

**Amended Development Agreement
Fox Run 3, LLC**

Parcel ID Nos.: WAKC 1328 024, WAKC 1328 025, WAKC 1328 026,
WAKC 1328 030, WAKC 1328 027, WAKC 1328 028,
WAKC 1328 029

After recording return to:
Attn Jeff Fortin
City of Waukesha
Dept of Community Development
201 Delafield St
Waukesha WI 53188

This Amended Development Agreement, referred to herein as the ~~Agreement~~**Amend-
ment**, is made by and between the **City of Waukesha, a Wisconsin municipal corpo-
ration**, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City;
and **Fox Run 3 LLC, a Wisconsin limited-liability company**, referred to herein as the
Developer. The Developer and the City together are referred to herein as the Parties.

Legal Description

Lots 1 through 5 and Outlots 6 and 7 of Certified Survey Map No. 12027, being a part of the Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section 8, Town 6 North, Range 19 East, and the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of Section 9, Town 6 North, Range 19 East in the City of Waukesha, Waukesha County, Wisconsin, recorded by the Register of Deeds for Waukesha County on June 26, 2020 at Book 122, pages 191-199, as Document Number 4487657.

This real property is referred to herein as the Property.

Recitals

Developer proposed a development consisting of multi-family residential buildings, office, retail, and smaller commercial/financial buildings, along with all required site and infrastructure improvements. The Developer represented to the City that this development would cost no less than \$33,300,000 to build, and the land and improvements would be assessable for real property taxes at no less than \$32,340,379 upon completion.

The City determined that it is in the best interests of the City and its taxpayers that the proposed development be built.

The City was presented with satisfactory proof by both the Developer and a third-party consultant that, but for the extension of tax incremental financing, the proposed development will not be built. The development is proposed to be built within the City's Tax Incremental District 27, referred to herein as TID 27.

The City determined that making certain incentive payments to Developer ~~under Part Two of this Agreement~~ would constitute an eligible project cost under Wis. Stat. §66.1105 and the Project Plan for TID 27 and further that such Incentive Payments are intended to be used to reimburse eligible project costs of the Developer.

The proposed development received general site layout and infrastructure plan approval by the Plan Commission on February 26, 2020, and by the Common Council on March 17, 2020.

The Common Council authorized the execution of a development agreement with the Developer on July 7, 2020 to provide tax-increment financing in the total amount of \$3,700,000 to the Developer for the proposed development, and a Development Agreement was executed by the Parties on July 17, 2020 and recorded by the Register of Deeds for Waukesha County on July 28, 2020 as Document Number 4496165.

The Development Agreement provided that Lots 3 and 4 are “future development sites,” with only possible uses described but not any definite development plans.

Lot 3 has previously been developed by the construction of a retail bank, without TIF assistance.

The Developer has now proposed definite plans for the development of Lot 4 as a multi-family residential building with a minimum of 63 units, and has requested additional TIF assistance for that additional development.

The City has determined that, consistent with the original intent of the Development Agreement, it is in the best interests of the City and its taxpayers that Lot 4 be developed with the assistance of tax-increment financing, and that an additional \$2,040,000 will be available to the Developer for the development of Lot 4.

This Amendment revises the terms and conditions of the Development Agreement to allow for the development of Lot 4 and the provision of additional TIF assistance for development of Lot 4.

Now, therefore, in consideration of the mutual promises of the Parties contained in this Amendment, the Parties agree and contract as follows:

1. **Amendment.** This Amendment amends the July 17, 2020 Development Agreement between the City and the Developer and is a continuation of that Development Agreement. The terms of this Amendment supersede the terms of the July 17, 2020 Development Agreement in its entirety.

