CITY OF STOUGHTON, 207 S. FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Resolution by the Common Council of the City of Stoughton
Approving Agreement to Undertake Development in the Plat of Abel Plat

Committee Action:

Fiscal Impact: N/A

File Number:	R-179-2020	**Date Introduced:**	December 8, 2020

The City of Stoughton, Wisconsin, Common Council does proclaim as follows:

RECITALS

Developer has requested authorization to develop the lands within the plat of Abel Plat, (the "Plat") located in the City of Stoughton, Dane County, Wisconsin.

The City's purposes in entering into this Agreement are, among others, to provide for the installation of required improvements, to require the Developer to pay the direct and indirect costs related to the required improvements, and to avoid the harmful effects of substandard subdivisions.

RESOLUTION

The Common Council of the City of Stoughton hereby approves the Agreement to Undertake Development in the Plat of Abel Plat and the proper city official(s) be hereby directed and authorized to enter into the Agreement.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____
Tim Swadley, Mayor Date

Council Action: _____ ☐ **Override** **Vote** _____

CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
207 S. Forrest Street, Stoughton, WI. 53589

(608) 873-6619 www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

Date: November 18, 2020

To: Finance Committee

From: Rodney J. Scheel
Director of Planning & Development

Subject: Abel Plat Development Agreement

The Abel Plat was created in 1990. The public improvements have not been installed. Habitat for Humanity of Dane County is now working to make the public improvements to prepare the lots for development. The Agreement to Undertake Development has been prepared to outline the requirements related to the public improvements.

We recommend approving the Agreement to Undertake Development and authorizing the Mayor to sign.

If you have any questions, please contact me.

AGREEMENT TO UNDERTAKE DEVELOPMENT IN THE PLAT OF ABEL PLAT

Agreement entered into this _____ day of_____, 2020, by and between Habitat for Humanity of Dane County, Inc. ("Developer"), and the City of Stoughton, (the "City"), a Wisconsin municipal corporation.

RECITALS

1. Developer has requested authorization to develop the lands within the plat of Abel Plat, (the "Plat") located in the City of Stoughton, Dane County, Wisconsin.

2. The City's purposes in entering into this Agreement are, among others, to provide for the installation of required improvements, to require the Developer to pay the direct and indirect costs related to the required improvements, and to avoid the harmful effects of substandard subdivisions.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and the City agree as follows:

ARTICLE I - REQUIRED IMPROVEMENTS

1. **General Conditions.**

   A. *Improvements*. Developer shall construct and install all improvements needed to serve the Plat. The Developer's obligation to complete the improvements will arise upon execution of this Agreement, will be independent of any obligations of the City contained herein and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

   The improvements contemplated herein include the following: Sanitary sewer service mains, manholes, laterals and all appurtenances; water mains, laterals, hydrants, valves and all appurtenances; storm sewer and storm water management facilities; public streets; gas and electric utilities; cable television; trees; telephone service; sidewalks; street signs; and street lamps (hereinafter referred to as the "Improvements") in accordance with plans and specifications to be approved by the City Planning Director. In addition, the Developer further agrees to construct improvements required to connect the subdivision to existing public improvements, facilities or utilities, including

any improvements required outside the boundaries of the Plat, and to dedicate said Improvements to the City.

The Improvements shall be designed, constructed and installed by the Developer at the Developer's sole expense. All required improvements shall be designed, constructed and installed in accordance with the plans and specifications to be prepared by the Developer's Engineer and approved by the City Planning Director. Two copies of the approved, signed and stamped plans and specifications shall be provided to the City Planning Director, and one copy shall be provided to each contractor. Only stamped and signed copies of the plans and specifications shall be used on the job site. Where standards and/or specifications have not been established by the City, all work shall be made in accordance with established engineering practices as designated and approved by the City Planning Director.

