

**COMMERCIAL PLANNED UNIT
DEVELOPMENT AGREEMENT
FOX RUN MIXED-USE - AMENDMENT – LOT 1 MEDICAL BUILDING**

Parcel ID Number: WAKC #####

After recording return to:
City of Waukesha
Dept of Community Development
201 Delafield St Ste 200
Waukesha WI 53188

The **City of Waukesha**, a Wisconsin municipal corporation, referred to herein as the City, enters into this Commercial Planned Unit Development Agreement, referred to herein as the Agreement, with **Ascension Wisconsin Hospital - Waukesha a Wisconsin Non Profit Company**, referred to herein as the Developer, for development pursuant to planned unit development overlay zoning on the real property described below, referred to herein as the Site. Together, the City and Developer are referred to herein as the Parties.

Legal Description: Attached as Exhibit A.

Whereas the Developer has submitted development plan and proposed uses for the Site, and has requested commercial planned unit development overlay zoning, and

Whereas the City has approved the Developer's plans, and amended the B-5 Community Business zoning with this Planned Unit Development (PUD) agreement, to achieve coordinated area site planning, diversified location of structures, and the mixture of compatible uses as a mixed-use development; and

Whereas the Developer is willing to develop the Site according to the approved development plans, this Agreement, all applicable zoning laws, all other contracts entered into between the City and Developer, and all other applicable ordinances, statutes, regulations and codes;

Now, therefore, in consideration of the mutual covenants contained in this Agreement, the City and Developer agree and contract as follows:

1. Covenants to Run with the Land, Successors Bound.

This Agreement, including all Exhibits and the PUD ordinance incorporated by Section 7, shall be a covenant running with the land. The terms and conditions of this Agreement inure to the benefit of the City and bind the Developer and all of Developer's successors in interest, tenants, operators, occupants, and their respective successors, whether such interests are legal, equitable, or otherwise. It is understood that Developer may transfer the Land or any part thereof, and that whenever such a transfer occurs, the transferor shall have no further liability for breach or covenant occurring thereafter, provided any such transferee agrees to assume the obligations of Developer with the respect to the portion of the Land so transferred.

2. Applicability of Laws, Precedence. All provisions of B-5 Community Business Zoning, as defined in Waukesha Municipal Code §22.37, and all other ordinances, rules, regulations, covenants, and restrictions properly enacted by the City, in force now or in the future, shall apply in all respects to the Site, except as modified by this Agreement or the

commercial planned unit development overlay zoning ordinance.

3. Description of Development. The Developer's proposed development of Lot 1 as a micro hospital and medical office building, subject to final approval by the City, and shall include:

- a. 4.2159 acres of land described as Lot 1 on CSM #####
- b. The development will occur on Lot 1, in accordance with this agreement and all other requirements imposed by the City in accordance with its policies and ordinances.
- c. The individual development plans for Lot 1, will be included as an amendment to the Commercial Planned Unit Development Agreement – Fox Run Mixed Use Agreement after receiving City Approval.

d. This development will integrate with the related site improvements for the overall Fox Run Mixed-Use development including access drives, sidewalks, parking, landscaping, lighting and storm water management.

This is referred to herein as the Development. The Developer has furnished to the City a complete, accurate, and detailed set of civil engineering plans and specifications, building plans and specifications, for the site; a general development plan showing locations of proposed drives, sidewalks, buildings, parking lots, lighting, screening, landscaping, open areas, and utilities; and the Developer agrees that the Development shall be in substantial compliance with such plans and specifications and that any substantial deviation therefrom must be approved in writing by the proper officials of the City, consistent with Section 8, below.

4. Allowed Deviations from Zoning. The following departures from B-5 Community Business standards are hereby specifically approved for the development of the Land:

- a. Lots 1, 2, 3, and 4 shall have a common shared parking easement to allow cross parking between these four lots.
- b. All lot lines between Lots 1, 2, 3, 4, and 5 shall be ignored to allow paving and parking over lot lines, light spillover, and general crossover for parking, access, utilities, signage, drainage, and other integrated operational characteristics. The Plan Commission shall permit cross access throughout all lots at the development.
- c. Parking shall be provided per the site plans for each lot to be approved by the Plan Commission and Common Council. Bicycle parking shall also be provided for each of the lots to be developed.
- d. All parking requirements in 22.53 of the zoning code except for those specifically addressed in this agreement and the individual development plans for each lot will be in effect.
- e. A master sign plan, and monument sign plans, must be approved by the City of Waukesha Community Development Department, (and, with respect only to deviations from City Code Chapter 27, the Plan Commission) will accommodate coordinated development-wide sign designs.

