

**MAINTENANCE AGREEMENT
VACATED DOPP STREET**

This Agreement ("Agreement") is made this ¹⁹ day of January, 2018, but effective February 2, 2016, between Waukesha Memorial Hospital, Inc. with its principal office at 725 American Avenue, Waukesha, Wisconsin 53188, hereinafter called "Developer," and the City of Waukesha, a Wisconsin municipal corporation, with its principal office at 201 Delafield Street, Waukesha, Wisconsin 53188, hereinafter called the "City."

WITNESSETH:

WHEREAS, pursuant to a Resolution by the Common Council of the City of Waukesha to Discontinue and Vacate a Portion of Dopp Street in the City of Waukesha, Wisconsin dated February 2, 2016, Developer owns that certain portion of Dopp Street and its right of way as described on attached Exhibit "A" located within the City of Waukesha and as depicted on the Street Vacation Exhibit dated November 11, 2015 and revised December 9, 2015 (attached hereto and made a part of this Agreement) and labeled as Exhibit "B" hereinafter referred to as "Developer Street"; and

WHEREAS, as a condition of the vacation of a portion of Dopp Street, Developer agreed to accept certain maintenance responsibilities concerning an adjacent portion of Dopp Street owned by the City as detailed on attached Exhibit C and hereinafter referred to as "City Street"; and

WHEREAS, Developer has agreed to accept additional responsibilities as detailed in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Developer Street.** Effective February 2, 2016, the Developer shall accept any and all obligations of ownership of the Developer Street.
2. **Certified Survey Map.** The Developer shall prepare and record a Certified Survey Map ("CSM"), subject to the approval of the City, wherein all of the Waukesha Memorial Hospital property comprising the hospital campus shall be included in the CSM.
3. **Maintenance of City Street.** The Developer shall accept any and all responsibility for snow and ice removal for the adjacent Dopp Street, a city street, as detailed on attached Exhibit C at Developer's sole cost and expense effective February 2, 2016.
4. **Maintenance of Sidewalks.** Developer shall maintain the public sidewalk on the north side of Dopp Street, including snow and ice removal. If a sidewalk is installed in the vacated portion of the south side of Dopp Street, it shall be a private sidewalk and Developer shall have the sole responsibility for maintenance as well as ice and snow removal.
5. **Fairview/Dopp Intersection Sidewalk.** A public sidewalk connection must be constructed by Developer at Developer's expense from the existing sidewalk on the north side of Dopp Street to the south side of Dopp Street. Developer shall also construct ADA compliant curb ramp at all corners of the intersection.
6. **Sanitary Sewer/Storm Sewer.** Both the public sanitary sewer from the existing manhole in Dopp Street, at the intersection of Mountain Avenue and Dopp Street and the existing public storm sewer in the vacated right of way shall be transferred by the City to the private ownership of the Developer. Developer shall prepare a deed and bill of sale for City review and approval.
7. **Signage.** Developer shall be responsible for payment of the expense of removing, modifying, or installing signage required by the City to ensure adequate traffic circulation and parking in the area of the vacated portion of Dopp Street.
8. **Pedestrian Access Over Developer's Sidewalks.** Developer shall not impede any pedestrian access over Developer-owned sidewalks fronting on Dopp Street.
9. **Indemnification.** In addition to, and not to the exclusion of any provision of this Agreement, or documents incorporated herein by reference, Developer shall indemnify and save harmless the City, its

officers, agents and employees and shall defend the same from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, reasonable attorney fees and the like which result from or arise in the course of, out of, or as a result of Developer's negligent performance or nonperformance of Developer's obligations under this Agreement.

10. **No Personal Liability.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or Developer, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.
11. **Force Majeure.** No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.
12. **Successors Bound.** This Agreement runs with the land, and is binding upon the Developer and all of Developer's successors, assignees, and grantees.
13. **Notices.** All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one business day after deposit with a nationally recognized overnight commercial courier service, airbill pre-paid, or forty-eight (48) hours after deposit in the United States mail postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To the City:

City of Waukesha
c/o Mayor
201 Delafield Street
Waukesha, Wisconsin 53188

With a copy to:

City of Waukesha
c/o City Attorney
201 Delafield Street
Waukesha, Wisconsin 53188

To Developer:

Waukesha Memorial Hospital, Inc.
c/o President
725 American Avenue
Waukesha, Wisconsin 53188

or its successor, provided that written notice
has been provided to the City of the name and
address of the successor

With a copy to:

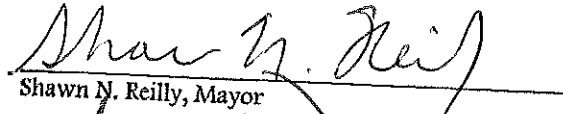
Walden & Schuster, S.C.
c/o Attorney James R. Walden, Jr.
707 West Moreland Boulevard, Suite 9
Waukesha, Wisconsin 53188

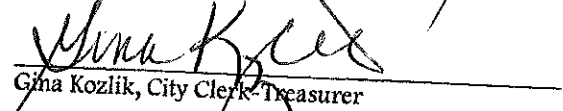
14. **Governing Law.** The laws of the State of Wisconsin shall govern this Agreement.
15. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.
16. **Execution in Counterparts.** This Agreement may be signed in any number of counterparts which shall all be effective as originals.