The City shall, to the extent it already owns or has access easements over offsite lands, permit reasonable access for Developer's construction of offsite improvements required under this Agreement, in accordance with the terms and limitations of such easement. The City shall not, however, be required to exercise, for the benefit of Developer, its power of eminent domain or exercise any other municipal authority to obtain access over any property which it does not currently own or over which it does not have access rights. Nor shall the City be required to expend any time or money to stake, for Developer's benefit, the location of any dedicated lands or easements over which it will furnish Developer access for construction of offsite improvements.

B. *City Approval of Starting Dates*. No land disturbances or work shall begin without the City Planning Director's approval of a starting date and schedule, which shall be submitted by the Developer to the City Planning Director a minimum of seven calendar days before work, is scheduled to begin. A starting date will not be approved until the surety required by this Agreement has been furnished to and approved by the City.

C. *Change to Work Order*. The City shall not be responsible for any costs or changes relating to this project except those specifically enumerated and agreed upon in this or subsequent written, signed agreements between the Developer and the City.

D. *Contractors Engaged by Developer*. The Developer agrees to engage contractors for all construction included in this Agreement who are acceptable to the City, who shall perform such work to the standards of the City, and who shall comply with every requirement of the City ordinances

and standards in performing such work. The Developer shall furnish the City Planning Director with the names of all contractors and their subcontractors, with the classification of work they will perform, not less than seven calendar days prior to any work beginning.

E. *Time of Completion*. All work specified herein, excepting the final asphalt lift, shall be completed within twelve months after the execution of this Agreement. The final asphalt lift shall be completed within 24 months after the execution of this Agreement. No damages may be recovered by Developer or any person against the City for delay in completion of the improvements.

2. **Specifications for Improvements.**

A. *Signs and Barricades*. The Developer shall install and maintain during construction and until the Improvements are accepted by the City all barricades and signs as specified by the City Planning Director at all points where new rights-of-way extend to or intersect with existing streets and all street ends.

B. *Grading*. Before starting grading, excavating or other land disturbing activities, the Developer shall obtain approval of a site grading and drainage plan, and shall obtain all necessary grading permits pursuant to the City Code. Developer shall perform all grading as specified in the plans approved by the City Planning Director.

C. *Erosion Control*. The Developer shall obtain an erosion control permit pursuant to the City Code, and shall design, install and construct all erosion control measures as required by the City's ordinances, and in accordance with plans and specifications approved by the City Planning Director, before grading, utility installation or any other land disturbing activity.

D. *Street Improvements*. The Developer shall design, construct and install standard street improvements, including grading, and bituminous base and surface course on all streets and in accordance with plans and specifications approved by the City Planning Director. The City Planning Director shall retain final authority regarding the need to remove bad subbase material and to replace such bad subbase material with breaker run, in order to insure the quality of the street construction. Construction of pavement, curb and gutter, aprons shall not occur at any time when the outside temperature at the site is forecast by the National Weather Service to be below 30 degrees farenheit during and for 24 hours following installation. The surface course of asphalt shall be installed during the same construction season as the installation of

the base course of asphalt, and in no event later than November 15 of the year in which the base course is installed, unless later installation is approved by the City Planning Director. The City shall have no responsibility to accept, plow or otherwise maintain any street that has not been fully completed, including the finals asphalt. Lift. Developer shall be responsible for snow removal from streets until such streets are fully completed.

E. S*idewalks*. The Developer shall construct and install sidewalks on both sides of the street within the Plat in accordance with the standard specifications of the City. The Developer shall construct and install sidewalk ramps and detectable warning fields at the ends of the sidewalks at crosswalk locations. Construction of sidewalks shall not occur at any time when the outside temperature at the site is forecast by the National Weather Service to be below 30 degrees farenheit during and for 24 hours following installation.

F. *Street signs*. The Developer shall pay for the installation of all traffic control signs and street name signs in accordance with City specifications as determined by the City Planning Director.

