

THIS INSTRUMENT PREPARED  
BY AND SHOULD BE RETURNED  
AFTER RECORDING TO:

Patrick M. Griffin  
Griffin Williams McMahon & Walsh  
LLP  
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ABOVE SPACE FOR RECORDER'S USE ONLY

## STORMWATER DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT

THIS STORMWATER DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT (this "**Agreement**") is entered into as of this \_\_\_ day of \_\_\_\_\_, 2024 (the "**Effective Date**"), by and between Fox Valley Habitat for Humanity, an Illinois not-for-profit corporation (the "**Developer**"), the City of Aurora, an Illinois municipal corporation (the "**City**") and Rodney Feld and Archangel Enterprises ("**Owner**", and collectively with Developer and City, the "**Parties**").

### RECITALS

A. Developer is the owner of the real estate which is legally described in **Exhibit A** hereto (the "**Development Property**") which Developer is improving with a residential smart neighborhood consisting of 17 net zero eco-friendly single-family homes known as the Habitat Green Freedom Development (the "**Development**").

B. Owner is the legal title holder of the real estate which is legally described in **Exhibit B** hereto (the "**Owner's Property**").

C. In conjunction with the City's approval of the Development, the City has requested that Developer construct, install, maintain, repair, replace, inspect, remove and use certain off-site stormwater drainage improvements as described in **Exhibit C** hereto (the "**Improvements**"), some of which Improvements are or may be located on Owner's Property, which *Improvements will mutually benefit Developer, City and Owner.*

D. In conjunction with the City's approval of the Development, and in accordance with the Illinois Drainage Code, the Kane County Stormwater Management Ordinance and other applicable laws (the "**Applicable Laws**"), the City has requested that Developer request offsite owners, including Owner, to execute a drainage easement and maintenance agreement in the form of this Agreement, for the mutual benefit of the Parties, which Agreement will be recorded in the Office of the Kane County Recorder of Deeds. No submission shall be made to Kane County Recorder until Owner, City and Developer give their written consent via email or letter.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and agreements set forth in this Agreement, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated into and shall constitute an integral part of this Agreement.

2. **Grant of Easement for Developer Improvements.** Owner hereby grants and conveys to Developer and City a non-exclusive, perpetual easement, right and privilege benefitting the Development Property in, on, over, under, and through the easement area depicted on **Exhibit D** hereto (the "***Easement Area***") for the purpose of: (1) the construction, installation, maintenance, repair, replacement, inspection, removal and use of the Improvements within the Easement Area; (2) allowing the Improvements to exist within the Easement Area; and (3) providing access to the Developer and the City for all purposes of the easement described herein.

3. **Construction and Maintenance of Improvements.**

a. Except as otherwise provided in this Agreement, Developer, its successors, assignees or Homeowners Association shall be solely responsible for the construction, installation, maintenance, repair, inspection, removal and replacement of the Improvements in accordance with Applicable Laws.

b. The City shall have the right to access the Development Property and the Easement Area in order to inspect the Improvements.

c. If the City provides written notice to the Developer that any portion of the Improvements does not comply with Applicable Laws, and if Developer fails to bring the Improvements into compliance within forty-five (45) days after receipt of such written notice (or such longer period of time as may be reasonably required under the circumstances, provided Developer is reasonable and diligently pursuing compliance), the City shall have the right to enforce any provision or provisions of the Applicable Laws in any manner authorized thereby. In addition to any obligations Developer may have under this Agreement, Developer shall also be responsible for the reimbursement of the City's actual out-of-pocket costs paid in furtherance of its enforcement of this Section and if Developer shall fail to pay such costs within thirty (30) days after the City's written request for payment, accompanied by adequate proof of the City's payment of such costs, the City shall have a right to file a lien on the Development Property until such amount is paid. Exercising the City's enforcement rights pursuant to this Section shall not limit or waive any of the City's other rights or remedies in this Agreement or at law or in equity.

d. The City and Owner shall not interfere with Developer's rights to use the Easement Area in accordance with the provisions of this Agreement.

