

DEVELOPMENT AGREEMENT
(Aspirus Downtown Health and Wellness Campus)

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of June 11, 2019 (the "Effective Date"), by and between the CITY OF WAUSAU, a Wisconsin municipal corporation (the "City"); and ASPIRUS WAUSAU HOSPITAL, INC., a Wisconsin non-stock, non-profit corporation ("Developer").

RECITALS

WHEREAS, the City has, pursuant to the authority granted in Wisconsin Statutes, Section 66.1105, created a Tax Incremental District, the City of Wausau Tax Increment District Twelve (the "TID"), and adopted a Project Plan (as amended and as may be amended from time to time, the "TID Plan") to finance certain costs to induce development within or around the TID; and

WHEREAS, in order to achieve the objectives of the TID Plan and to make the land within the TID available for development by private enterprises for and in accordance with the uses specified in the TID Plan, the City has determined to provide assistance and other actions, as hereinafter set forth, to permit development to proceed; and

WHEREAS, Developer desires to acquire certain real property in the City of Wausau, County of Marathon, State of Wisconsin, being depicted on Exhibit A attached hereto (the "Property"); and

WHEREAS, Developer has proposed to construct on the Property an approximately 36,000 square foot clinic (the "Project"); and

WHEREAS, Developer's ability to construct the Project on the Property as set forth herein requires the closure of portions of McIndoe Street and North Second Street as depicted on Exhibit B which, to accomplish, requires City action; and

WHEREAS, the City intends to amend the TID Plan to include the Property within the TID; and

WHEREAS, the City has determined that the Project at the Property, as set forth herein, (i) will promote and carry out the development objectives of the City, (ii) furthers the purposes of the TID Plan, and (iii) would not occur at the Property without the assistance of the City to cause the closure of the necessary streets.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. Construction of the Project by Developer. Upon City certifying to Developer that final approval and authorization for closure of those portions of McIndoe Street and North Second Street depicted on Exhibit B has been accomplished, Developer, at its cost and expense, shall commit to purchase the Property and construct the Project. Developer will cause the Project to

be constructed in a good and workmanlike manner and constructed in conformance and compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances. Developer shall provide the City with documentation reasonably acceptable to the City to confirm the Project shall be approximately 36,000 square feet.

2. Street Vacation by the City. The City shall, at its cost (other than the HSIP Grant described below), vacate the streets identified on Exhibit B attached hereto and shall relocate the portion of the state highway affected thereby as depicted on Exhibit B (the "Street Vacation"). The currently-proposed new routing of the highway impacted by the Street Vacation is also shown on Exhibit B; provided, however, that the City may make changes to this new routing in its reasonable discretion. Developer understands and agrees that the Street Vacation shall be subject to easements for utilities and other matters, and Developer shall design the Project accordingly. The final effectiveness of the Street Vacation impacting the highway and the rerouting of such highway is subject to the completion of a jurisdictional transfer agreement (as discussed in Wisconsin Statutes Section 84.02(8)) (the "Jurisdictional Transfer Agreement"). The City will use reasonable efforts to obtain the Jurisdictional Transfer Agreement, but the City cannot guarantee whether such agreement will be obtained. The City has applied for and has received preliminary approval of a ninety percent (90%) cost-sharing grant from the Wisconsin Department of Transportation under its Highway Safety Improvement Program ("HSIP Grant") for the eligible Street Vacation costs.

3. Conditions Precedent to the City's Obligations.

a. *City Council Approval.* The obligations of the City under this Agreement are conditioned upon the approval of this Agreement by the City Council.

b. *Conditions to Completion of the Street Vacation.* The City's obligation to complete the Street Vacation is conditioned upon the satisfaction of each and every of the following conditions:

i. The City shall have received all required approvals from the Wisconsin Department of Transportation for the Street Vacation, including, without limitation, the Jurisdictional Transfer Agreement.

ii. The City shall have received a firm commitment and a State Municipal Agreement for the HSIP Grant which is approved by the City Council.

iii. The City shall have determined its out-of-pocket expenses for the Street Vacation (after applying the HSIP Grant) and shall have received necessary authority for the expenditure.

iv. Developer shall have made the agreements necessary to ensure its ability to purchase the Property.

v. Developer shall provide certified evidence (such as a construction budget) that it will meet the requirement in Section 1 above regarding the square footage of the Project.

vi. No uncured default, or event which with the giving of notice or lapse of time or both would be a default, shall exist under this Agreement. Developer shall not be in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument with respect to the Project to which Developer is a party or an obligor.

In the event the foregoing conditions have not been satisfied by December 31, 2019, at the option of the City, the City may terminate this Agreement. If, by December 31, 2019, City does not certify to Developer that all the contingencies for the Street Vacation have been satisfied and that the Street Vacation shall occur, Developer may terminate this Agreement at its option. Upon termination, neither party shall have any duties, obligations, commitments, or covenants pursuant to the Agreement.

