

EXHIBIT - AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is entered into as of the ____ day of _____, 2023, by and between the **City of Madison**, a Wisconsin municipal corporation (the “Seller”) and **Habitat for Humanity of Dane County, Inc.**, a Wisconsin non-stock corporation (the “Buyer”).

In consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and Seller (together, the “Parties”) hereto covenant and agree as follows:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Special Warranty Deed (the “Deed”) fee simple title to the real property located at 5141 Horned Owl Drive and 5166 Great Gray Drive, legally described as follows (the “Property”):

Lot Twenty-nine (29) and Lot Forty (40), Owl’s Creek Subdivision, in the City of Madison, Dane County, Wisconsin.
2. Effective Date. The “Effective Date” shall be the date first stated above.
3. Purchase Price. The total purchase price for the Seller’s interest in the Property (the “Purchase Price”) shall be One Dollar (\$1.00), payable in cash at the date of conveyance (the “Closing”), subject to the adjustments and prorations herein provided.
4. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Due Diligence Period as described in Paragraph 5, the Seller will reproduce at the Seller’s expense and send to the Buyer, either electronically or by hard copy as specified in Paragraph 17, copies of the following documents in the Seller’s possession or control: all environmental studies, reports, permits, applications and remediation plans or assessments of the Property.
5. Due Diligence Period. The Buyer shall have sixty (60) days from the Effective Date (the “Due Diligence Period”) to review, test and inspect all aspects of the Property, at its sole cost and expense. If within the Due Diligence Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and this Agreement shall terminate immediately.

The Buyer agrees that if it terminates this Agreement, as provided herein, or fails to close the transaction contemplated hereby for any reason, then the Buyer shall deliver to the Seller, at no cost to the Seller, complete and accurate copies of all of the Buyer’s due diligence materials other than any attorney work product or attorney-client privileged documents.

The Buyer shall keep the Property free of all liens in connection with its inspection of the Property and shall cause all such liens to be removed immediately upon being notified of same.

If the Buyer does not provide written notice terminating this Agreement on or prior to the sixtieth (60th) day of the Due Diligence Period, this Agreement shall remain in full force and effect, the

Buyer shall accept the Property as-is, and the Parties shall proceed to close the transaction as provided herein.

The Due Diligence Period may be extended upon written agreement of the Parties.

6. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing during the Due Diligence Period including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of the Property and any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer's and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors access to, and inspection of, the Property shall be at the Buyer's sole risk and expense and the Seller shall have no responsibility therefor. The Buyer will repair, at the Buyer's and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors cost, all damages caused by its inspections or testing so that the condition of the Property is returned to as good or better.
7. Indemnification. The Buyer shall be liable to and agrees to indemnify, defend and hold harmless the Seller, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Seller or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Buyer or its officers, officials, agents, employees, assigns, guests, invitees or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the Seller, its officers, officials, agents, or employees.
8. Insurance. The Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property shall carry commercial general liability insurance covering as insured the Buyer and naming the Seller, its officers, officials, agents and as additional insured's, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the Seller thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Agreement. As evidence of this coverage, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish the City of Madison (the "City") with a certificate of insurance on a form approved by the Seller, and, if requested by the City Risk Manager, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to the Seller prior to the performance of any work on the Property. If the coverage required above expires while this Agreement is in effect, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to the Seller for approval.

9. Lease. The Seller shall represent that the Property is currently not leased and the Seller shall agree that it shall not enter into any lease or rental for the Property, or any portion thereof, or allow occupation of the Property during the Due Diligence Period and through the date of Closing, without the prior written consent of the Buyer.
10. Personal Property. The purchase of the Property does not include any personal property.
11. Survey. Any survey of the Property including, but not limited to, an ALTA/ACSM Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2021 that is required to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the title company providing the title insurance described in Paragraph 12 shall be at the sole cost and expense of the Buyer.
12. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to the date of Closing, a commitment from First American Title Insurance Company (the "Title Company") to issue an ALTA Owner's Title Insurance Policy for the Closing, in the amounts specified in Paragraph 3, upon the recording of proper documents, together with a gap endorsement of the Closing. The respective commitments shall show title to the portion of the Property being conveyed, as specified in Paragraph 1, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in this Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to the Buyer ("Permitted Exceptions"). The Buyer shall notify the Seller of any valid objection to title, in writing, prior to Closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and the date of the Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out this Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Agreement shall be void.
13. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, the Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by the Seller, its agents or employees, in entering into this Agreement or in closing the transaction described herein. Except as provided below, the Buyer's Closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property.
14. Broker Representation. The Seller shall acknowledge that it is not represented by a licensed real estate broker on its behalf in respect of the transactions contemplated herein. The Buyer shall acknowledge that it is not represented by a licensed real estate broker on its behalf in respect of the transactions contemplated herein.
15. Closing.
 - a. The Closing shall occur on or before the thirtieth (30th) day from the expiration of the Due Diligence Period, or on such other date agreed to in writing by the Parties, at the

office of the Title Company, unless the Parties agree in writing to an alternate Closing location.