4. **Insurance and Indemnification.**

a. **Insurance.** Developer agrees to maintain, on a primary basis and at its sole expense at all times that this Agreement is in effect, the following minimum applicable coverages and limits. The insurance requirements contained herein, as well as the City's review or acceptance of insurance maintained by Developer, is not intended to

and shall not in any manner limit or qualify the liabilities or obligations assumed by Developer under this Agreement.

i. *Commercial General Liability.* Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsements excluding or limiting Product/Completed Operations, Contractual Liability or Cross Liability.

ii. *Umbrella or Excess Liability.* Developer will provide proof of Umbrella or Excess Liability coverage wherein the Annual Aggregate limits shall not be less than the highest "Each Occurrence" limit for required policies.

iii. *Additional Insured.* Developer agrees to endorse the City as a non-contributing Additional Insured on both the Commercial General Liability Policy and the Umbrella or Excess Liability Policy. The Additional Insured shall read "City of Aurora as its interest may appear."

iv. *Certificate of Insurance.* Developer shall provide the City a Certificate of Insurance evidencing that all coverages, limits, and endorsements required herein are maintained and in full force and effect. Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Developer's insurer. If Developer receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Developer shall notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

b. Indemnification.

i. *Definitions in this Section 4(b).* "**Charges**" means claims, lawsuits, judgments, costs (including, without limitation reasonable attorneys' fees), damages, losses, demands, liabilities, fines, penalties, settlements, and expenses. "**Indemnitees**" means the City and its past, current, and future officers, officials, independent contractors, agents, attorneys, and employees, excluding Developer.

ii. *Indemnification.* To the maximum extent allowed by law, and subject to subsection "iii" below, Developer shall defend (with legal counsel reasonably acceptable to the City and Developer), indemnify, and hold harmless the Indemnitees from and against all Charges for property damage or personal injury to the extent that such Charges arise from, in connection with, or out of: (a) the failure of Developer, its contractors, agents, or anyone directly or indirectly employed by any of them to perform Developer's obligations under this Agreement; and (b) any negligent acts or omissions of Developer, its contractors, agents, or anyone directly or indirectly employed by any of them in the performance of Developer's obligations under this Agreement.

iii. *Limitation.* In no event shall Developer be required to defend, indemnify or hold harmless the Indemnitees for any Charges to the extent arising from the negligence or willful misconduct of any of the Indemnitees.

iv. *Other Provisions Separate.* Nothing in this Section 4(b) shall affect any warranties, rights or duties in favor of the City that are otherwise provided in or arise out of this Agreement. This Section 4(b) is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

v. *Survival.* This Section 4(b) shall remain in force after the termination of this Agreement with respect to Charges that arise from acts or omissions that occurred before the date of any termination of this Agreement (but not with respect to Charges that arise from acts or omissions that occurred after the date of any termination of this Agreement).

5. **Covenants Running with the Land.** This Agreement shall run with the land and be binding on all successors, heirs and assigns as to the Parties, the Development Property and the Owner's Property. Any conveyance of the Developer Property or the Owner's Property, or any portions thereof, shall be subject to the easements, rights, covenants, obligations and undertakings contained in this Agreement, and, at the time of conveyance, the grantor in any deed of conveyance shall be relieved of future obligations thereafter arising by the owners of the lot or property interest so conveyed, but the grantor in any deed of conveyance shall not be relieved of obligations that are based on acts, omissions, or events that occurred before the time of conveyance. Any grantee of Developer or their successors, heirs or assigns, by recordation of a deed or other instrument of transfer or conveyance of the Developer Property (other than the grantee of a single family lot improved by a single family home) shall be deemed to have assumed the obligations under this Agreement with respect to such property.

6. **Amendment and Termination.** This Agreement may be modified, amended or terminated only by written agreement of the Parties and Developer, and shall be duly acknowledged in a manner suitable for and effective upon recording in the Office of the Recorder of Deeds of Kane County, Illinois. This Section 6 is subject to Section 13 (Performance of Government Functions).

7. **Governing Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to principles of conflict of laws. Venue for any action brought in connection with this Agreement shall be Kane County, Illinois.

8. **No Public Dedication; No Third-Party Beneficiaries or Consents.** This Agreement is not intended, and shall not be construed: (a) as a dedication to the public of any interests in the Developer Improvements described herein, (b) to give any member of the public, or any person, entity, or party other than as provided herein, any right whatsoever herein or therein; or (c) to require any consent or other action of any other person, entity or party other than as expressly provided herein to any amendment to or waiver of any provision of this Agreement.

9. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain expressed herein, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

10. **Compliance Certificate.** Upon the written request of the Developer or the City, or the holder of any first lien deed of trust or first lien mortgage on any such parcel, any such owner shall execute, have acknowledged and deliver a certificate stating whether, to the knowledge of the signatory party, the other party is otherwise in compliance with this Agreement.