17. **Disclaimer Relationships.** Nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed to create any relationship other than independent contractors.
18. **Severability.** If any provision of this Agreement is declared by a court having jurisdiction to be unenforceable, it shall be severed from the remainder of this Agreement to the extent that it may be, and the remainder shall remain enforceable.
19. **No Drafting Presumption.** This Agreement has been drafted as a joint effort of the parties after lengthy negotiations, consultations, and approval as to form. Accordingly, neither of the parties may hereafter be entitled to a presumption that any portion of this Agreement should be construed either for or against a particular party or contend that this Agreement was drafted by a particular party.

In witness whereof, the parties to this Agreement have caused this instrument to be signed and sealed by duly authorized representatives.

CITY OF WAUKESHA:


Shawn N. Reilly, Mayor


Gina Kozlik, City Clerk-Treasurer

WAUKESHA MEMORIAL HOSPITAL, INC.:

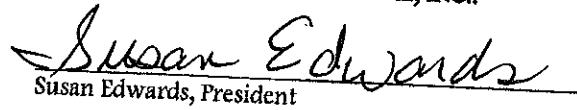

Susan Edwards, President

EXHIBIT A

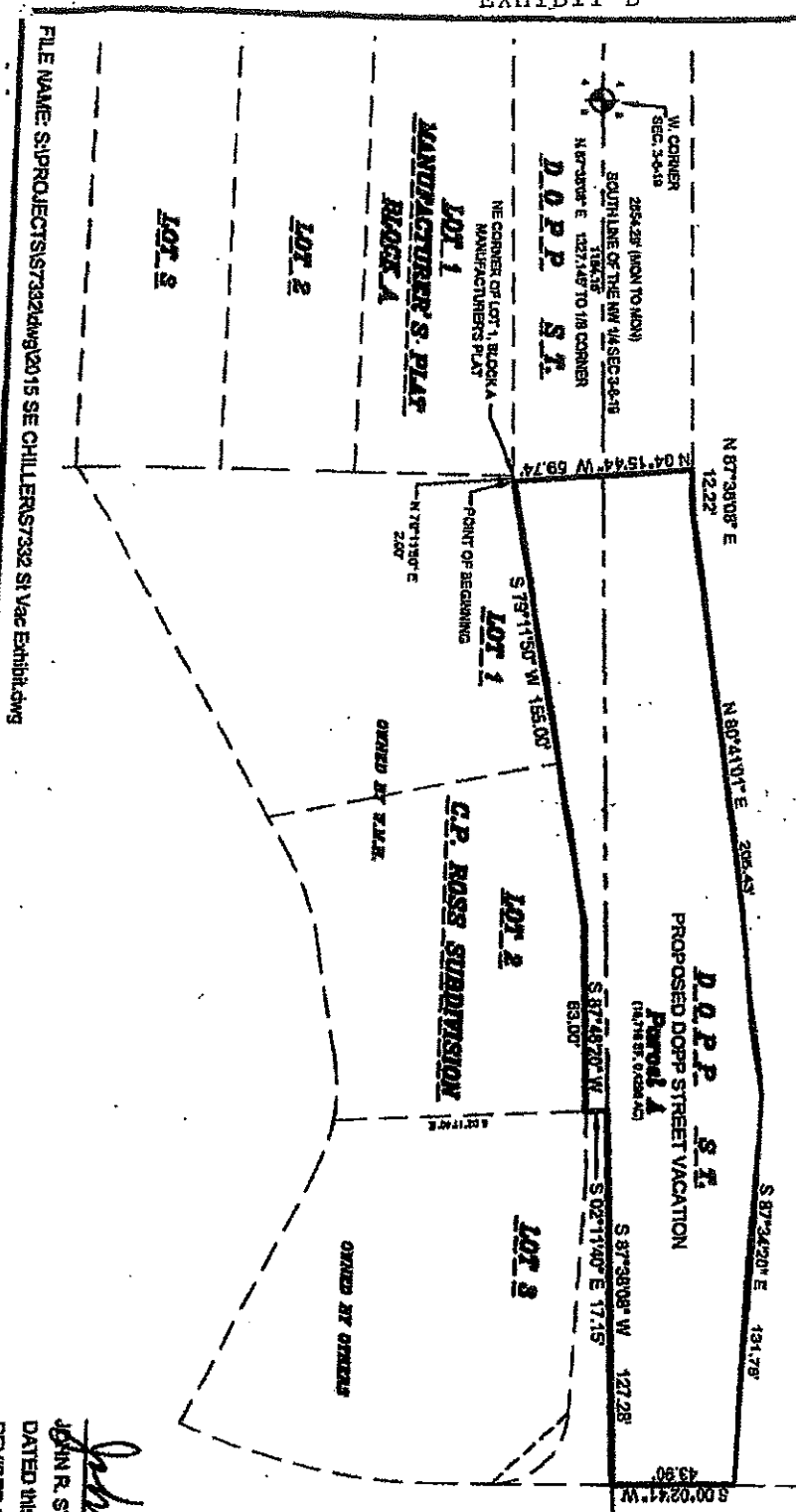
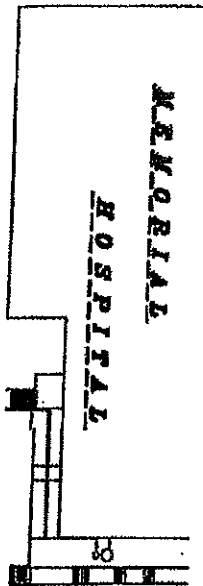
DEVELOPER STREET LEGAL DESCRIPTION