4.2. **The Development.** The Development is defined as Lots 1 through 5 and Outlot 6 and 7 on Exhibit B, the Property and all the proposed improvements to these parcels the Property as presented by Developer to the Plan Commission, and as amended and finally finally approved by the Plan Commission and Common Council. The improvements shall consist of the following:

- a. **Lot 1.** An approximately-30,000 square foot multi-story medical facility.
- b. **Lot 2.** Lot 2 consists of an existing financial institution – no additional improvements proposed.
- c. **Lot 3.** ~~Future development site. Possible uses include retail, commercial, office buildings, or restaurant~~Commercial building.
- d. **Lot 4.** ~~Future development site. Possible uses include retail, commercial, office buildings, or restaurant~~Multi-family residential building with a minimum of 63 residential units.
- e. **Lot 5.** Multi-family residential buildings with a minimum of 72 units.
- f. **Public Sidewalk.** The Developer shall install public sidewalk, subject to City plan approval, along the north side of Sunset Drive from its current terminus at Fox River Parkway to the western boundary

of TID 27. The City shall reimburse the developer for all sidewalk installed along City-owned properties. See Exhibit D for sidewalk plan. Part of the sidewalk work is outside of the Developer’s work area but within the TID Project Plan. However, the TID includes funds for part of the work set forth on Exhibit D in blue. This sidewalk work shall be performed by the Developer as part of the Developer’s work, in addition to the sidewalk to be installed within the Developer’s work area. Prior to commencing this additional work, the Developer shall submit to the City the plans and projected costs for the work to be performed. Once the City approves the design and construction budget, the Developer shall complete the work. Upon completion, the Developer shall submit an invoice to the City for reimbursement. The City shall promptly reimburse the Developer for the actual costs incurred to complete the approved sidewalk work. The Parties acknowledge that the work required by this subsection has been completed satisfactorily, accepted by the City, and reimbursement has been done.

g. **Public Infrastructure.** The Development shall also include the improvement of private drives, stormwater management facilities, and public infrastructure as required in the final plan approval.

2.3. **Deviations from Approved Plans.** Material deviations from the approved plans and specifications shall not be made unless approved by the City planning staff in advance and agreed to in writing appended to this Agreement Amendment. The City planning staff reserves the right to refer any changes it deems so material as to be in conflict with the original plan to the Plan Commission for its approval.

3.4. Construction Deadlines. Developer shall complete construction per the following schedule:

- a. Office/Commercial (Lot 1). Construction on the medical facility shall commence on or before December 31, 2020 and be completed by December 31, 2022. The Parties acknowledge that this construction has been completed in compliance with the terms of the July 17, 2020 Development Agreement.
- b. Commercial/Retail (Lot 3). Construction of the commercial development on Lot 3 shall be completed no later than December 31, 2024. The Parties acknowledge that this construction has been completed in compliance with the terms of the July 17, 2020 Development Agreement.
- c. ~~Commercial/Retail (Lot 4). Construction of the commercial development on Lot 4 shall be completed no later than December 31, 2024.~~ Construction of the multi-family residential building on Lot 4 shall be completed by December 31, 2027.
- d. Multifamily Community (Lot 5). Construction of the multi-family community shall be completed by December 31, 2022. The Parties acknowledge that this construction has been completed in compliance with the terms of the July 17, 2020 Development Agreement.

4.5. Incentive Payments to Developer. Incentive Payments to Developer will be made by the City as follows.

a. **Definitions.** For purposes of this section 4Amendment, the following definitions apply.

- i. **Increment Revenue.** Tax revenue attributable to the increment generated by the Development only, including any payments in lieu of taxes made by Developer pursuant to section 65. The year 2020 shall be the base year for determination of increment.
- ii. **Administrative Expenses.** The portion of the City's overall annual administration cost for its tax incremental districts allocated to TID 27 by the City's Finance Department, provided such allocation is consistent with allocations to all other Tax Incremental Districts in the City. Administration cost is the amount of staff compensation allocated to work done in connection with administration of the City's tax incre-

mental districts, along with the costs of consultants, advisers, and audits, and any Department of Revenue fees.

iii. **Available Increment.** The Increment Revenue generated by the project less the Administrative Expenses and 5% of the increment generated by the project before administrative expenses in any year.

