

Development Agreement
Institutional
Froedtert Health, Inc.

Parcel ID Number: WAKC 1361 998

After recording return to:
City of Waukesha
Engineering Division
130 Delafield St
Waukesha WI 53188

This Development Agreement, referred to herein as the Agreement, is entered into by and between the **City of Waukesha**, a Wisconsin municipal corporation, referred to herein as the City; and **Froedtert Health, Inc.**, a Wisconsin non-stock corporation, referred to herein as the Developer. The real property subject to this Agreement is legally described on attached Exhibit A, and is referred to herein as the Real Property.

In consideration of the mutual covenants contained herein, the City and the Developer agree and contract as follows:

1. The Development. The term Development, as used herein, refers to the Developer's construction of a commercial development on the Real Property and all associated improvements as shown in the Development Plans, defined below. Developer has retained Beeler Construction, Inc. ("Construction Manager") as its construction manager to construct the Development and associated improvements on the Real Property.

2. Expenses of Development. All expenses of the Development and costs of compliance with the terms and conditions of this Agreement shall be paid solely by the Developer, unless expressly provided otherwise in this Agreement.

3. Development Plans. The Developer is required to furnish the City complete, accurate and sufficiently-detailed plans of the Development, which are referred to herein as the Development Plans. The Development Plans include the following:

- a. Construction drawings of all improvements to the Real Property, showing the locations of all streets, sidewalks, utilities, storm water facilities, storm sewers, sanitary sewers, signs, pavement markings, street lighting, traffic signals, elevations, grading, and all other plans and drawings for the Development; including, but not limited to, street and utility construction in Saylesville Road (CTH "X"), West High Drive and Donald Drive.

- b. Storm water management plan and storm water management practice maintenance agreement and all addendums.

- c. Project specifications.

- d. Landscape and turf-restoration plans.

- e. Master grading and erosion-control plans.

- f. Vehicle and pedestrian traffic-control plans.

- g. Street signage and street lighting plans.

4. Compliance with Development Plans. The Developer shall cause its Construction Manager to construct the Development in substantial compliance with the Development Plans as modified, conditioned, and approved by the City Plan Commission, and any substantial deviation from them must be approved in writing by the City, in advance.

5. Impact Fees and Other Charges. Developer (or its Construction Manager) shall pay to the City the following Impact Fees and charges. All Impact Fees and charges shall be paid in full before any building permits are issued for the Development.

- a. Sanitary sewer Impact Fee: \$981.49

- b. Parks Impact Fee: \$0.00

- c. Library Impact Fee: \$0.00

- d. Police Impact Fee: \$210.00

- e. Deferred pump station assessment of \$0.00.

- f. Deferred sanitary sewer interceptor assessment of \$0.00.

6. Construction Requirements. The following improvements as shown in the Development Plans are specifically required by the City, and the completion of them shall be secured by the performance bond or letter of credit required by section 9 of this Agreement:

- a. Site landscaping.
- b. Location of building transformers in substantially the locations shown on the Development Plans approved by the City.
- c. Public sanitary sewer.
- d. A digital record drawing of all sanitary sewer, storm sewer, and storm water facilities in the Development.
- e. A televising video of all sanitary sewer main, and sanitary sewer laterals, in the Development.
- f. Sanitary sewer Acceptance Form, as published by the City Department of Public Works, completed by the Developer, submitted to the City, and approved by the City.
- g. Storm water maintenance facilities constructed according to the City's specifications, and the subsequent execution and recording by the Waukesha County Register of Deeds of a Stormwater Management Practice Maintenance Agreement in the City's usual form with specific addenda for the particular needs of the Development, as approved by the City.

7. Time for Performance

- a. Developer shall cause its Construction Manager to complete the construction of all improvements listed in section 7 no later than 18 months from the date of this Agreement. Construction of improvements shall be deemed complete when the City delivers a written acceptance of these improvements to Developer, which shall not be unreasonably withheld by City.
- b. Developer shall cause its Construction Manager to complete the construction of public sidewalks, and full restoration of landscaped areas no later than June 1, 2021. Construction of driveways shall be deemed complete when binder course asphalt replacements, utility structure adjustments, concrete curb and gutter and sidewalk removals and replacements, surface course asphalt pavement installation and all incidentals are

complete, and City and Waukesha County delivers a written acceptance of street construction to Developer.

