

**Development Agreement  
Habitat for Humanity of Waukesha County, Inc  
Aeroshade Development**

Parcel ID No.: WAKC 1304 206

After recording return to:  
City Attorney  
201 Delafield St Ste 330  
Waukesha WI 53188-3646

This Development Agreement, referred to herein as the Agreement, is made by and between the **City of Waukesha**, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and **Habitat for Humanity of Waukesha County, Inc.**, referred to herein as the Developer. The Developer and the City together are referred to herein as the Parties.

**Legal Description:**

All of Lots 1 thru 11, Block B, Wardrobes Addition and unplatted lands being a part of the Northwest Quarter (NW¼) of the Southeast Quarter (SE ¼) of Section 2, Town 6 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin, bounded and described as follows: Beginning at the southwest corner of Lot 5, Wardrobes Addition; thence North 00°27'23" East along the easterly right-of-way line of Oakland Avenue 397.94 feet to a point on the southerly railroad right-of-way line; thence North 77°04'20" East along said railroad right-of-way line 361.49 feet to a point on the westerly right-of-way line of Greenfield Avenue; thence South 00°29'12"11 West along said westerly right-of-way line 483.72 feet to the southeast corner Lot 9 Wardrobes Addition, also being a point on the northerly right-of-way line of Ellis Avenue; thence North 89°12'04" West along said right-of-way line of Ellis Street 351.42 feet to the place of beginning. Containing 154,964 square feet (3.557 acres) of land.

This land is referred to herein as the Real Property.

**Recitals**

Developer has proposed a residential development on the Real Property consisting of 20 new residential units substantially similar to the conceptual plan attached hereto as Exhibit A, the General Development Plan.

The City has determined that it is in the best interests of the City and its taxpayers that the proposed development be built.

The City has been presented with satisfactory proof by the Developer that, but for the extension of City funding to assist with site development costs, the proposed development will not be built.

City has determined that to assist with the creation of 20 new affordable owner occupied housing units it will make a grant to the Developer, as defined in Part Two of this Agreement; and further that the grant is intended to be used for certain development related costs, including, but not limited to property acquisition, site grading, driveways, utilities, building materials, and stormwater drainage incurred by the Developer.

The proposed development received Planned Unit Development approval by the Plan Commission on April 27, 2022 and the Common Council on May 17, 2022. The development received Final Plat approval by the Plan Commission on XXXX and the Common Council on XXXXX.

The Common Council authorized the execution of a development agreement with the Developer on XXXXXX to provide ARPA funding to the Developer for the proposed development.

Now, therefore, in consideration of the mutual promises of the Parties contained in this Agreement, the Parties agree and contract as follows:

## Part One – Construction of the Development

**1. The Development.** The improvements described below are referred to collectively herein as the Development. The general layout of the Development is shown on Exhibit A. The Development shall include the following improvements:

- a. Single Family Residential Units.** The development shall contain 16 single family residential buildings made available only to households at or below 80% of the County Median Income Level and whose cost of housing as defined by HUD does not exceed 30% of the household's income.
- b. Two-Family Residential Units.** The development shall contain 2 two-unit residential buildings made available only to households at or below 80% of the County Median Income Level and whose cost of housing as defined by HUD does not exceed 30% of the household's income.
- c. Private Infrastructure.** The Developer shall install all required private infrastructure, and shared stormwater facilities in accordance with the approved final site plans.
- d. Public Infrastructure.** The Development shall also include the public infrastructure as required in the final plan approval and the DPW Development Agreement also executed by the Developer and the City.
- e. City-Approved Plans.** All improvements contained in the Site, Architectural, Infrastructure, and Landscaping Plans, as amended, were approved by the Plan Commission on April 27, 2022 with all incorporated staff comments; and are adopted in the Department of Public Works Development Agreement also executed by the Developer and the City.

**2. Construction Start Date.** The Developer shall commence site work and construction on or before April 30, 2023.

**3. Deviations from Approved Plans.** Material deviations from the approved plans and specifications shall not be made unless approved by the City planning staff in advance and agreed to in writing appended to this Agreement. The City planning staff reserves the right to refer any changes it deems so material as to be in conflict with the original plan to the Plan Commission for its approval.