b. **Incentive Payments.** Commencing in year 2022, or the first year in which increment is available, whichever occurs last, annual Incentive Payments will be made by the City to Developer, calculated as follows: The Increment Revenue generated in the previous tax year shall be reduced by (1) Administrative Expenses for that tax year, and further reduced by (2) an amount equal to 5% of the Increment Revenue for that year before deduction of Administrative Expenses. The remainder of the Increment Revenue shall be the Annual Incentive Payment for that year. The Annual Incentive Payment shall be made no later than June 1 of each year and shall be made by check drawn on the City's treasury, and only after real estate taxes are paid in full.

c. **Limit of Incentive Payments.** The total amount of all Incentive Payments paid to the Developer shall not exceed \$3,700,000 \$5,740,000 and shall not extend beyond tax year 2031 2039. Annual Incentive Payments shall cease when the aggregate limit of \$3,700,000 \$5,740,000 has been reached, or the annual Incentive Payment for tax year 2031 2039 (payable in 2032 2040) has been made, whichever occurs first. The City shall not close TID 27 before 2031 2040 unless the full amount of the Incentive Payments payable hereunder has been paid to the Developer or escrowed for future payments as earned.

d. **Adjustment of Incentive Payment.** The total amount of the Incentive Payment may be adjusted, as follows:

i. **Construction Cost Verification.** Upon completion of construction of the Development, the Developer shall deliver to the City documentation of the total costs of construction of the Development, sufficient for the City and City's financial consultant to determine the actual total cost of construction, including documentation of all draws made against Devel-

oper's construction loan and all backup information provided to Developer's lender. Developer shall provide to City all additional documentation requested by the City or City's financial consultant reasonably necessary to compute the actual total cost of construction, in the City's reasonable discretion. City or City's financial consultant shall then compute the actual total cost of construction of the Development, and if that cost is less than the total cost of construction shown in Developer's final pre-construction budget submitted to the City, then the total Incentive Payment shall be reduced by an amount equal to one-half of the difference between the pre-construction budget and the final cost of construction determined by the City and City's financial consultant. If that reduction amount exceeds the total remaining balance of the Incentive Payments, the Developer shall not owe a refund to the City. ~~The construction cost verification shall take place in 2025~~ The Parties acknowledge that construction cost verification for all improvements completed as of the date of this Amendment has been done and accepted by them. Construction cost verification for development of Lot 4 shall be done in 2028 and any further adjustment to payments to the Developer as contemplated hereunder shall take place thereafter. The City's calculation of construction costs shall be based on reasonable market standards and include all typical costs associated with development.

ii. **Internal Rate of Return Review.** Upon the sale of the Development, or on the date 7 years after the issuance of the final certificate of occupancy for the Development, whichever occurs first, the Developer shall deliver to the City financial records relating to the Development sufficient for the City or City's financial consultant to determine the actual, then-current internal rate of return for the Development, using the same methodologies as used to calculate the pre-construction projected internal rate of return. If that then-current internal rate of return exceeds 17%, then the amount of revenues generated by the Development that causes the internal rate of return to exceed 17% shall be divided by two, and the total Incentive Payment shall then be reduced by the resulting amount. The calculation of internal rate of return shall take into account

all relevant factors, as determined by the City's financial consultant using generally-accepted accounting principles and reasonable market standards, including the final cost of construction of the Development, the Development's historical cash flow, proceeds of the sale or deemed sale of the Development, brokerage fees, leasing fees, and other disposition costs, equity contributions or loans made to the Developer by its members or others, and construction financing and related financing costs.

- e. Developer shall not use any Incentive Payment for the reimbursement or payment of any real, personal, or other property taxes.
- f. This Agreement Amendment is the only documentation of the City's obligation to pay the Incentive Payments, and no other instrument will be executed to evidence the obligation to make the Incentive Payments. The Incentive Payments shall not be included in the computation of the City's constitutional debt limitation, because the Incentive Payments are limited and conditional, and no taxes have been or will be levied for its payment or pledged to its payment. Nothing in this Agreement Amendment shall be deemed to change the nature of City's obligation from a limited and conditional obligation to a general obligation.