5. Incorporation of PUD Ordinance. All conditions to the B-5 Community Business PUD/Planned Unit Development Overlay Ordinance recommended by the Plan Commission at their May 27, 2020 meeting and adopted by the Council at their June 16, 2020 meeting are hereby incorporated by reference and made binding upon Developer and Developer's successors in interest.

6. Changes to Plans. Insubstantial changes, deletions, or additions of no greater than 20 feet or 5% for any single dimension or area of an approved site plan or changes in amounts of approved building materials and/or colors on said lots, may be approved by City staff. More substantial changes, that do not alter the character of the site and including but not limited to architectural elevations for any approved buildings on said lots consistent with approved plans, may be approved by the Plan Commission in the same manner that the Plan Commission approves plans and specifications under Zoning Code Sections 22.15 and 22.37(g).

7. Water Utility. The Developer agrees to furnish a complete set of plans and specifications to the Waukesha Water Utility for approval, and to provide such additional information as required by the Utility relative to construction and grades of street and easements; grades and locations of sewer facilities; and telephone, electric, and gas installations. Developer shall be responsible for payment of water services furnished to the Site.

8. Storm Water Management. The Developer shall maintain all storm water management facilities which are located within the Property in accordance with the Stormwater Management Practice Maintenance Agreement for the new Fox Run Mixed Use Development between the City and Fox Run 3, LLC, and Developer shall allow the City reasonable access to the storm water management facilities at all times, to make inspections and perform maintenance. If the storm water facilities are not maintained by Developer in accordance with the Stormwater Management Agreement, the City shall perform such maintenance, and charge the cost thereof against the Property as a special assessment, without notice and without hearing.

9. Lighting and Landscaping. Developer shall construct and maintain private lighting facilities and install landscaping as indicated on the approved plans and specifications. The City's Planning Staff shall inspect the Site upon completion and may require additional landscaping where necessary to contribute to safety or to improve the appearance of plain, unsightly views of structures. Installation of landscaping shall be completed before occupancy of the building. The Developer shall tender a performance bond for the landscaping in the value of 120% of the installation value of the approved landscape plan and a \$15,000 performance bond for the transformer location as shown on the approved plans before issuance of a building permit for such building. If the City allows occupancy of a building in winter months or in conditions that do not allow for the completion of landscaping by the date of occupancy the City shall grant additional time, up to six (6) months to complete the approved landscaping that pertain to that specific occupancy so granted.

In the event that the general site landscaping is not completed at the time of occupancy, subject to delays beyond Developer's control, the City may, at its election, use the proceeds of the performance bond to complete landscaping as set forth in the

general site landscaping plan. If a transformer is installed in a location other than shown on the approved plans for each Lot, the City may use the proceeds of the performance bond to move the transformer to the approved location or mitigate its visibility.

10. Trash Enclosures. All trash, refuse, debris, and recycling are to be kept within an enclosed area of each building or a formal trash enclosure approved by the Plan Commission until collection. All maintenance and collection expenses are to be the responsibility of the Developer and all owners, lessees, operators, and occupants of the development as well as their respective successors and assigns.

11. Entry onto Site, Inspection. The City shall have the right to the extent permitted by law and this Agreement to inspect, and if required, approve all construction of public improvements, including all sewer facilities, water mains, and sidewalks. The City shall also have the right, to the extent permitted by law and this Agreement, to go upon any part of the Site at reasonable times for the purpose of making inspections, provided, however, that the City's officials shall not interfere with the use and enjoyment of the Site by the owners, operators, invitees and permittees.

12. City Utility Easements. The Developer shall prepare, execute, and deliver to the City, in recordable form and with content approved by the City, easements for all of the water mains and public facilities on site for the purpose of inspecting, maintaining, and servicing them. The easements shall prohibit the construction of any building, structure or fence of any kind within any of the areas described in the easements and shall prohibit trees or shrubs more than four feet in height. The Developer shall, upon notice from the City, remove or have removed any violating buildings, improvements, fences, trees, or shrubbery from the easements.

13. Impact Fees. The parties acknowledge that City's impact fee ordinances, now in and subsequently amended or adopted, shall apply in all respects to all the lots covered by this PUD agreement. Impact fees are due at the time building permits are issued.

14. Subordination to Mortgages. This Agreement shall be subordinate to any first-lien mortgage now or hereafter encumbering the Site.

