAT FOR HUMANITY, INC., a Minnesota nonprofit corporation (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended (the “EDA Act”), and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Minnetonka, Minnesota (the “City”); and

WHEREAS, pursuant to the EDA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise and promote the development of affordable housing within the City; and

WHEREAS, the Developer proposes to acquire certain property in the City (the “Development Property”) and construct thereon ten twin homes with approximately 1,750 square feet of finished livable space for persons or families earning, on average, 60% or less of area median income (the “Project”); and

WHEREAS, in order to achieve the City’s objectives of creating affordable homes in the City, the Authority has agreed to facilitate the Project and provide certain assistance to the Project by providing a grant to the Developer from the City’s Affordable Housing Trust Fund in the amount of \$794,266; and

WHEREAS, the Authority believes that the development of owner-occupied affordable homes within the City is in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms have the following meanings:

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Area Median Income” means the midpoint of the Twin Cities metro area’s income distribution as defined on an annual basis by the Department Housing and Urban Development.

“Authority” means the Economic Development Authority in and for the City of Minnetonka.

“Authority Representative” means the Executive Director of the Authority.

“Bill of Sale” means a document that transfers ownership of goods or property to new owner.

“Board” means the Board of Commissioners of the Authority.

“Certificate of Completion” means the certification provided to the Developer pursuant to Section 4.4 hereof and set forth in EXHIBIT B.

“City” means the City of Minnetonka, Minnesota.

“City Council” means the City Council of the City.

“Closing” has the meaning given such term in Section 3.3 hereof.

“Community Land Trust” means a non-profit organization created to acquire and hold land for the benefit of the community while providing access to permanently affordable housing.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Development Property, including the Project, which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City; and (b) shall include at least the following: (1) site plan, (2) foundation plan, (3) floor plan for each floor, (4) cross-sections of each (length and width), (5) elevations (all sides, including a building materials schedule), (6) landscape and grading plan, and (7) such other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Hennepin County, Minnesota.

“Developer” means Twin Cities Habitat for Humanity, Inc., a Minnesota nonprofit corporation, or its permitted successors and assigns.

“Development Property” means the real property described in EXHIBIT A.

“EDA Act” means Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Event of Default” means an action by the Developer listed in Article IX hereof.

“Ground Lease” means the lease of the land upon which a home is built.

“Homes Within Reach” is the assumed name of West Hennepin Affordable Housing, a community land trust, and will be the land owner upon transfer of the land at or around the time of the closing on each home and holds the rights and responsibilities provided in the Ground Lease.

“Owner-Occupied Housing Form” means the form attached hereto as EXHIBIT C.

“Project” means the development on the Development Property of ten twin homes with approximately 1,750 square feet of finished livable space for persons or families.

“Qualified Costs” means the costs related to acquisition of land, site preparation, the construction of affordable housing, and all associated soft costs as described in EXHIBIT D.

“State” means the State of Minnesota.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“Total Development Costs” means those costs shown in Exhibit D.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays.

(The remainder of this page is intentionally left blank.)

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Authority is an economic development authority organized and existing under the laws of the State. Under the provisions of the EDA Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder, and execution of this Agreement has been duly, properly and validly authorized by the Authority.

(b) The Authority proposes to assist in financing Qualified Costs necessary to facilitate the construction of the Project in accordance with the terms of this Agreement.

(c) The Authority finds that the Project is necessary to increase affordable owner-occupied housing opportunities in the City.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

(f) No commissioner of the Board or officer of the Authority has either a direct or indirect financial interest in this Agreement, nor will any commissioner or officer benefit financially from this Agreement within the meaning of Section 469.098 of the EDA Act.

Section 2.2. Representations by the Developer. The Developer represents and warrants that:

(a) The Developer is a nonprofit corporation duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Developer will construct, operate and maintain the Project in accordance with the terms of this Agreement, and all local, State, and federal laws and regulations (including, but not limited to, environmental, zoning, building code, labor, and public health laws and regulations).

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer or the Authority in or on the Development Property may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the Authority is aware). The Developer is aware of no facts the existence of which would cause it to be in

violation of or give any person a valid claim under any local, State, or federal environmental law, regulation, or review procedure.