G. *Street Lamps*. The Developer shall pay to Stoughton Utilities the actual cost of purchasing and installing streetlamps in accordance with a plan to be approved by the Stoughton Utilities Director. Prior to the approval of a start date for construction, Developer shall provide a deposit to Stoughton Utilities in the amount of the estimated cost of purchasing and installing streetlamps in such phase, as such amount is estimated by the Utilities Director for Stoughton Utilities. Stoughton Utilities may directly apply such deposit to the cost of purchasing and installing streetlamps. If any amount of the actual cost of purchasing and installing streetlamps exceeds the deposit, Developer shall pay the additional cost to Stoughton Utilities. If the actual cost of purchasing and installing streetlamps is less than the deposit, the unused portion of the deposit shall be returned to Developer.

H. *Sanitary Sewer Mains*. The Developer shall design, construct and install all public sanitary sewer mains and laterals (complete with appurtenances thereto), necessary to serve the Plat from the existing City sanitary sewer facilities, and in accordance with plans and specifications and requirements of the City, as approved by the City Planning Director. No installation of the underground utilities shall commence until plans and specifications have been approved by the City Planning Director and the Wisconsin Department of Natural Resources as it requires.

I. *Water Mains and Service Pipes*. The Developer shall design, construct and install all water mains, including pipe, hydrants, tees, valves, crosses and

related appurtenances and water service laterals to serve the Plat from existing City water facilities, and as required by the plans, specifications, and requirements of the City, as approved by the City Planning Director. All materials used shall conform to the City's specifications for water mains.

J. *Storm Sewer and Stormwater Management Facilities*. The Developer shall obtain a stormwater management permit pursuant to the City Code, and shall design, construct and install storm sewer and stormwater management facilities to be dedicated to the City and to serve the Plat, as required by the City's ordinances and the stormwater management plan and permit.

K. *Easements and Utility Service*. The Developer shall install or cause to be installed electric, gas, cable television lines, and telephone lines, including necessary appurtenances thereto, in order to serve the Plat. All new utility service lines shall be installed underground.

L. *Fencing and Debris Removal*. The Developer shall remove all fences and posts on the property, and shall remove all debris on lands to be dedicated to the public by the Plat, or which are public at this time.

M. *Excess Fill Materials*. If excavations result in excess fill, and the Developer uses such fill materials on lots within the subdivision, the Developer shall be solely responsible for the location and method of placement of such material. Although such fill materials shall be leveled and graded to the specifications of the City Planning Director, neither the City, the City Planning Director, nor the employees or agents of either, shall be responsible for the location, method of placement, type, or degree of compaction of any materials placed on private property.

N. *Survey Monuments*. The Developer shall install all survey monuments for the lands within the Plat in the manner required by law within the time required by law.

O. *Terrace Trees*. The Developer shall install or pay a fee to fund the installation of terrace trees. The number of required trees shall be determined using the methodology in section 10-2(5) of the City of Stoughton Municipal Code. If the Developer elects to install the required terrace trees, such installation shall be done in accordance with a tree planting plan approved by the public works director or their designee. The tree planting plan shall specify the number, species and location of required trees. If the Developer elects to pay a fee to fund the installation of terrace trees, the fee shall be calculated using the methodology in section 10-2(6) of the City of Stoughton Municipal Code.

ARTICLE II - PAYMENT OF FEES AND COSTS

1. **Fees.** The Developer shall pay the City for all outstanding fees, costs and assessments levied against lands within the Plat, including any outstanding costs for engineering, legal or other consulting services, at or before the time this Agreement is executed.

2. **Developer to Reimburse City Costs.** The Developer shall reimburse the City for the City's actual cost of design, inspection, testing, and construction and associated legal, engineering and other fees relating to the Plat, this Agreement or the Improvements. The City's costs shall be determined as follows:

   A. The actual cost of the City's consulting, inspection, engineering and legal fees at the invoiced amount, incurred by the City for purposes of the preparation, review, construction, inspection and testing of the Plat, this Agreement, the proposed development and the Improvements.