All that part of the Southwest Quarter (SW ¼) and the Northwest Quarter (NW ¼) of Section 3, Town 6 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin bounded and described as follows:

Commencing at the Northeast corner of Lot 1, Block A of Manufactures Flat, a recorded subdivision; and being a point on the south right-of-way line of Dopp Street; thence North 79°11'50" East 2.00 feet to the place of beginning of the lands hereinafter described; thence North 04°15'44" West 59.74 feet to the north right-of-way line of Dopp Street; thence North 87°38'08" East 12.22 feet along said north right-of-way line; thence North 80°41'01" East 205.43 feet along said north right-of-way line of Dopp Street; thence South 87°34'20" East 131.78 feet along said north right-of-way line; thence South 00°02'41" West 43.90 feet along the west right-of-way line extended of Mountain Avenue to the south line of the Northwest Quarter (NW ¼) of Section 3, Town 6 North, Range 19 East; thence South 87°38'08" West along said Quarter line 127.28 feet; thence South 02°11'40" East 7.15 feet; thence South 87°48'20" West along the south right-of-way line of Dopp Street 63.00 feet; thence South 79°11'50" West along said south right-of-way line 155.00 feet to the place of beginning. Containing a net area of 18,716 square feet or 0.4296 acres of land.

STREET VACATION EXHIBIT

SURVEYOR:
 JOHN R. STIGLER, PLS
 JAHNKE & JAHNKE ASSOC., INC.
 711 WEST MORELAND BLVD.
 WALKERSHA, WI. 53189-2479
 PHONE: (262) 542-5737



FILE NAME: S:\PROJECTS\157332\dwg\2015 SE CHILLER\ST332 SI Vac Exhibit.dwg

John R. Stigler
 JOHN R. STIGLER, PLS. REG. NO. 3-1020
 DATED THIS 11 DAY of NOV 2015
 REVISED THIS 9TH DAY of DEC 2015

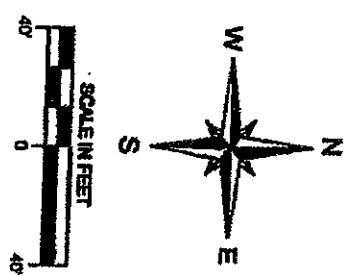


EXHIBIT C
CITY STREET LEGAL DESCRIPTION & SCHEMATIC



Jahnke & Jahnke
Associates, Inc.