- c. All work in the Development shall be completed in one phase.

8. Construction Standards.

a. Contractor Qualification. For work in the public right of way, Developer shall identify all contractors that will provide materials or labor to the Development to the City Engineering Department, and all contractors must be approved by the City Engineering Department.

b. Work Standards. Developer shall cause its Construction Manager to construct all improvements in the Development in a good and workmanlike manner, according to accepted practices within the trades and in compliance with all applicable laws and codes. All streets, curbs, sidewalks, sanitary and storm sewers constructed by Developer's Construction Manager in connection with the Development shall be constructed according to the City Department of Public Work's published street, sidewalk and utility construction standards; the approved storm water management plan; and the Development Plans. All construction work shall be subject to inspection by City staff for compliance with the terms of this Agreement. After inspection, City staff will identify areas requiring correction to comply with this Agreement, and Developer shall cause its Construction Manager to perform all corrective work required by the City after inspection.

9. Security for Performance. The Developer shall, at Developer's sole expense, cause its Construction Manager to obtain and deliver to the City either a surety bond or irrevocable letter of credit, naming the City as beneficiary, to secure full performance of Developer's obligations under sections 6, 7, and 8. The choice of surety bond or letter of credit is the Developer's option. The bond or letter of credit shall meet the following requirements:

a. Surety Bond Requirements. The bond shall be issued by a surety listed on the U.S. Department of the Treasury's Department Circular 570-Listing of Approved Sureties in a form satisfactory to the City Attorney.

b. Letter of Credit Requirements. The letter of credit shall be irrevocable, shall be issued by a commercial bank licensed to conduct business in

Wisconsin in a form satisfactory to the City Attorney.

c. Security Amount. Subject to adjustment pursuant to subsection 9.d, the amount of the bond or letter of credit shall be \$681,801.64. Developer shall take whatever actions are necessary, at Developer's sole expense, to ensure that after any partial draws are made, there shall remain 120% of the remaining estimated costs of completion of the improvements listed in section 7 available for the City to draw upon.

d. Reduction of Security Amount. Pursuant to Wis. Stats. §236.13(2)(a)(1), on the date 14 months after the binder coat is installed on all roads to be dedicated to the City, or, if no roads are to be dedicated to the City, on the date 14 months after 90% by cost of the public improvements to be installed by Developer are completed, the security amount required by this section shall be reduced to the amount equal to the cost to complete any unfinished public improvements plus 10% of the total cost of the finished public improvements.

e. Condition of Payment. The condition of payment under the bond or letter of credit shall be the completion by Developer's Construction Manager of the required improvements listed in section 6, in compliance with the standards in section 8, no later than the deadlines stated in section 7. This shall be established by an affidavit by the City. Time is of the essence. Upon Developer's failure to complete the requirements, the City shall provide notice to Developer and provide Developer with a reasonable opportunity to cure prior to making any demand for payment.

f. Remedy Not Exclusive. Application of the bond or letter of credit proceeds by the City shall not relieve the Developer of its obligations under this Agreement, and demand by the City on the bond or letter of credit shall not be a waiver by the City of any other rights or remedies.

10. Dedication. All improvements required by section 6 that are upon City property, are within City rights-of-way, or are within easements for the use of the public, as indicated on the Certified Survey Map, shall be dedicated and conveyed to the City upon their completion in fee simple, free and clear of all liens and encumbrances, together with easements in favor of the City for necessary access to such improvements. No dedication shall be effective until all review and inspection fees relating to the improvements have been paid in full, all contractors who performed work on the improvements have been paid in

full and have provided construction lien waivers, and the City accepts the dedications in writing.