   B. The total cost of City employees' time engaged in any way with the Improvements based on the hourly rate paid to the employee, plus 20 percent of those costs representing the City's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.

   C. The cost of City equipment employed.

   D. The cost of mileage reimbursed to City employees that is attributed to the Plat.

   E. The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 10 percent of the cost of the materials.

   F. The costs incurred by the City in connection with the review and approval of construction plans and other documents relating to the development of the lands within the Plat, including but not limited to erosion control, grading and stormwater management plans and permits.

3. **Required Permits.** The Developer is responsible for obtaining all licenses, permits and authority necessary to perform its obligations under this agreement.

ARTICLE III - ACCEPTANCE AND GUARANTEE OF IMPROVEMENTS

1. **Acceptance**. After the required Improvements have been installed and completed, and within 21 days after receiving written notice that the Developer desires the City to inspect such Improvements, the City Planning Director or his designee shall inspect the Improvements and, if acceptable to the City Planning Director, the City Council shall by resolution certify such Improvements as being in compliance with the standards and specifications of the City. Before obtaining certification of any such Improvements, the Developer shall: (1) present to the City valid lien waivers from all persons providing materials or performing work on the Improvements for which certification is sought; (2) provide as built drawings to the City Planning Director consisting of four hard copies on paper; (3) provide to the City all information regarding such Improvements that the City requests to comply with GASB 34. Certification by the City Planning Director does not constitute a waiver by the City of the right to draw funds under a letter of credit or invoke its rights under a performance bond because of defects in or failure of any Improvements that are detected or which occur following such certification.

   The Developer agrees that the required public Improvements will not be accepted by the City until they have been inspected and approved by the City Planning Director and furthermore until all outstanding City costs, including engineering and inspection charges, have been paid in full and affidavits and lien waivers are received by the City indicating that the contractors and their suppliers have been paid in full for all work and materials furnished under this Agreement. The sanitary sewer and water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by the Developer is submitted to the City Planning Director. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained and tested by a certified agency. The Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's water utility personnel. In addition, the Developer shall clean the sanitary sewers in accordance with the directives of the City Planning Director. Upon completion of the mains, hydrants, valves, appurtenances, and service laterals and acceptance of the system by the City, ownership and control of the system shall be turned over without any restrictions to the City.

   The Developer agrees to provide for maintenance and repair of all required public Improvements until such Improvements are formally accepted by the City.

   The City will provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the required standards and specifications

or is otherwise defective. The Developer shall have 30 days from the issuance of such notice to cure the defect. The City shall not declare a default under this Agreement during the 30 day cure period on account of any such defect unless it is clear that the Developer does not intend to cure the defect, or unless the City determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat.

2. **Guarantee**. The Developer agrees to guarantee and warrant all work performed under this Agreement for a period of one year from the date of final acceptance by the City of the last improvement completed by the Developer under this Agreement against defects in workmanship or materials; provided, however, that such one year guarantee period shall commence upon the date of final acceptance by the City of the last such public Improvements completed by the Developer under this Agreement. If the Improvements are accepted between November 15 and April 15, both dates inclusive, the guarantee period shall extend to June 15 following that date which is one year from the date the Improvements are accepted by the City. If any defect appears during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at its own expense, including total and complete restoration of any disturbed surface or component of the Improvements on lands where the repairs or replacement is required, to the standard provided in the approved plans and specifications.

   All guarantees or warranties for materials or workmanship that extend beyond the above guarantee period shall be assigned by the Developer to the City.

ARTICLE IV - SURETY

1. **Surety**. Before a starting date will be approved, the Developer shall provide the City with a letter of credit or performance bond in the amount of 120 percent of the estimated cost of constructing the public improvements pursuant to this Agreement. If a letter of credit is provided, it shall have an initial term of not less than 12 months. Any letter of credit or performance bond shall acceptable to the City Attorney, in both form and substance.