5.6. Warranty of Assessed Value, Payments in Lieu of Taxes. ~~Each Lot in the Development shall be assessed separately by the City for property tax purposes.~~ Developer warrants to the City that ~~the individual Lots in the Development shall have an aggregate real estate tax assessed values of not less than the following amounts~~ \$42,338,549.00 as of January 1, ~~2024~~ 2028, and as of each successive January 1.

- i. ~~Lot 1~~ \$16,371,528.00
- ii. ~~Lot 2~~ No guaranteed value
- iii. ~~Lot 3~~ \$941,107.00
- iv. ~~Lot 4~~ \$2,677,823.00 12,675,993.00
- v. ~~Lot 5~~ \$12,349,921.00

~~With respect to Lots 1, 3, and 4, t~~ The warranty of assessed value and the obligation to make payments in lieu of taxes shall continue until the date 3 years after TID 27 closes. ~~With respect to Lot 5, the warranty of assessed value and the obligation to make payments in lieu of taxes shall continue until three years after TID 27 closes,~~

~~provided Lot 5 has met the warranted assessment value for all of the final three years. If it has not, the warranty and obligation to make payments in lieu of taxes shall continue until Lot 5 has met the warranted assessment value for three consecutive years, or until ten years after TID 27 closes, whichever comes first.~~ The obligation to make payments that have already accrued and are due and owing shall continue after the expiration of any of these time periods.

The amount of the payment in lieu of taxes shall be as follows:

- During the period in which Incentive Payments are made, if tax increment collected with respect to the Development for a given year falls below the City's administrative expenses for TID 27 for that given year, the Developer shall make a payment in lieu of taxes sufficient to cover the shortfall and make the City whole for its administrative expenses. If TID 27 is expanded during the period in which Incentive Payments are being made, then administrative costs for TID 27 shall be allocated pro-rata to the Development.
- After the Incentive Payments have concluded, for any year in which the assessed value of any Lot in the Development is not at least the warranted value indicated above, the owner of the Lot as of January 1 of that year shall make a payment in lieu of taxes, in addition to payment of the property taxes actually billed by the City. The payment in lieu of taxes shall be equal to the difference between ~~the warranted values indicated above~~ \$42,339,549.00 and the aggregate assessed value on which the property tax for the Lot-Development for that year was calculated, multiplied by the applicable tax rate for that year. Payments in lieu of taxes shall be due on March 15 of the year in which regular property tax payments are due. For example, if on January 1, 2024~~2028~~, Lot 4~~the Development~~ is assessed at \$15,371,528~~41,339,549.00~~ a payment in lieu of taxes equal to \$1,000,000 times the tax rate for 2024-2028 would be due on March 15, 2025~~2029~~.

6-7. Warranty; Effect of Conveyance to Successors.

The warranty of assessed value and the obligation to make payments in lieu of taxes described in section ~~65~~ binds only the then-current title holder of a Lot in the Development, and upon conveyance of a Lot to a bona-fide third-party successor, the obligations of the conveying party with respect to that conveyed Lot cease and are as-

sumed by the third party to which the Lot is conveyed, except for obligations that have already arisen at the time of the conveyance.

7-8. Payments in Lieu of Taxes Due without Regard to Tax-Exempt Status. The obligation to make payments in lieu of taxes continues even if the Development or the Developer becomes exempt from the payment of property taxes, or if the Developer successfully challenges the assessment of the Development in court and has the assessment reduced.

8-9. Unpaid Amounts to Be Special Charge. If Developer fails to make any payment in lieu of taxes when due, the Developer consents that any unpaid amount shall be a special charge imposed upon the Development pursuant to Wis. Stat. §66.0627 and §74.01(4), and may reduce future incentive payments to the Developer, in the City's discretion.