11. Building Permits. The building permits will not be issued for the Development until:

a. The Storm Water Management Practices Maintenance Agreement for the Development, as described in section 6.g, has been reviewed and approved by the City and recorded by the Waukesha County Register of Deeds.

b. The security required by section 9 has been received by the City.

c. The Certified Survey Map of the Development is recorded by the Waukesha County Register of Deeds.

d. All impact fees and assessment fees have been received by the City Engineering Division.

e. The City Storm Water Permit has been issued, and any permits for grading or wetland disturbance have been issued by the Wisconsin Department of Natural Resources, with copies of the permits provided to City Engineering.

f. Copies of applicable permits from Waukesha County have been provided to the City for project work.

g. This Developer's Agreement is recorded at the Waukesha County Register of Deeds and a digital pdf copy is provided to the City for filing.

12. Pavement Warranty. All asphalt and concrete pavement that will be dedicated to the City pursuant to this Agreement, or installed are part of the project shall be warranted by the Developer and/or its Construction Manager for materials and workmanship for a period of 2 years from the date of delivery of written acceptance of street construction pursuant to section 7.b. Pavement deficiencies identified by the City within the 2-year warranty period shall be addressed at Developer's sole expense as follows:

a. All paving joints (longitudinal and transverse) that open shall be routed and crack-sealed to the satisfaction of the City Engineer.

b. All premature cracks shall be crack-sealed or routed and crack-sealed to the satisfaction of the City Engineer.

c. Any other pavement irregularities shall be addressed in a method approved by the City Engineer.

d. If deficiencies are discovered within the 2-year warranty period, the pavement warranty will be extended by one year from the latest date the deficiencies are corrected.

13. Landscaping Warranty. The warranty period for all topsoil, seed or sod and restoration work in this contract shall be 1 year from the final completion date.

14. Sewer Warranty. All sewer mains and laterals, and all associated equipment, that will be dedicated to the City pursuant to this Agreement shall be warranted by the Developer and/or its Construction Manager for materials and workmanship for a period of 1 year from the date of delivery of written acceptance of sewer construction pursuant to section 7.a. Sewer deficiencies identified by the City within the 1-year warranty period shall be corrected to the City Engineer's satisfaction, and any damage caused by deficient materials or workmanship restored, at Developer's sole expense.

15. City May Correct Deficiencies. If the Developer fails, after reasonable notice from the City, to cure any defaults of the terms of this Agreement, including all warranties, the City may cure the defaults. The Developer shall then reimburse the City for all expenses incurred by the City, and the City may charge such expenses against the Development as a special charge under Wis. Stats. §66.0627.

16. Construction Compliance Inspections, Deposit. The City of Waukesha contracts with private consultants to perform compliance inspections of construction projects, who are referred to as Construction Site Representatives, or CSRs. The cost of inspections by CSRs is borne by project developers, who are required to maintain a deposit with the City to cover that cost. Therefore, the Developer or the Construction Manager shall deposit with the City an amount equal to 120% of the estimated cost of providing a CSR for the Development, as determined by the City. The City shall draw upon this deposit to pay the costs of the CSR's inspections. If the deposit is drawn down to less than 25% of the original deposit amount, then Developer shall deposit additional amounts as necessary to maintain the deposit at no less than 25% of the original amount at all times. If the deposit amount falls below 25% of the original estimated amount at any time, the City may order that all building and construction permits be suspended and all work on the Development cease until the deposit amount is restored to at least 25% of the original amount. Deposits shall be held by the City in its general funds, but shall be accounted for separately. The City shall not pay interest on any deposits.

17. Inspection Access. Developer shall allow the City and its CSRs access to the Development as reasonably required to perform inspections of the Development. If Developer fails to give adequate access for inspections, the City may order that all building and construction permits be suspended and all work on the Development cease until adequate access has been given for inspections and the inspections reveal that the Development is in compliance with all codes, permits, and the terms of this Agreement.

18. Utility Easements. The Developer shall grant to the City easements for all municipal utility facilities in the Development, and deliver to the City an instrument in recordable form showing all such easements. The easement instrument shall be in a form approved by the City, and shall contain all usual terms and provisions required by the City.