2. **Letter of Credit Procedures**.

   A. *Payment under Letters of Credit*. A letter of credit shall be payable to the City at any time upon presentation of (1) a sight draft drawn on the issuing Bank in the amount to which the City is entitled to draw pursuant to the terms of this Agreement; (2) an affidavit executed by an authorized City official stating that the Developer is in default under this Agreement; and (3) the original Letter of Credit.

B. *Reduction of Letters of Credit*. As work progresses on installation of the Improvements, the City Planning Director, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of the letter of credit as hereinafter provided. When portions of the Improvements are completed by the Developer, and determined acceptable by the City Planning Director, the City Administrator is authorized to reduce the amount of the required Letter of Credit after receiving: (1) copies of pay requests approved by the Developer's Planning Director; (2) a statement from the Developer's Planning Director certifying the estimated cost of the total amount of work remaining to complete the Improvements, including all approved or anticipated change orders; and, (3) partial lien waivers from the general contractor, subcontractors and material suppliers for the total amount paid to date. The amount of the reduced letter of credit shall be not less than the estimated cost of the total work remaining to complete the Improvements, including approved and anticipated change orders, plus 10 percent of the cost of the completed improvements, and including the cleaning of stormwater management measures prior to acceptance of such measures, as certified by the Developer's Planning Director, and approved by the City Planning Director.

C. *Reduction after Acceptance.* Upon acceptance by the City Council of all Improvements, the City agrees to reduce the surety to 10 percent of the total cost of the Improvements. The City shall return any remaining letter of credit to Developer or the institution that provided the letter of credit after Developer's guarantee obligations under Article III, Section 2 if this Agreement have been satisfied.

D. *Accounting*. The Developer may inspect the City records of payments made using a letter of credit upon request at reasonable times. However, the City retains the exclusive right to determine, among other things, questions of design, specifications, construction cost, performance, contract compliance, and payment in connection with this work. The Developer agrees that in the absence of fraud on the part of the City, the City's decisions on all such matters shall control and shall be final.

E. *Insufficient Letter of Credit Amount*. If the amount provided by a letter of credit is not sufficient to secure the Developer's performance of this Agreement, then the City shall notify the Developer of the necessary increase in the letter of credit, or the additional amounts due, and the Developer agrees to increase the Letter of Credit or pay the City for such additional costs within 30 days of receipt of notification.

F. *Notice of Expiration*. Developer agrees to provide written notice of the expiration of any letter of credit or replacement letter of credit provided for herein not less than 60 days before its expiration by sending written notice to the City. The Letter of Credit shall be renewed at least 30 days before its expiration date, or any renewal date, until the completion of the guarantee period specified in Article III, Section 2.

ARTICLE V- MISCELLANEOUS PROVISIONS

1. **Inspections.** The Developer grants the right of entry on the lands within the Plat to personnel or agents of the City to conduct inspections and monitor compliance with the provisions of this Agreement.

2. **Developer's Project Manager.** The Developer hereby designates _____ as the Project Manager, who shall act as the Developer's representative during the construction of the Improvements. The Project Manager shall be available during construction hours on the job site or available by telephone at _____.

3. **Building Permits.** Building permits for Lots in the Plat shall not be issued until all Improvements have been constructed and approved by the City Planning Director, and the City Planning Director has certified that all "punch list" items have been completed to his satisfaction. The "punch list" items are those items needed to complete all Improvements other than the planting of street trees, and the installation of the surface coat of bituminous concrete on streets that shall be completed during the construction season immediately following the construction season during which the binder course was installed.

4. **Other Laws Apply.** All applicable provisions of Chapter 66 of the City of Stoughton ordinances, and any other applicable ordinances or laws shall be adhered to with respect to the design, construction and installation of required improvements. If there is a conflict between any law or regulation and this Agreement, the City Planning Director shall determine which shall control.