15. Severability. Invalidation of any one of the foregoing restrictions and covenants by judgment or court order shall in

no way affect any of the other restrictions and covenants, each of which shall be construed and deemed severable and remain in full force and effect.

16. Recording. The City will record this Agreement with the Register of Deeds following its execution by the City and the Developer. The cost of recording the document will be paid by the Developer.

17. Estoppel Certificate. The City agrees that it will, within ten days of request by Developer, execute and deliver to Developer and to any parties designated by Developer, an estoppel certificate certifying (1) that this Agreement is unmodified and in full force and effect, or if there have been modifications, that the Agreement is in full force and effect as modified; (2) that there are no defaults of this Agreement, or specifying any defaults; and (3) such other matters as may be reasonably requested by Developer.

18. Further Assurances. The City and Developer each agree to do, execute, acknowledge, and deliver any and all other documents and instruments and to take all such further action as are reasonably necessary to carry out this Agreement and to effectuate its terms.

19. Good Faith. To the extent that either party to this Agreement is granted discretion in the performance of that party's duties or obligations under this Agreement, such discretionary acts shall be undertaken in a reasonable manner and in good faith, taking into account the entire Agreement and the intention of the parties.

20. Notice and Addresses. All notices and communications shall be addressed to the Parties as follows:

City: Attn Dept of Community Development
City of Waukesha
201 Delafield St Ste 200
Waukesha WI 53188

Developer: Ascension Wisconsin Hospital – Waukesha
Columbia St. Mary's Inc.
400 West Riverwoods Parkway
Glendale, WI 53212

Dated the _____ day of _____, 2020.

Fox Run 3 LLC

(sign above)
(print name) _____
Title: _____

STATE OF WISCONSIN }
 } ss.
WAUKESHA COUNTY }

_____, known to me to be the person who executed this Agreement, personally came before me the ____ day of _____, 2020, signed this Commercial Planned Unit Development Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public: (Location) _____
My commission (is permanent) (expires _____)