9-10. Personal Guaranties of Payment Obligations. The members of Fox Run 3 LLC shall guaranty the payment of all obligations required of Fox Run 3 LLC by this Agreement Amendment and shall execute and deliver to the City a guaranty in the form of Exhibit A attached hereto. This guaranty is required of only the members of Fox Run 3 LLC, and is not binding on or required of any successors in interest to any Lots in the Development. The Parties acknowledge that the personal guaranties already executed and delivered to the City satisfy this requirement.

10-11. Mortgage. Developer shall grant the City a mortgage on the Development securing payment of all outstanding amounts due from the Developer under this Agreement Amendment, including amounts to become due in the future. The mortgage shall be subordinate only to mortgages securing the construction loan for the Development and mortgages securing any permanent loan that the construction loan is rolled into. The mortgage shall be in a form satisfactory to the City. The Parties acknowledge that the mortgage already executed and delivered to the City satisfies this requirement.

11-12. Preservation of Value of Development. The following covenants shall survive and continue in effect after TID 27 closes.

- a. Prohibition of Conveyance to Tax-Exempt Entity.** Developer shall not convey the Development or any portion of the Development to any entity which is exempt from payment of property taxes unless such entity and the City execute an agreement for the entity to make payments in lieu of

taxes, in the full amount of the property taxes that would otherwise be owed, for each year that such entity owns the Development. Any conveyance attempting to do otherwise shall be void and of no effect.

b. Prohibition of Obtaining Tax-Exempt Status. Developer shall not make application for, obtain, or accept recognition of tax-exempt status which would result in the Development being exempt from real-property taxation unless the owner and the City execute an agreement for the entity to make payments in lieu of taxes, in the full amount of the property taxes that would otherwise be owed, for each year that such entity owns the Development

c. Prohibition of Contesting Real Property Taxes. Developer waives its rights to, and shall not, contest in any manner or in any forum the City's assessed value of the Development, to the extent that the requested re-assessment would result in an assessed value less than the amounts shown in section 65. The Developer shall have the right to participate in, and forward information to the Assessor to assist in a proper valuation of the Development. The Assessor shall share information with, and solicit the opinions of, the Developer, and its successor of the guaranteed obligations Fox Run 3, LLC, prior to issuing a formal notice of assessed value. It being agreed to by the parties that the Developer shall be in the best position to obtain and deliver both development-specific information as well as relevant market sale and income data to assist the Assessor in determining a reliable fair market valuation for the stabilized Development. Regardless of the foregoing, the Assessor shall assess the Development according to the requirements of law, in the Assessor's sole discretion.

d. Requirement to Maintain the Development. Developer shall maintain the Development, and all additions, improvements, and fixtures to the Development, in good condition, in compliance with all applicable statutes, building codes, and the Waukesha Municipal Code, such that the fair market value of the Development does not decrease as a result of the condition of the Development or a failure to maintain the Development.

e. Requirement to Maintain Casualty Insurance. Developer shall maintain comprehensive property casualty insurance on the Development, including builder's risk insurance during construction

and loss of income coverage, for not less than the actual replacement value of all improvements and lost income. Developer shall provide the City with proof of such coverage upon request.

f. Requirement to Reconstruct after Casualty Loss. Subject to the rights of Developer's first mortgage lenders, Developer shall promptly repair, rebuild and reconstruct the Development after any casualty loss, to restore the Development to the condition it was in prior to the loss. If the loss is of a type covered by the insurance required in section 12.e44-e, then Developer or Developer's successors shall make claim to casualty-insurance carriers for all casualty and income losses, promptly after loss, and, subject to the rights of Developer's mortgage lenders to proceeds of casualty insurance policies, shall apply all proceeds of the insurance to the repair and reconstruction of the Development. Casualty loss shall not be an excuse for not making payments in lieu of taxes.