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## Part Two – Financing Assistance

**4. Grant.** The City shall pay to the Developer, a grant upon the following terms:

- a.** The City shall pay the Developer \$1,000,000, structured as a grant. The funds shall be released based on the following project milestones:
  - i.** \$500,000 shall be paid to the Developer upon closing on the Real Property. Development agreement must be executed and recorded prior to any funds being released.
  - ii.** The remaining \$500,000 shall be released upon the issuance of a building permit for the first single family residential unit in the Development.
- b.** The Developer guarantees that all units will gain occupancy prior to January 1, 2029.
- c.** If occupancy has not been achieved by at least 20 residential units by December 31, 2028, then the Developer shall make a payment in lieu of taxes, the amount that would be collected if the properties were not tax exempt for each property without occupancy for as long as the properties have a tax exempt status.

**5. Impact Fees.** The City shall waive all impact fees related to the Development.

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## Part Three – Restrictive Covenants

**6. Preservation of Value of Development.** The following covenants shall survive and continue in effect for the physical life of the structures built in the development.

- a. Prohibition of Conveyance to Tax-Exempt Entity.** Developer shall not convey the Development or any portion of the Real Property to any entity which is exempt from payment of property taxes unless such entity and the City execute an agreement for the entity to make payments in lieu of taxes, in the full amount of the City property taxes that would otherwise be owed, for each year that such entity owns the Development or any portion of the Development. Any conveyance attempting to do otherwise shall be void and of no effect. This

requirement shall be binding on all purchasers and other successors in interest.

**b. Prohibition of Obtaining Tax-Exempt Status.** Developer shall not sell, transfer, or otherwise convey any residential units or lots to a tax-exempt entity unless a payment in lieu of taxes agreement is approved by the City. This agreement shall require payments in lieu of taxes in the full amount of the City property taxes that would otherwise be owed with respect to the Development or portion of the Development, in each year in which the Development or portion of the Development is exempt from property taxation. This requirement shall be binding on all purchasers and other successors in interest.

**c. Requirement to Maintain the Development.** Developer and successors and assigns during their period of ownership shall maintain the Development, and all additions, improvements, and fixtures to the Development, in good condition, in compliance with all applicable statutes, building codes, and the Waukesha Municipal Code, for the purpose of maintaining the fair market value of the Development.

**d. Requirement to Maintain Casualty Insurance.** Developer and successors and assigns during their period of ownership shall maintain comprehensive property casualty insurance on the Development, including builder's risk insurance during construction, for not less than the actual replacement value of all improvements. Developer shall provide the City with proof of such coverage upon request.

**e. Requirement to Reconstruct after Casualty Loss.** Subject to the rights of Developer's secured mortgage lenders, and any regulatory restriction or limitation, Developer shall promptly repair, rebuild and reconstruct the Development or any portion of the Development that is still owned by the Developer after any casualty loss, to restore it to substantially the condition it was in prior to the loss. If the loss is of a type covered by the insurance required in section 6.d, then Developer or Developer's successors shall make claim to casualty-insurance carriers for all casualty losses, promptly after loss, and, subject to the rights of Developer's mortgage lenders to proceeds of casualty insurance policies, shall apply all proceeds of the insurance to the repair and reconstruction of the Development.

**7. Agreement Runs with the Land.** The City may record this Agreement against the Development with the Register of Deeds for Waukesha County, at the Developer's expense. The Restrictive Covenants of Part Three shall run with the land. The Parties acknowledge that the Development will include individual lots and that these will be sold to successor owners. The restrictive covenants in section 6 shall be binding on all such successors in interest to the Developer, and all references in section 6 to Developer shall be deemed to include such successor owners, including any condominium or homeowners associations, and all references to the Development shall be deemed to refer to the lots, common elements, or condominium units owned by such successors.

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#### Part Four – General Provisions

**8. Parties Are Independent Contractors.** Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions. The City shall not participate in, or have any responsibilities connected with, the Development in any way other than the City's specific obligations in this Agreement.