4. **Additional Representations and Warranties and Covenants of Developer.** Developer represents and warrants to the City as of the Effective Date as follows:

a. All statements and copies of documents, contracts and agreements which Developer has furnished and will furnish to the City are true and correct in all material respects.

b. Developer is a non-stock, non-profit corporation duly formed and validly existing in the state of Wisconsin and is duly qualified to do business and in good standing in the State of Wisconsin.

c. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of Developer and constitute the valid and binding obligations of Developer enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.

d. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project that would adversely affect the Project or Developer or the enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

e. No Default, or event which with the giving of notice or lapse of time or both would be a Default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument entered into in connection with the Project.

5. Default by Developer. The occurrence of the following shall constitute a default ("Default") hereunder: Developer shall breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty (30) days following notice thereof from the City to Developer (or such longer period of time as is necessary to cure the default as long as Developer has commenced the cure of the default within the 30-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than sixty (60) days following the notice thereof from the City). Upon the occurrence of

any Default, the City at its option, may seek any remedy available to the City under the terms of this Agreement or take any other action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Developer under this Agreement, including securing an injunction to prevent harm.

6. Default by the City. In the event the City is in default hereunder, Developer shall be entitled to take any action allowed by applicable law by virtue of said default provided that Developer first gives the City written notice of default describing the nature of the default, what action, if any, is deemed necessary to cure the same and specifying a time period of not less than thirty (30) days in which the default may be cured by the City. In the event of a default by the City that remains uncured, Developer may seek any remedy available to Developer under the terms of this Agreement or take any other action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement, including securing an injunction to prevent harm.

7. Term. The term of this Agreement shall commence on the Effective Date and shall continue, unless terminated by mutual agreement of the parties, until the relative duties, obligations, commitments, or covenants of either party, established by this Agreement, are completed and satisfied.

8. Joint and Several Obligations. If Developer consists of more than one person/entity, each such person/entity shall be jointly and severally liable for the payment and performance of all obligations of Developer under this Agreement and the City may bring suit against each such person/entity, jointly or severally, or against any one or more of them.

9. Miscellaneous.

a. Notices. All notices hereunder must be in writing and must be sent by United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified below:

Notices to Developer:

with a copy to:

Aspirus Wausau Hospital, Inc.
333 Pine Ridge Boulevard
Wausau, WI 54401
Attn: President

Aspirus, Inc.
2200 Westwood Drive
Wausau, WI 54401
Attn: General Counsel

Notices to the City:

City of Wausau
407 Grant Street
Wausau, WI 54403
Attn: City Clerk

with a copy to:

City of Wausau
407 Grant Street
Wausau, WI 54403
Attn: City Attorney

Notices given by mail are deemed delivered within (3) three business days after the party sending the notice deposits the notice in the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the party delivering the notice timely deposits the Notice with the courier for overnight (next day) delivery.

- b. Recording. Recording of this Agreement is prohibited.
- c. No Personal Liability. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.
- d. Waiver; Amendment. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.
- e. Entire Agreement. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.
- f. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of Developer and the City, and no third party (including, without limitation, the seller of the Property or Developer's construction or development consultants) shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the City in connection therewith. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to the Project.
- g. Severability. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms, and agreements of this Agreement

will not be affected by such holding, and will remain valid and in force to the fullest extent by law.

h. Governing Law. This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Marathon County, Wisconsin.

i. Time is of the Essence; Deadlines. Time is of the essence with respect to this performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.

j. Relationship of Parties. This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Developer.

k. Captions and Interpretation. The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

l. Counterparts/Electronic Signature. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.

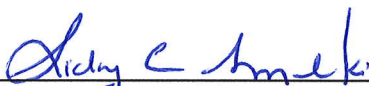
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first printed above.

DEVELOPER:

ASPIRUS WAUSAU HOSPITAL, INC.

By: 
Name: Darrell M. Lentz, President

Attest: 
Sidney C. Szygelski
Sr. Vice President of Finance/CFO

CITY:

CITY OF WAUSAU

By: _____
Robert B. Mielke, Mayor

Attest: _____
Toni Rayala, Clerk

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By: _____
Name: Darrell M. Lentz, President

Attest: _____
Sidney C. Szygelski
Sr. Vice President of Finance/CFO

CITY:

CITY OF WAUSAU

By: Robert B Mielke
Robert B. Mielke, Mayor

Attest: Toni Rayala
Toni Rayala, Clerk

EXHIBIT A

DEPICTION OF THE PROPERTY

Note: The final boundaries of the Property may include less than the entirety of the property on the southwest corner of McIndoe Street and N 3rd St (PIN 291-2907-253-0184).



EXHIBIT B

DEPICTION OF STREET VACATION