12.13. Agreement Runs with the Land and Binds Successors. The City shall record this Agreement Amendment against the Development with the Register of Deeds for Waukesha County, at the Developer's expense. This Agreement Amendment shall run with the land. This entire Agreement Amendment is binding on and inures to the benefit of the Developer; the following sections of this Agreement Amendment, only, are also binding upon all of Developer's successors in interest: 65, 76, 87, 98, 1140, 1244, and all of Part Four 13 through 28. References to Developer in those sections shall be deemed to refer to Developer and all of Developer's successors in interest.

13.14. Parties Are Independent Contractors. Nothing in this Agreement Amendment shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement Amendment, 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. The City shall not participate in, or have any responsibilities connected with, the Development in any way other than the City's specific obligations in this Agreement Amendment.

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

15.16. Assignment Prohibited. This ~~Agreement~~Amendment, and the Developer's responsibilities under this ~~Agreement~~Amendment, may not be assigned by the Developer without the City's written consent, which cannot be unreasonably withheld, provided, however that the City hereby agrees that the Developer may collaterally assign this ~~Agreement~~Amendment to its lenders and the City shall acknowledge and consent to the same on terms and conditions reasonably acceptable to the City.

16.17. Notices. All notices required by this ~~Agreement~~Amendment shall be in writing and delivered by first-class postage by the US Postal Service, addressed as follows:

To City: Director of Community Development
City of Waukesha
201 Delafield St Ste 200
Waukesha WI 53188

To Developer: Fox Run 3, LLC
Attn. Jimmy Rosen
19035 W. Capitol Drive, Suite 108
Brookfield, WI 53045

With a copy to: Axley Brynson, LLP
N20W22961 Watertown Road
Waukesha, WI 53186
Attn: Don Murn

17.18. City Access to Development. Developer shall give City representatives access to the Development during construction, upon reasonable notice, to inspect and verify compliance with this ~~Agreement~~Amendment.

18.19. Proof of Good Standing and Authorization. Developer shall provide to City a certificate of good standing issued by the Wisconsin Department of Financial Institutions, and a resolution of all members of Developer authorizing the execution of this ~~Agreement~~Amendment by the individuals signing, within 10 days of the execution of this ~~Agreement~~Amendment.

19.20. Default. Neither Party shall be in default of this ~~Agreement~~Amendment unless written notice of the default has been delivered and 30 days have passed without the default being cured by the Developer or its investor member. An election by either Party not to enforce any default of this ~~Agreement~~Amendment shall not be deemed to be a waiver of the right to enforce subsequent defaults.

20.21. Costs of Enforcement. The Parties agree that in the event legal action is necessary to enforce any term or condition of this ~~Agreement~~Amendment, then the

breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

21.22. No Discrimination. Developer shall not discriminate against any employee or contractor, or potential employee or contractor, in the construction of the Development on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry.

22.23. Corporate Authorization. The individuals executing this ~~Agreement~~Amendment on behalf of the Developer warrant and represent that they are duly authorized to bind the Developer to this ~~Agreement~~Amendment. Developer warrants and represents that the execution of this ~~Agreement~~Amendment is not prohibited by the Developer's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Developer shall provide proof upon request.

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

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

25.26. Governing Law and Jurisdiction. This ~~Agreement~~Amendment will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this ~~Agreement~~Amendment, it shall 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.

26.27. Integration. This ~~Agreement~~Amendment constitutes the entire agreement of the Parties. All other agreements and understandings of the parties with respect to

the subject matter expressed in this ~~Agreement~~Amendment are unenforceable. However, nothing in this ~~Agreement~~Amendment shall be construed to limit the Common Council in the exercise of its legislative powers.

27.28. Force Majeure. Neither Party shall be deemed to be in default of this ~~Agreement~~Amendment if the failure to perform is the result of unforeseeable causes beyond

the Party's control, such as civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials, acts of God, Governmental restrictions, and pandemics, provided the Party has used reasonable diligence in attempting to anticipate and avoid such causes and resumes performance in good faith as soon as possible. Time for performance shall be extended by the period of delayed performance.