(d) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(e) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) The Developer shall promptly advise the Authority in writing of all litigation or claims affecting any part of the Project and all written complaints and charges made by any governmental authority materially affecting the Project or materially affecting Developer or its business which may delay or require changes in construction of the Project.

(The remainder of this page is intentionally left blank.)

ARTICLE III

Property Acquisition; Duties of Developer; Financing

Section 3.1. Status of Development Property. The Developer will enter into a purchase agreement to purchase the Development Property once the City Council approves the site plan. The Authority has no obligation to purchase the Development Property.

Section 3.2. Duties of the Developer. The Developer shall construct the Project and identify the first buyer of each twin home.

Section 3.3. Process for Selling Twin Homes. The Developer shall follow the steps set forth below for each sale of a twin home.

- (a) The Developer will identify the initial income-qualified buyer.
- (b) The Developer shall refer each potential buyer to Homes Within Reach to ensure that the buyer meets the Homes Within Reach program requirements. The buyer must meet the qualifications of the Home Within Reach program and agree to participate in the Homes Within Reach program.
- (c) The Developer shall certify to the Authority that the ten homes will be sold to initial buyers at 60% AMI or below on average over the ten homes. If the Developer does not meet the cumulative average, the Developer will be subject to the requirements set forth herein, including the lookback provisions in Section 3.7 hereof. The Developer will complete the Owner-Occupied Housing Form set forth in Section C and provide a copy of the form to the Authority.
- (d) At Closing (sale to Community Land Trust buyer), Homes Within Reach will receive a warranty deed for the Development Property and a facilitation fee of \$4,000.
- (e) At Closing, the buyer receives a Ground Lease and a Bill of Sale. The Ground Lease requires 99 years of affordability.
- (f) The Developer will act as lender for the home sales and will provide down-payment assistance. The Developer may sell homes on the regional MLS, in which case, buyers may use a lender approved by Homes Within Reach.
- (f) At Closing, Homes Within Reach will manage the ongoing covenants and declarations associated with the Development Property and will assume all rights and responsibilities for any declarations or covenants which are recorded pursuant to the funder's requirements.

Following Closing, the Developer shall have no further involvement with the Development Property other than its responsibilities as general contractor, the declarant of the CIC (community interest company) and as lender (via a subsidiary) related to construction of the Project.

Section 3.4. Homes Within Reach. Homes Within Reach will provide the following services:
_____ [to be determined by Developer and HWR].

Section 3.5. AHTF Grant. The Authority will reimburse a portion of the Developer's costs with respect to the construction of the ten twin homes by providing an AHTF Grant in an amount not to exceed

\$794,266. The AHTF Grant shall be disbursed to the Developer in one installment after the following conditions subsequent have occurred:

(a) Upon the Developer having delivered to the Authority evidence of Qualified Costs paid or incurred, as well as one or more certificates signed by the Developer's duly authorized representative, containing the following:

(i) a statement that each cost identified in the certificate is a Qualified Cost as defined in this Agreement and that no part of such cost has been included in any previous certification;

(ii) reasonable evidence that each identified Qualified Cost has been paid or incurred by or on behalf of the Developer;

(ii) a statement that, to the Developer's knowledge, no uncured Event of Default by the Developer has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require; and

Section 3.6. Purpose of Assistance. The parties agree and understand that the purpose of the Authority's financial assistance to the Developer is to facilitate development of housing and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

Section 3.7. Reduction of AHTF Grant and Lookback. The Authority has provided an AHTF Grant to the Developer in the amount of \$794,266 via this Agreement. The AHTF Grant shall be reduced if any of the following occur:

(i) if the funding sources, including grants or sponsorships, exceed the Total Development Costs, the AHTF Grant shall be reduced accordingly.

(ii) if the development costs are less than the Total Development Costs, the AHTF Grant shall be reduced accordingly

(iii) if the Developer's profit and Developer fees exceed 8%, the AHTF Grant shall be reduced by the amount that Developer profit and Developer fees exceed 8%.

(iv) if the average purchase price paid for the units exceeds the Affordable Home Price as set by the Metropolitan Council in the year sold for 60% AMI owners, the AHTF Grant shall be reduced by the amount the purchase price exceeds the 60% AMI Affordable Home Price.