**9. Governmental Immunities and Notice Requirement Preserved.** Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

**10. Assignment Prohibited.** This Agreement, and the Developer's responsibilities under this Agreement, may not be assigned by the Developer without the City's written consent, which cannot be unreasonably withheld, provided, however that the City hereby agrees that the Developer may collaterally assign this Agreement to its lenders and the City shall acknowledge and consent to the same on terms and conditions reasonably acceptable to the City.

**11. Notices.** All notices required by this Agreement shall be in writing and delivered by first-class postage by the US Postal Service, addressed as follows:

To City:	Director of Community Development
	City of Waukesha
	201 Delafield St Ste 200
	Waukesha WI 53188

To Developer: Chief Executive Officer  
Habitat for Humanity of Waukesha  
County, Inc.  
2020 Springdale Rd,  
Waukesha, WI 53186

**12. City Access to Development.** Developer shall give City representatives access to the Development during construction, upon reasonable notice, to inspect and verify compliance with this Agreement.

**13. Proof of Good Standing and Authorization.**

Developer shall provide to City a certificate of good standing issued by the Wisconsin Department of Financial Institutions, and a resolution of all members of Developer authorizing the execution of this Agreement by the individuals signing, within 10 days of the execution of this Agreement.

**14. Default.** Neither Party shall be in default of this Agreement unless written notice of the default has been delivered and 30 days have passed without the default being cured by the Developer or its investor member. An election by either Party not to enforce any default of this Agreement shall not be deemed to be a waiver of the right to enforce subsequent defaults.

**15. Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

**16. No Discrimination.** Developer shall not discriminate against any employee or contractor, or potential employee or contractor, in the construction of the Development or potential homebuyer on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry.

**17. Corporate Authorization.** The individuals executing this Agreement on behalf of the Developer warrant and represent that they are duly authorized to bind the Developer to this Agreement. Developer warrants and represents that the execution of this Agreement is not prohibited by the Developer's articles of incorporation, by-laws, operating agreement, or other

internal operating orders, or by any applicable law, regulation or court order. Developer shall provide proof upon request.

**18. Assistance of Counsel, Voluntary Agreement.**

The Developer acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.

**19. Severability.** If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.

**20. Governing Law and Jurisdiction.** This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin and waive all jurisdictional defenses.

**21. Integration.** This Agreement constitutes the entire agreement of the Parties. All other agreements and understandings of the parties with respect to the subject matter expressed in this Agreement are unenforceable. However, nothing in this Agreement shall be construed to limit the Common Council in the exercise of its legislative powers.

**22. Force Majeure.** Neither Party shall be deemed to be in default of this Agreement if the failure to perform is the result of unforeseeable causes beyond the Party's control, including but not limited to civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials, acts of God, Governmental restrictions, and pandemics, provided the Party has used reasonable diligence in attempting to anticipate and avoid such causes and resumes performance in good faith as soon as reasonably possible. Time for performance shall be extended by the period of delayed performance.

Executed this XXXX day of XXXXXX

**City of Waukesha**

\_\_\_\_\_  
Shawn N. Reilly, Mayor

\_\_\_\_\_  
Gina L. Kozlik, Clerk-Treasurer

State of Wisconsin }  
                                  } ss.  
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the persons who executed this Agreement on behalf of the City of Waukesha in the indicated capacities, personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, signed their names in my presence, and acknowledged the same.

\_\_\_\_\_  
Notary Public, Waukesha County, Wisconsin  
My commission (is permanent) (expires\_\_\_\_\_)

**Habitat for Humanity of Waukesha County, Inc.**

\_\_\_\_\_  
(sign above)  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(sign above)  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Wisconsin }  
                                  } ss.  
\_\_\_\_\_ County }

\_\_\_\_\_ and \_\_\_\_\_, known to me to be the persons who executed this Agreement on behalf of \_\_\_\_\_, in the indicated capacities, personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, signed their names in my presence, and acknowledged the same.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, Wisconsin  
My commission (is permanent) (expires\_\_\_\_\_)

This document was drafted by City of Waukesha Department of Community Development.

**Incorporated attachments:      Exhibit A – General Development Plan**

**EXHIBIT A**  
**General Development Plan**