**CIVIL ENGINEERING
PLANNING • SURVEYING**

Legal Description: For ProHealth Care, RE: Dopp Street Maintenance Area

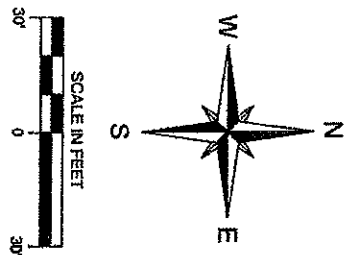
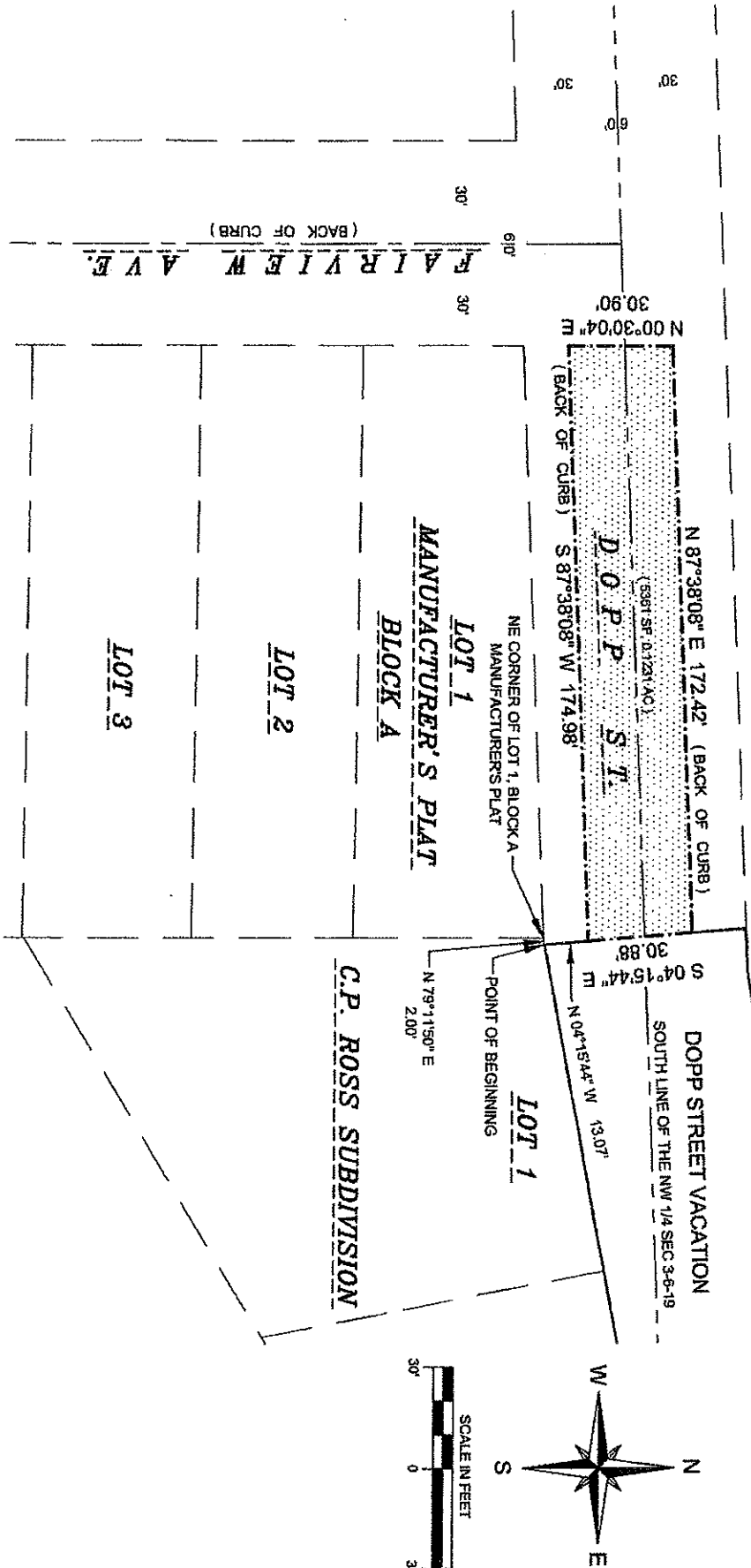
All that part of the Southwest Quarter (SW ¼) and the Northwest Quarter (NW ¼) of Section 3, Town 6 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin bounded and described as follows:
Commencing at the northeast corner of Lot 1, Block A of Manufacture's Plat a recorded subdivision and being a point on the south right-of-way line of Dopp Street; thence North 79°11'50" East 2.00 feet; thence North 04°15'44" West 13.07 feet to a point on the south curb line of Dopp Street and the place of beginning of the land hereinafter described; thence South 87°38'08" West along said curb line 174.98 feet; thence North 00°30'04" East 30.90 feet; thence North 87°38'08" East along the north curb line of Dopp Street 172.42 feet; thence South 04°15'44" East along the west line of vacated Dopp Street 30.88 feet to the place of beginning. Containing a net are of 5360.6 square feet or 0.1230 acres of land

Prepared by Jahnke & Jahnke Associates Inc.
By: John R. Stigler, P.L.S.-1820
Dated this 29th day of February 2016

711 West Moreland Boulevard, Waukesha, Wisconsin 53188-2479
Telephone: (262) 542-5797 • Facsimile: (262) 542-7698 • Email: jstigler@jahnkeandjahnke.com

DOPP STREET MAINTENANCE AREA

SURVEYOR:
 JOHN R. STIGLER, PLS
 JAHNKE & JAHNKE ASSOC., INC.
 711 WEST MORELAND BLVD.
 WAUKESHA, WI. 53188-2479
 PHONE: (262) 542-5797



JOHN R. STIGLER - Wis. Reg. No. S - 1820
 DATED this _____ DAY of _____, 2018