Section 3.8. Payment of Administrative Costs. The Developer has deposited with the Authority \$7,500 to pay Administrative Costs. "Administrative Costs" are defined as out-of-pocket costs incurred by the Authority, together with staff and consultant costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement and other documents and agreements in connection with the development of the Development Property, and not previously paid by Developer. At the Developer's request, but no more often than monthly, the Authority will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. At any time the deposit drops below \$1,000, the Developer shall replenish the deposit to the full \$7,500 within thirty (30) days after receipt of written notice thereof from the Authority. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice

from the Authority containing evidence of the unpaid costs. If Administrative Costs incurred, and reasonably anticipated to be incurred, are less than the deposit by the Developer, the Authority shall return to the Developer any funds not anticipated to be needed.

ARTICLE IV

Construction of Project

Section 4.1. Construction of Project. Following the conveyance of the Development Property to the Developer, the Developer agrees that it will construct the Project on the Development Property substantially in accordance with the Construction Plans as approved pursuant to Section 4.2 hereof, and at all times prior to the Maturity Date, the Developer will operate and maintain, preserve, and keep the Project or cause such improvements to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority shall have no obligation to operate or maintain the Project.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Project, the Developer shall submit the Construction Plans to the Authority. The Authority Representative will approve the Construction Plans in writing if (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Project; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources (including Developer's equity) for construction of the Project; and (vi) no uncured Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative shall relieve the Developer of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State, and local laws, ordinances, rules, and regulations, or to construct the Project in accordance therewith. No approval by the Authority Representative shall constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, such Construction Plans shall be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. Such rejections shall set forth in detail the reasons therefor, and shall be made within thirty (30) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Developer shall submit new or corrected Construction Plans within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval shall not be unreasonably withheld, delayed or conditioned. Said approval shall constitute a conclusive determination that the Construction Plans (and the Project constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to such previously approved Construction Plans, the Authority Representative shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Such rejection shall be made within thirty (30) days after receipt of the notice of such change. The Authority's approval of any such change in the Construction Plans may be conditioned on amendment to provisions of this Agreement if such amendments will mitigate the materiality of such proposed changes.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer will commence the construction of the Project by September 1, 2025, and substantially complete construction of the Project by September 1, 2028. Construction is considered to be commenced upon the beginning of physical improvements beyond grading. All work with respect to the Project to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority.

The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the development of the Project.

Section 4.4. Certificate of Completion.

(a) Promptly after completion of each home in accordance with the provisions of this Agreement, the Authority Representative will furnish the Developer with a Certificate of Completion for each home, as set forth on EXHIBIT B hereof; provided, however, that prior to the issuance of the Certificate of Completion, the Developer must provide the Authority with evidence satisfactory to the Authority Representative that all contractors, subcontractors, and project laborers have been paid.

(b) If the Authority Representative shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority Representative shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) Regardless of whether a Certificate of Completion is issued by the Authority, the construction of the Project shall be deemed to be complete upon issuance of a certificate of occupancy by the City.

(The remainder of this page is intentionally left blank.)

ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Developer will provide and maintain at all times during the process of constructing the Project an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy; the interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); the Authority shall be listed as an additional insured on the policy; and

(iii) workers' compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Project and prior to the Maturity Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) insurance against loss and/or damage to the Project under a policy or policies covering such risks as are ordinarily insured against by similar businesses;

(ii) comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000, and shall be endorsed to show the Authority as an additional insured; and

(iii) such other insurance, including workers' compensation insurance respecting all employees, if any, of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V, each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the

Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Project.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding \$200,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct and restore the Project to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer shall complete the repair, reconstruction, and restoration of the Project, whether or not the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

(e) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V shall terminate upon the termination of this Agreement.

(The remainder of this page is intentionally left blank.)

ARTICLE VII

Financing

Section 6.1. Mortgage Financing.

(a) Before commencement of construction of the Project, the Developer shall submit to the Authority evidence of one or more commitments for financing which, together with committed equity for such construction, is sufficient for payment of the Project. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, grants, forgivable loans, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subsection (a) above, then the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within thirty (30) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within thirty (30) days after such rejection.