11. **Waiver.** This Agreement may not be waived orally or impliedly, but only by written document executed by the party against which such waiver is sought. Neither the failure of a party to complain of any violation of this Agreement, regardless of how long such failure continues, nor the failure of a party to invoke (or the election by a party not to invoke) any right, remedy or recourse for a violation hereof, shall waive the rights, remedies and recourses of the party with respect to such violation. No waiver by a party of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof.

12. **Rights Cumulative.** All rights, powers and privileges conferred hereunder shall be cumulative and in addition to, and not to the exclusion of, those provided at law or in equity.

13. **Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed to in any way to stop, limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions, including the power of eminent domain.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be considered as one and the same instrument.

15. **Headings; Singular/Plural.** The paragraph, section and sub-section headings in this Agreement are for convenience only and shall in no way define or limit the scope or content of this Agreement and shall not be considered in any construction or interpretation of this Agreement or any part thereof. Plural and singular terms shall be interpreted as to their most logical usage in the Agreement.

16. **Notice.** All notices or other communications required or permitted by this agreement shall be in writing and shall be given either by personal delivery, fax, or certified United States Mail, return receipt requested, addressed as follows:

If to Developer: Fox Valley Habitat for Humanity  
Attn: Executive Director  
1300 S. Broadway Rd., Suite 101  
Montgomery, IL 60538

Copy to: Griffin Williams McMahon & Walsh LLP  
Attn: Patrick M. Griffin  
21 N. 4<sup>th</sup> St.  
Geneva, IL 60134

If to City: City of Aurora  
Attn: Corporation Counsel  
44 East Downer Pl.  
Aurora, IL 60507

If to Owner:

Rodney K. and Julie A. Feld  
1900 Jericho Road  
Aurora, IL 60506

A change of address, fax number or person to receive notice may be made by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery if it is personally served or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the date on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever occurs first.

If to Owner:

Archangel Enterprises, LLC  
Jericho Road + Edgelawn Dr.  
Aurora, IL 60506

A change of address, fax number or person to receive notice may be made by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery if it is personally served or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the date on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever occurs first.

*[REMAINDER OF PAGE BLANK – SIGNATURES FOLLOW]*

In Witness Whereof, this Acknowledgment is acknowledged and agreed to by the undersigned effective as of the date first set forth above.

**DEVELOPER**

FOX VALLEY HABITAT FOR HUMANITY

By: [Signature]

Name: Jeffrey J. Barrett

Its: Executive Director

STATE OF IL )  
 ) SS.  
COUNTY OF Kendall )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jeffrey Barrett, as Executive Director of Fox Valley Habitat for Humanity, an Illinois not-for-profit corporation (the "Company"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 21<sup>st</sup> day of February, 2024  
Shauna L. Weatherspoon  
Notary Public





**OWNER**

[OWNER'S NAME]

By: Robney Feld Julie Feld

STATE OF IL )  
 ) SS.  
COUNTY OF Kendall )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robney Julie Feld, an individual, (the "Owner"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of the Owner, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 27<sup>th</sup> day of February, 2024

Shauna L. Weatherspoon  
Notary Public

**OWNER**

[OWNER'S NAME]

By: [Signature]

STATE OF IL )  
 ) SS.  
COUNTY OF Kane )



The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Tao Martinez, an individual, (the "Owner"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of the Owner, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 27<sup>th</sup> day of February, 2024

Michele M. Jacob  
Notary Public

**EXHIBIT A**



**Legal Description of the Development Property**

Taken from ALTA/NSPS Land Title Survey prepared by Todd Surveying dated May 21, 2021.