5. **Amendment.** This Agreement may only be amended by a written amendment instrument approved and executed by the City and the Developer.

6. **No Release.** Nothing set forth in this Agreement shall be construed as, nor is intended to be, a waiver or release of any obligations imposed upon the Developer by Chapter 66, City of Stoughton ordinances, or any other applicable City of Stoughton ordinance, state statute, or administrative rule. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly

provided for by a written amendment to this Agreement signed by both the City and the Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute approval of any wrongful act by the Developer or the acceptance of any improvements.

7. **Successors Bound.** This Agreement shall run with the land and shall be binding upon the Developer, its grantees, personal representatives, heirs, successors and assigns.

8. **No Vested Rights Created.** Except as provided by law, or as expressly provided in this Agreement, no vested right in connection with this project shall inure to the Developer. The City does not warrant by this Agreement that the Developer is entitled to any required approvals.

9. **Severability.** Any illegal or unenforceable provision of this Agreement will be severed and the remainder of this Agreement will remain enforceable.

10. **Sovereign Immunity.** The provisions of this Agreement are not meant to, and do not imply or create any waiver of the City's sovereign immunity.

11. **Written Notice.** Any written notification required under this Agreement shall be deemed to be served if it is personally delivered or sent by first class mail to the following:

City of Stoughton
Attn: Planning Director
207 S. Forrest Street
Stoughton, WI 53589

Developer
_____
_____
_____

12. **Insurance.**

A. *General.*

The Developer shall obtain insurance acceptable to the City as required under this section. The Developer shall maintain all required insurance under this section until Improvements have been accepted and during any

subsequent period in which the Developer does work under this Agreement pursuant to the Improvement guarantee or otherwise.

B. *Certificates of Insurance.*

Certificates of Insurance on all policies specified shall be filed with the City clerk which shall include a fifteen (15) day prior written notice of material change or cancellation to the City and which clearly state that liability insurance is provided and, if applicable to work under this Agreement, explosion, collapse and underground coverage. Explosion, collapse and underground coverage may be provided by the Developer's contractor.

C. *Insurance.*

The minimum limits of liability shall be as follows:

Employer's Liability (if applicable)	$100,000 Per Occurrence
Comprehensive Motor Vehicle Liability, Bodily Injury & Property Damage Combined (if applicable)	$1,000,000 Per Accident
Comprehensive General Liability	$2,000,000 Per Occurrence
Bodily Injury Property Damage	$2,000,000 Aggregate

The Developer may furnish coverage for bodily injury and property damage for Comprehensive Motor Vehicle Liability and Comprehensive General Liability through the use of primary liability policies or in a combination with an umbrella excess third party liability.

Other coverages shall include the following:

The Developer shall provide completed Operations and Products Liability coverage for the life of the Agreement and maintain coverage for a period of one (1) year after the Improvements have been accepted by the City. The liability limits shall be as required above for Comprehensive General Liability.

The Developer shall provide Owner's Protective Liability coverage (Independent Contractor Insurance). The liability limits shall be the same as required above for Comprehensive General Liability.

Insurance required under this Agreement shall be carried with an insurer authorized to do business in Wisconsin by the Wisconsin Commissioner of Insurance. The City reserves the right to disapprove any insurance company.

13. **Indemnification**. The Developer shall indemnify and hold harmless the City, its officers, agents and employees and the City Planning Director from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part, by any negligent act or omission of the Developer, Developer's contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder provided, however, that such indemnification shall not extend to directions by the City or its employees to perform acts if the acts are performed in accordance with such direction. A claim for indemnification under this section shall be conditioned upon the City giving to the Developer, within thirty business days of receiving the same, written notice of any claim made against the City for which indemnification is sought and if requested to do so by the Developer's insurance carrier, the City shall tender the defense of such claim to the Developer's insurance carrier.