19. Indemnification. Developer shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, the Developer's construction of the Development, including court costs and actual attorney fees. Such indemnification shall not extend to claims arising out of the negligent acts or omissions or the intentional acts of the City, its officers, agents, employees and independent contractors.

20. Insurance. Developer shall maintain, or require its Construction Manager to maintain, insurance of the following kinds and for not less than the following limits, at Developer's sole expense, at all times during the construction of the Development. Policies shall be occurrence, and not claims-made, policies. Developer's Construction Manager shall obtain an endorsement making the City an additional insured and loss payee, and such insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Agreement, Developer's Construction Manager shall deliver a certificate of insurance to City showing that all requirements of this section are met.

a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.

b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.

c. Builders risk, the value of the improvements required by section 6.

- d. Excess liability-umbrella, \$5,000,000.
- e. Worker compensation, statutory requirements.

21. Recording. The Developer will record this Agreement with the Register of Deeds, and a recorded copy of this Agreement will be provided to the City by the Developer.

22. Agreement Runs with Land. The terms and conditions of this Agreement, specifically including but not limited to the Developer's obligations under the storm water management and maintenance plan referred to in section 3.b, are covenants running with the land; bind the Developer and its successors, assigns, and any other entities claiming legal, equitable or beneficial interests in the Real Property; and inure to the benefit of the City.

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

24. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

25. Corporate Authorization. The individuals executing this Agreement on behalf of the Developer represent that they are duly authorized to bind the Developer contractually. The Developer represents that the execution of this Agreement is not prohibited by its articles of incorporation, by-laws, operating agreement, partnership agreement, limited-partnership agreement, or other internal operating orders, or by any applicable law, regulation or court order.

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

27. Adequacy of Consideration. The Parties acknowledge that the consideration expressed in this Agreement is adequate and sufficient to make the obligations contained in this Agreement binding upon the Parties.

28. Integration. This Agreement and any documents which are executed pursuant to express provisions in this Agreement embody the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.

29. Amendments. No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing and signed by all of the Parties to this Agreement.

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

31. Governing Law and Jurisdiction. This Agreement shall be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Agreement, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

Developer: Froedtert Health, Inc.

(sign above)
Print name: _____
Title: _____

State of Wisconsin }
 } ss.
_____ County }

_____, personally came before me the _____ day of _____
2020, signed this Development Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public, _____ County, Wisconsin
My commission (is permanent)(expires _____)

City of Waukesha

By Shawn N. Reilly, Mayor

Attest: Gina L. Kozlik, City Clerk

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the Mayor and City Clerk, respectively, of the City of Waukesha, personally came before me the _____ day of _____, 2020, signed this Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent)(expires _____)

This instrument was drafted by City of Waukesha Department of Public Works.

Exhibit A

Parcel ID Number: WAKC 1361 998

Legal Description of Real Property:

Lot 1 and Lot 2 of Certified Survey Map No. 11089, and a part of the Northeast 1/4 of the Northeast 1/4, all in Section 17, Town 6 North, Range 19 East, in the City of Waukesha, County of Waukesha, State of Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of said Northeast 1/4; thence S 89°17'36" W along the north line of said Northeast 1/4, 209.05 feet; thence S 00°42'24" E, 37.00 feet to the south right of way line of County Trunk Highway "D", and the point of beginning; thence S 20°12'24" E along the westerly right of way line of County Trunk Highway "X", 77.15 feet; thence S 31°02'32" W continuing along said westerly right of way line, 621.37 feet to the south line of Lot 2 of Certified Survey Map No. 11089; thence N 59°14'14" W, along said south line, 297.00 feet to the west line of said Lot 2; thence N 31°02'32" E, along said west line, 132.00 feet to the south line of said Lot 2; thence N 59°14'14" W, along said south line, 53.02 feet to the west line of said Lot 2; thence N 28°18'46" E, along said west line, 350.09 feet to the south right of way line of County Trunk Highway "D"; thence N 89°17'36" E, along said south right of way line, 360.46 feet to the point of beginning;

Containing 203,237 Square Feet (4.6657 Acres), more or less.