Executed this _____ day of _____, 2026.

City of Waukesha

Shawn N. Reilly, Mayor

Katie Panella, City Clerk

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Katie Panella, known to me to be the persons who executed this ~~Agreement~~Amendment on behalf of the City of Waukesha in the indicated capacities, personally came before me this __ day of _____, 2026, signed their names in my presence, and acknowledged the same.

Notary Public, Waukesha County, Wisconsin
My commission (is permanent)(expires_____)

Fox Run 3, LLC

(sign above)
Print name: _____
Title: _____

(sign above)
Print name: _____
Title: _____

State of Wisconsin }
 } ss.
_____ County }

_____ and _____, known to me to be the persons who executed this ~~Agreement~~Amend-
ment on behalf of _____, in the indicated capacities, personally came before me this _____ day of
_____, 2020, signed their names in my presence, and acknowledged the same.

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

This document was drafted by City of Waukesha Department of Community Development.

Incorporated attachments: **Exhibit A – Form of Guaranty**
 Exhibit B – Development Lots
 Exhibit C – Development Site Plan

Exhibit A - Guaranty

Guarantor: (print name) _____

Guarantor address: _____

Developer: Fox Run 3 LLC

Recitals

Developer has proposed a real estate development in the City of Waukesha, and has requested tax-incremental financing (TIF) from the City for a portion of the cost of the development. The City has agreed to extend TIF financing to Developer, according to the terms and conditions of a "Development Agreement – Fox Run 3, LLC" executed by the Developer and City. One of the terms of the Development Agreement is the requirement that all of the members of the Developer guaranty the payment of the Developer's monetary obligations to the City contained in the Development Agreement. This Guaranty is given by the Guarantor to satisfy that requirement, and to induce the City to extend TIF financing to the Developer, upon the following terms:

- 1. Acknowledgement of Value Received.** Guarantor certifies and acknowledges that (a) he or she is a direct or indirect shareholder, member or partner in the Developer; (b) he or she will receive value from the extension by the City of TIF financing to the Developer; and (c) that the received value is adequate and sufficient consideration to support this Guaranty as a contractual obligation.
- 2. Guaranty of Payment.** Guarantor personally, jointly and severally with the Developer and Developer's other guarantors, guaranties payment all of the Developer's payment obligations to the City contained in the Development Agreement, specifically including, but not limited to payments-in-lieu-of-taxes; including all future advances, extensions and renewals; and including the costs of collection, reasonable attorney fees and court costs.
- 3. Limit of Guaranty.** This guaranty shall be subject to the terms and conditions of the Development Agreement, and it shall remain in full force and effect until it terminates according to the terms of the Development Agreement.
- 4. Waiver of Notice, Presentment and Demand.** Guarantor waives (a) notice of acceptance of this guaranty and of extensions of credit by City to the Developer, (b) presentment and demand for payment, (c) protest and notice of dishonor or default, and (d) all other notices to which Guarantor might otherwise be entitled, and (e) any demand for payment under this Guaranty.
- 5. Not a Guaranty of Collection.** This is a guaranty of payment and not of collection, the Guarantor's obligation is primary. Guarantor waives any right to require that any action be brought against the Developer or any other guarantor, or to require that resort be had to any security or collateral.
- 6. No Waiver of City's Rights.** No forbearance or delay on the part of City in exercising any rights shall be deemed a waiver of rights, unless the City specifically waives any such rights in writing delivered to the Guarantor.
- 7. Applicable Law and Venue.** This Guaranty shall be construed and enforced according to the laws of Wisconsin, and any action to enforce it shall be filed in the Wisconsin Circuit Court for Waukesha County. Guarantor waives all objections to venue or personal jurisdiction.

Dated the _____ day of _____, 2020.

Guarantor signature

State of Wisconsin }
Waukesha County } ss.

_____ personally came before me the _____ day of _____, 2020, signed
the foregoing Guaranty in my presence, and acknowledged the same.