    In any and all claims against the City, its officers, agents and employees or the City Planning Director, by any employee of the Developer, Developer's contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer, the Contractor or any Subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

14. **Indemnification for Environmental Contamination.** The Developer shall indemnify, defend, and hold the City and its officers, employees, and agents and the City Planning Director harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including reasonable fees for attorneys, consultants, and experts) that arise as a result of the presence or suspected presence in or on the real property dedicated or conveyed to the City by, under, pursuant to, or in connection

with the Plat or this Agreement (including, but not limited to, utility easements, street right-of-way and lands for stormwater management facilities) of any toxic or hazardous substances in violation of environmental laws arising from any activity occurring prior to the acceptance of all Improvements. Without limiting the generality of the foregoing, the indemnification by the Developer shall include costs incurred in connection with any site investigation or any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence or suspected presence of toxic or hazardous substances in violation of environmental laws on or under the real property, whether in the soil, groundwater, air or other receptor.

The City shall notify the Developer of the discovery of any contamination or of any facts or circumstances that reasonably indicate that such contamination may exist in or on the real property. The City also agrees that following notification to the Developer that contamination may exist, the City shall make all reasonable accommodations to allow the Developer to examine the real property and conduct such clean-up operations as may be required by the appropriate local, state, or federal agencies to comply with applicable laws.

15. **Personal Liability of Public Officials**. In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the City's officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the City.

16. **Attorney Fees**. If either party commences litigation, arbitration, or mediation to enforce the terms of this Agreement, the non-prevailing party shall pay all costs, including reasonable attorney fees and expert witness fees of the prevailing party. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs.

17. **Default.** A default is defined herein as the Developer's breach of, or failure to comply with, the terms of this Agreement. The City reserves to itself all remedies available at law or equity as necessary to cure any default. The City also reserves to itself the right to draw on letters of credit provided hereunder, and to specially assess costs against the property within the Plat, in addition to pursuing any other available remedies. Remedies shall include, but not be limited to, stopping all construction in the approved Final Plat area and prohibiting the transfer or sale of lots.

18. **Entire Agreement.** This written agreement, and written amendments, shall constitute the entire agreement between the Developer and the City relating to the Plat.

19. **Benefits.** The benefits of this Agreement to the Developer are personal and shall not be assigned without the express written consent of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and shall be binding on the heirs, successors and assigns of the Developer. There is no prohibition on the right of the City to assign its rights under this Agreement. The City shall release the original Developer's Letter of Credit if it accepts new security from any developer or lender who obtains the property. However, no act of the City shall constitute a release of the original Developer from its liability under this Agreement.

20. **Recording.** The City may record a copy of this Agreement with the Register of Deeds. All costs of recording shall be paid by the Developer.

21. **Ownership Warranty.** The Developer hereby warrants that the Developer is the lawful Owner of and now lawfully possesses the real estate to be improved pursuant to this Agreement.

22. **Authority.** Each person signing this Agreement on behalf of either party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the party.

23. **Effective Date**. This Agreement is entered into as of the day and year first written above.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the dates noted below.

CITY OF STOUGHTON

By _____
Tim Swadley, Mayor

By _____
Holly Licht, City Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this_____day of _____, 2020 the above named Tim Swadley and Holly Licht, to me known to be the Mayor and City Clerk of the City of Stoughton, and the persons who executed the foregoing instrument and acknowledged the same.

_____
(Print Name) _____
Notary Public, State of Wisconsin
My Commission: _____

HABITAT FOR HUMANITY OF DANE COUNTY

By: _____
Print name: _____
Title: _____

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2020, the above named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____

Print Name: _____

Notary Public, State of Wisconsin

My Commission _____

(SEAL)

Approved as to Form:
STAFFORD ROSENBAUM LLP
Attorneys for the City of Stoughton

_____
By: Matthew P. Dregne

This instrument drafted by and to be returned to:
Matthew P. Dregne
Stafford Rosenbaum LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784