Section 6.2. Authority's Option to Cure Default in Mortgage. In the event that any portion of the Developer's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to this Article VII, the Developer shall cause the Authority to receive copies of any notice of default received by the Developer from the Holder of such Mortgage. Thereafter, the Authority shall have the right, but not the obligation, to cure any such default on behalf of the Developer within such cure periods as are available to the Developer under the Mortgage documents.

Section 6.3. Termination. All the provisions of this Article VII shall terminate with respect to the Project, upon delivery of the Certificate of Completion for the Project. The Developer or any successor in interest to the Project or portion thereof, may sell or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Project or any portion thereof for which a Certificate of Completion has been obtained, without obtaining prior written approval of the Authority; provided that such sale, financing or other transaction creating a mortgage or encumbrance shall not be deemed as resulting in any subordination of the Authority's rights under this Agreement unless the Authority expressly consents to such a subordination.

(The remainder of this page is intentionally left blank.)

ARTICLE VII

Prohibitions Against Assignment and Transfer; Indemnification

Section 7.1. Representation as to Development. The Developer represents and agrees that its purchase of the Development Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of development of the Development Property and not for speculation in land holding.

Section 7.2. Transfer of Property. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the Project:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Project under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant) without the prior written approval of the Authority unless the Developer remains liable and bound by this Agreement in which event the Authority's approval is not required. Any such transfer shall be subject to the provisions of this Agreement.

(b) After issuance of the Certificate of Completion for each twin home, the Developer may commence marketing and selling the twin homes pursuant to Article III.

Section 7.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and its respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project.

(b) Except for any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Developer agrees to protect and defend the Authority and its governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Project. As to any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Authority agrees to protect and defend the Developer, its officers, agents, servants and employees and hold the same harmless from any such proceedings.

(c) The Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Project due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority in the individual capacity thereof.

(The remainder of this page is intentionally left blank.)

ARTICLE XIII

Events of Default

Section 8.1. Events of Default. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) failure by the Developer or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or

(b) if the Developer:

(i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(ii) makes an assignment for benefit of its creditors;

(iii) fails to pay real estate taxes on the Development Property or the Project as they become due;

(iv) admits in writing its inability to pay its debts generally as they become due;

(v) is adjudicated a bankrupt or insolvent;

(vi) fails to comply with labor laws.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement;

(b) cancel and rescind or terminate this Agreement; and

(c) upon a default by the Developer resulting from the Developer’s noncompliance with labor laws, the Authority may take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 8.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 8.5. Attorneys' Fees and Costs. Whenever any Event of Default occurs and if the Authority employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

(The remainder of this page is intentionally left blank.)

ARTICLE IX

Additional Provisions

Section 9.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 9.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in this Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 9.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and such successors and assigns, shall use the Development Property solely for the development of affordable owner-occupied housing in accordance with the terms of this Agreement, and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 9.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 9.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 9.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 1954 University Avenue, St. Paul, MN 55104, Attn: Land Development Director; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attention: Community Development Director;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 9.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.8. Recording. The Authority may record a memorandum of this Agreement and any amendments thereto with the County Recorder and/or Registrar of Titles of the County, as the case may be. The Developer shall pay all costs for recording.

Section 9.9. Amendment. This Agreement may be amended only by written agreement executed by the Authority and the Developer.

Section 9.10. Interpretation; Concurrence. The language in this Agreement shall be construed simply according to its generally understood meaning, and not strictly for or against any party and no interpretation shall be affected by which party drafted any part of this Agreement. By executing this Agreement, the parties acknowledge that they (a) enter into and execute this Agreement knowingly, voluntarily and willingly of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had a sufficient amount of time to consider this Agreement's terms and conditions, and to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms, appreciate the significance of those terms and have made the decision to accept them as stated herein; and (d) have not relied upon any representation or statement not set forth herein.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Authority has caused this Contract for Private Development to be duly executed in its name and behalf and the Developer has caused this Contract for Private Development to be duly executed in its name and behalf as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY IN
AND FOR THE CITY OF MINNETONKA,
MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Michael Funk, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

Execution page of the Developer to the Contract for Private Development, dated the date and year first written above.