- b. The Seller agrees to execute and deliver to the Buyer at Closing the Deed conveying the Property described in Paragraph 1 to the Buyer free and clear from all liens and encumbrances arising during the Seller's ownership of the Property, excepting the following: Municipal and zoning ordinances and the Permitted Exceptions.
- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by this Agreement.
- d. All 2023 real estate taxes with respect to the Property shall be prorated between the Buyer and Seller as of the date of the Closing based upon the period of ownership of the Parties and the latest known assessment and latest known mill rate.
- e. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of the Closing.
- f. The Seller shall pay any Wisconsin Real Estate Transfer fee or taxes due in connection with the conveyance of the Property at the Closing.
- g. The Seller or Title Company shall prepare and provide a Wisconsin Real Estate Transfer Return at the Closing.
- h. The Seller shall provide, and the Buyer shall execute at the Closing, a Land Use Restriction Agreement (the "LURA"), to be recorded at the Dane County Register of Deeds, requiring the Buyer to construct owner-occupied homes on the Property to be acquired by eligible households earning at or below 80% County Median Income.
- i. The Seller shall provide, and the Buyer shall execute at the Closing, an Option to Purchase document to be recorded at the Dane County Register of Deeds, containing, but not limited to, the following terms and conditions:
 - i) The Buyer must obtain a Certificate of Occupancy within two (2) years of the date of the Closing;
 - ii) If a Certificate of Occupancy is not obtained within two (2) years, the Seller shall have, at the Seller's sole discretion, the option to require the Buyer to deed the impacted lot and any improvements located thereon back to the Seller (the "Option");
 - iii) If after two years the Buyer has not obtained a Certificate of Occupancy, the Seller may extend, at the Seller's sole discretion, the duration of the Option in the event the Buyer is able to reasonably demonstrate to the Seller that completing construction was not financially feasible due to general new housing construction market conditions;

- iv) Any transfer back to the Seller shall be completed within fifteen (15) days of the date the Seller provides notice to the Buyer of the Seller's intent to exercise the Option;
 - v) The Buyer shall pay all costs related to exercising the Option;
 - vi) In the event the Option is exercised, the Seller shall compensate the Buyer One Dollar (\$1.00) for the portion of the Property so transferred.
- j. The Buyer shall provide a one (1) year Basic Universal Home Protection warranty (the "Warranty") for the future purchaser, effective beginning the date of the deed of the completed home to the future purchaser. Failure to provide the Warranty shall make the Buyer liable to future purchasers to provide the same one (1) year coverage as detailed in the Warranty and pay for all costs related thereto. This Warranty provision shall survive the Closing and be included in purchase and sales agreements or offer to purchase contracts with future purchasers.
- k. The Seller shall obtain approval from the City's Common Council for the execution of this Agreement.
16. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance.
17. Notices. All notices required or permitted to be given hereunder shall be given to the Parties at the following addresses if sent via mail, or to the email addresses if provided via email. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Agreement.

Seller: City of Madison
Economic Development Division
Office of Real Estate Services
Attention: Andy Miller
Post Office Box 2983
Madison, WI 53701-2983
Email: acmiller@cityofmadison.com

Buyer: Habitat for Humanity of Dane County, Inc.
Attention: Steve Hanrahan
3101 Latham Drive
Madison, WI 53713
Email: SHanrahan@habitatdane.org

18. Entire Agreement. This Agreement contains the entire agreement between the Parties and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Agreement may be amended only by a further written document signed by each of the Parties.
19. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.
20. Captions. The captions of the paragraphs in this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.
21. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.
22. Counterparts and Transmittal of Signatures. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same Agreement. A signed copy of the Agreement transmitted by facsimile electronic scanned copy (.pdf) or similar technology and shall be as valid as original. This Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.
23. Time of the Essence. Time is of the essence for the performance of this Agreement.

Signatures begin on following page.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

BUYER: HABITAT FOR HUMANITY OF DANE COUNTY, INC.

By: _____

Print name: _____

Title: _____

Date: _____

Signatures continue on following page.

SELLER: CITY OF MADISON

By: _____ Date: _____
Name: Satya Rhodes-Conway
Title: Mayor

By: _____ Date: _____
Name: Maribeth Witzel-Behl
Title: City Clerk

Approved:

David Schmiedicke,
Finance Director

Date

Approved:

Eric Veum,
Risk Manager

Date

Approved as to form:

Michael P. Haas,
City Attorney

Date

Execution of this Purchase and Sale Agreement by the City is authorized by Resolution Enactment No. RES-23-_____, File I.D. No. _____, adopted by the Common Council of the City of Madison on _____, 2023.

Drafted by the City of Madison Office of Real Estate Services

Project No. 11540