**LEGAL DESCRIPTION**

THAT PART OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST ¼; THENCE NORTH 89 DEGREES 58 MINUTES 35 SECONDS WEST ALONG THE SOUTH LINE OF SAID NORTHEAST ¼, 3.00 FEET TO THE WESTERLY LINE OF EDGELAWN DRIVE EXTENDED SOUTHERLY; THENCE NORTH 00 DEGREES 06 MINUTES 04 SECONDS WEST ALONG SAID WESTERLY LINE, 49.32 FEET TO A LINE DRAWN PARALLEL WITH AND 40.00 FEET NORMALLY DISTANCE NORTH OF THE PRESENT CENTER LINE OF JERICHO ROAD; THENCE SOUTH 89 DEGREES 45 MINUTES 45 SECONDS WEST ALONG SAID PARALLEL LINE, 449.76 FEET TO THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO FIRST CHURCH OF THE NAZARENE BY WARRANTY DEED RECORDED APRIL 22, 1975 AS DOCUMENT NO. 1324874, FOR THE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 06 MINUTES 04 SECONDS WEST PARALLEL WITH THE WESTERLY LINE OF EDGELAWN DRIVE, AFORESAID, 596.19 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD COMPANY RIGHT OF WAY; THENCE NORTH 66 DEGREES 30 MINUTES 19 SECONDS WEST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 607.42 FEET TO THE EASTERLY LINE OF LOT 5 IN LEIGH SUBDIVISION UNIT 8, EXTENDED NORTHERLY; THENCE SOUTH 23 DEGREES 05 MINUTES 15 SECONDS WEST ALONG SAID EASTERLY LINE AND SAID EXTENSION, 217.76 FEET TO THE NORTHWEST CORNER OF LOT 10 IN SAID LEIGH SUBDIVISION, UNIT 8; THENCE SOUTH 66 DEGREES 56 MINUTES 45 SECONDS EAST ALONG THE NORTHERLY LINE OF SAID LOT 10, 173.39 FEET TO THE NORTHEAST CORNER OF SAID LOT 10; THENCE SOUTH 00 DEGREES 12 MINUTES 15 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LEIGH SUBDIVISION, UNIT 8, AND THE EASTERLY LINE OF LEIGH SUBDIVISION, UNIT 6, 572.10 FEET TO THE SOUTHEAST CORNER OF LOT 1 OF SAID LEIGH SUBDIVISION, UNIT 6; THENCE NORTH 89 DEGREES 45 MINUTES 45 SECONDS EAST ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID JERICHO ROAD, 485.90 FEET TO THE POINT OF BEGINNING, IN THE TOWNSHIP OF AURORA, KANE COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1921 JERICHO ROAD, AURORA, ILLINOIS.

**COVERED BY PIN: 15-30-277-004**

**EXHIBIT B**

**Legal Description of Owner's Property**

**Tax Parcel ID #: 15-30-427-017**

Address: 1900 Jericho Rd, Aurora, IL 60506

Owner: Rodney E. Feld and Julie A. Feld, Trustees of the Rodney E. Feld and Julie A. Feld Living Trust dated July 12, 2016

Warranty Deed Recorded 8/09/2016 as Document Number 2016K041637

LOT A IN BLOCK 2 OF UNIT NUMBER 2, PINE KNOLL SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANE COUNTY, ILLINOIS.

**Tax Parcel ID #: 15-30-427-019**

Address: Jericho Road & Edgelawn Dr, Aurora, IL 60506

Owner: Archangels Enterprises LLC Series 100

Warranty Deed Recorded 11/03/2011 as Document Number 2011K066166

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89 DEGREES 44 MINUTES WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER 474.76 FEET TO THE NORTHEAST CORNER OF UNIT NO. TWO, PINE KNOLL SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE SOUTH 4 DEGREES 35 MINUTES 20 SECONDS WEST ALONG THE EASTERLY LINE OF SAID UNIT NO. TWO, 529.59 FEET; THENCE NORTH 89 DEGREES 55 MINUTES 12 SECONDS EAST, 517.48 FEET TO AN IRON STAKE; THENCE NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST, 529.38 FEET TO THE POINT OF BEGINNING, IN AURORA TOWNSHIP, KANE COUNTY, ILLINOIS.

## EXHIBIT C

### Description of Improvements

*The Improvements will include excavation, removal and replacement of the existing drain tile pipe with a new drain pipe in place and inspection manhole structures. This may include movement of existing drain tile to the west and south side of the property as agreed upon by Owner, City and Developer. The trench excavation will be backfilled and the soil restored with seed and straw mulch.*

**EXHIBIT D**

**Depiction of Easement Area**

See Attachment

Proposed Habitat Green  
Freedom Subdivision

Lindenwood Drive

S Edgelawn Drive

JERICHO RD

Existing/Proposed underdrain

Approximate location of  
proposed underdrain. Exact  
location to be determined at  
time of construction and  
coordination with the property  
owner.

PIN: 15-30-427-017  
(Rodney & Julie Feild)

PIN: 15-30-427-019  
(Archangels Enterprises)

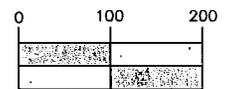
EXISTING  
UNDERDRAIN

10.00 10.00

Aurora  
University  
Sport Facility

LINDENWOOD DR

NORTH



1" = 200'  
GRAPHIC SCALE

DATE:	DESCRIPTION:
01/22/24	ISSUED FOR REVIEW
EXHIBIT D DEPICTION OF EASEMENT AREA	
PROJECT No.: M22006	
DRAWN BY: ZDS	CHECKED BY: CLS
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# MeritCorp

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