TWIN CITIES HABITAT FOR HUMANITY, INC.

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the _____ of Twin Cities Habitat for Humanity, Inc., a Minnesota nonprofit corporation, on behalf of the Developer.

Notary Public

EXHIBIT A

DEVELOPMENT PROPERTY

[Insert legal description of Development Property]

EXHIBIT B

FORM OF CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Twin Cities Habitat for Humanity, Inc., a Minnesota nonprofit corporation (the “Developer”), has fully complied with its obligations under Articles III and IV of that document titled “Contract for Private Development,” dated _____, 2024, between the Economic Development Authority in and for the City of Minnetonka, Minnesota and the Developer (the “Agreement”), a memorandum of which was recorded in the office of [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota on _____, 20____, as document number _____, with respect to construction of the Project in accordance with Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the Project under Articles III and IV of the Agreement.

Dated: _____, 20____.

**ECONOMIC DEVELOPMENT AUTHORITY IN
AND FOR THE CITY OF MINNETONKA,
MINNESOTA**

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

This document was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
Telephone: 612-337-9300

EXHIBIT C

OWNER-OCCUPIED HOUSING FORM

PROPERTY INFORMATION

Legal description of property to be sold: Lot _____ Block _____
Subdivision _____

Parcel Identification No. _____

Postal Address of Parcel _____

PURCHASER INFORMATION

Name of Purchaser _____

Current Address _____

Current Phone # _____

Number of family/household members: _____

Annual Household Income* \$ _____

**Annual Household Income must be supported by documentation (i.e. copy of most current 1040's, etc.).
Failure to provide verification will constitute a "non-qualifying family".*

INCOME LIMIT INFORMATION

Purchasers must establish that they earn 80% or less of area median income

Does the Purchaser meet these limits and has appropriate documentation been submitted?

_____ YES _____ NO

If not, purchaser is not eligible to acquire the home. If Yes, the purchaser is eligible to acquire the property.

Signature of Purchaser(s) _____ Date _____

_____ Date _____

Signature of Seller _____ Date _____

Reviewed and approved on behalf _____

By _____ Date _____

EXHIBIT D

TOTAL DEVELOPMENT COSTS SOURCES AND USES

MN140-254 (JAE) 942468v6

EDA Resolution No. 2025-

Resolution approving revised contract for private development with Twin Cities Habitat for Humanity, Inc.

Be it resolved by the Board of Commissioners (the “Board”) of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) as follows:

Section 1. Background.

- 1.01. The Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution adopted by the City Council of the City of Minnetonka, Minnesota (the “City”).
- 1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.
- 1.03. By EDA Resolution No. 2024-001, the EDA previously approved a contract for private development with Twin Cities Habitat for Humanity, Inc., a Minnesota nonprofit corporation (the “Developer”), to acquire certain property in the City (the “Development Property”) and construct thereon ten twin homes with approximately 1,750 square feet of finished livable space for persons or families earning, on average, 60% or less of area median income (the “Project”). The parties have not executed the contract in the form as originally approved.
- 1.05. The Developer needs additional time to commence construction and complete the construction of the Development Property. The Developer has requested changing the commencement date to September 1, 2025, and changing the substantial completion date to September 1, 2028.

Section 2. Approvals.

- 2.01. The Board approves the revised Contract in substantially the form on file in City Hall; provided that staff of the Authority are authorized to make non-substantive changes to the Contract in consultation with counsel to the Authority. The Contract shall be substantially in the revised form on file with the Authority which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the President and the Executive Director, in their discretion, shall determine, and the execution thereof by the President and the Executive Director shall be conclusive evidence of such determination.
- 2.02. The President and the Executive Director are hereby authorized to execute and deliver to the Developer any and all documents deemed necessary to carry out the intentions of the Contract.

- 2.03. The execution of all documents deemed necessary to carry out the intentions of the Contract by the appropriate officers of the Authority herein authorized shall be conclusive evidence of the approval of such documents. This resolution shall not constitute an offer and the documents shall not be effective until the date of execution thereof.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on Feb. 10, 2025.

Brad Wiersum, President

Attest:

Becky Koosman, Secretary

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a meeting held on Feb. 10, 2025.

Becky Koosman, Secretary