DRAFT

City of Waukesha

By Shawn N. Reilly, Mayor

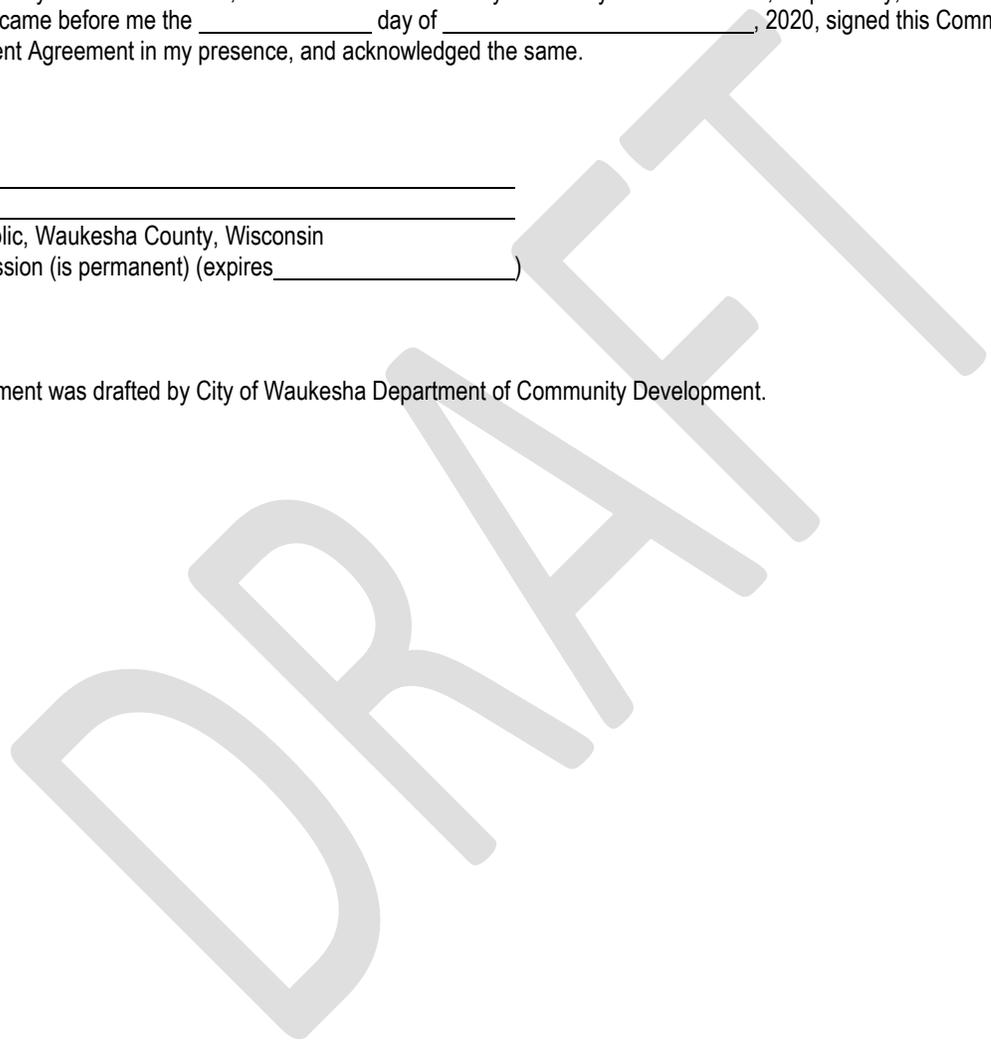
Gina L. Kozlik, City Clerk-Treasurer

STATE OF WISCONSIN }
 } ss.
WAUKESHA COUNTY }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the Mayor and City Clerk-Treasurer, respectively, of the City of Waukesha, personally came before me the _____ day of _____, 2020, signed this Commercial Planned Unit Development 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 Community Development.



**Exhibit A
Legal Description**

Project Identifier: 2300 W. St. Paul Ave.

Legal Description:

DRAFT

**Exhibit B
Site Plans**

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Exhibit C
Plan Commission Standards for Development

Curbing. All paved areas must be curbed.

Trash Enclosures. Trash and recycling areas shall be fully enclosed by a masonry wall of a material compatible with the building, seven (7) feet tall, with gates consisting of cedar boards on a metal frame.

Grading. Parking areas should not be steeper than 5% or flatter than 1%. Green areas should be no steeper than 3:1.

Retaining Walls. Must be made of decorative masonry. No wall may be higher than five (5) feet. Terraced walls must be separated by at least five (5) feet.

Lighting. Must be decorative fixtures on maximum twenty (20) foot poles on four (4) foot bases. Must be high-pressure sodium or LED with a correlated color temperature of 4000k or less.

Roof-Top Mechanicals. Must be screened with a material compatible with the material of the building. Screening must be as high as the unit being screened. Screening and the roof-top units must be shown on the final building elevation drawings.

Architectural Design

Compatibility. The architectural design of each building must be compatible with the design of other buildings in the area.

Wrap-Around Architecture. All sides of the building shall be designed with details that complement the front façade. Side and back facades that are visible from the street or to the public shall receive equal design attention.

Wall Materials. Durable exterior materials shall be used. Materials such as masonry, stone, stucco, and wood are encouraged. Except for M-1 and M-2 districts, metal is not allowed as the primary building material, though it may be used for accents.

Where masonry is used for exterior finish, decorative patterns must be incorporated. Examples of these decorative patterns include multicolored masonry units such as brick, stone, or cast stone, in layered or geometric patterns, or split-faced concrete block to simulate a rusticated stone-type construction. Plain concrete block is not acceptable. The use of false brick or other "faux" sidings is discouraged.

The lower portion of each wall shall be brick, stone, or masonry to minimize damage to the building. Painting of brick and stone is discouraged.

Wood siding must be bevel, shingle siding, or channel siding. Buildings must incorporate changes in relief on at least 20% of their primary façade and at least 10% of each remaining façade. Relief changes include cornices, bases, fenestration, fluted masonry, or other treatments.

Wall Planes. Single, large building masses shall be avoided. A minimum of 20% of each façade shall employ actual façade protrusions or recesses such as fascia, balconies, canopies, arcades, building setbacks of 3 feet or more or other multidimensional design features to break up large wall surfaces.

Windows. Window and door placement should be used to avoid large blank walls on elevations visible from the street or to the public. Every façade that faces a public street must contain at least 20% of the wall area in display windows, windows, or doorways. This standard is lowered to 10% for all other walls that are visible to the public.

Roof Lines. Roofs and the tops of building walls shall be designed to sufficiently break planes and horizontal lines, reflect sunlight, and add interest to the structures they are a part of and to minimize buildings from appearing as big, flat boxes.

Decorative devices, such as molding, entablature, and friezes, are expected at the roofline. Where such ornamentation is present in the form of a linear molding or board, the band must be at least eight inches wide.

A minimum of 20% of all of the combined linear roof eave or parapet lines of the structure shall employ differences in height. For buildings over 50,000 square feet, such differences must be generally 4 feet or more as measured eave to eave or parapet to parapet, and shall be in proportion to the scale of the building.