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

Exhibit B: Development Lots

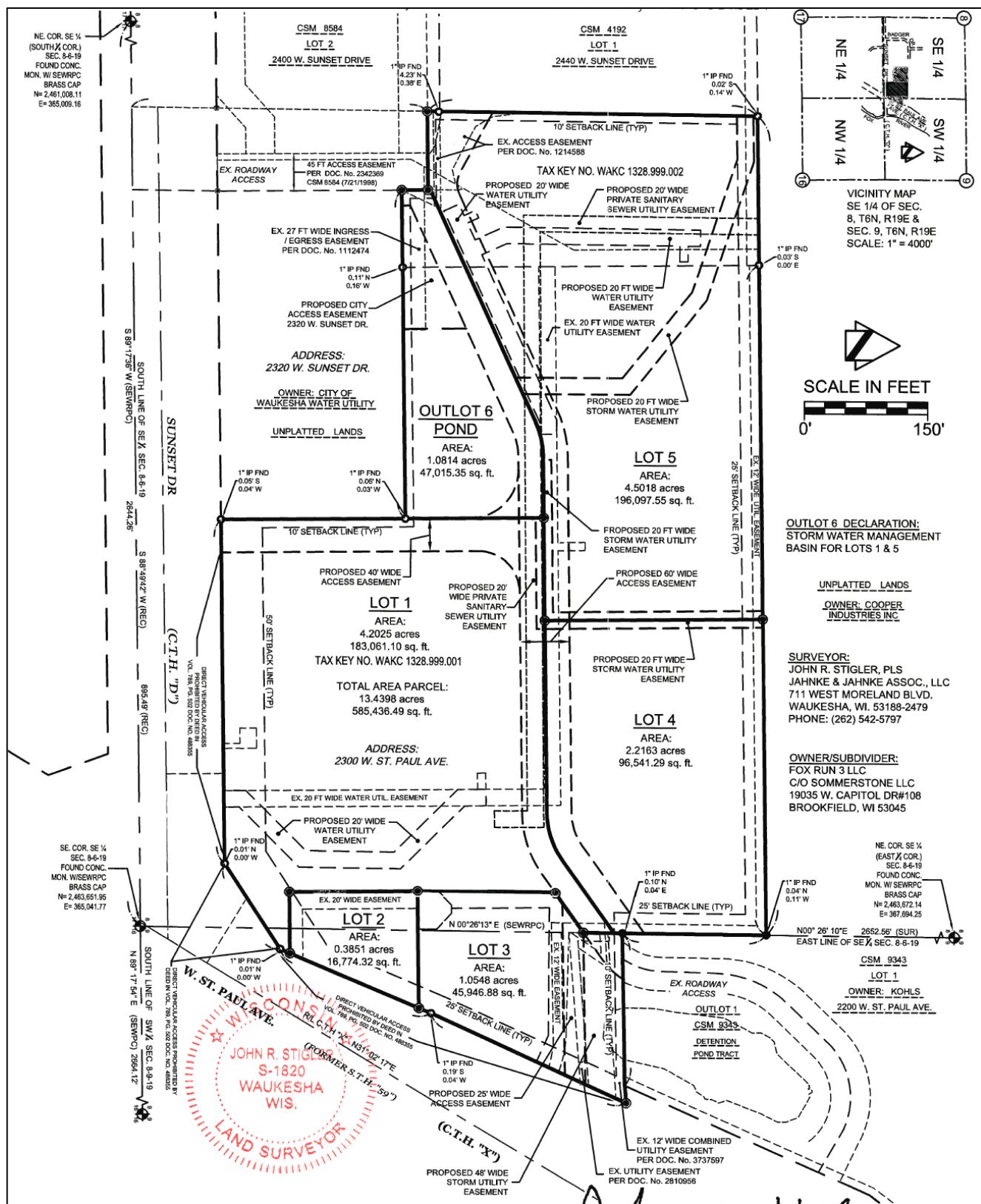


Exhibit C: Site Development Plan

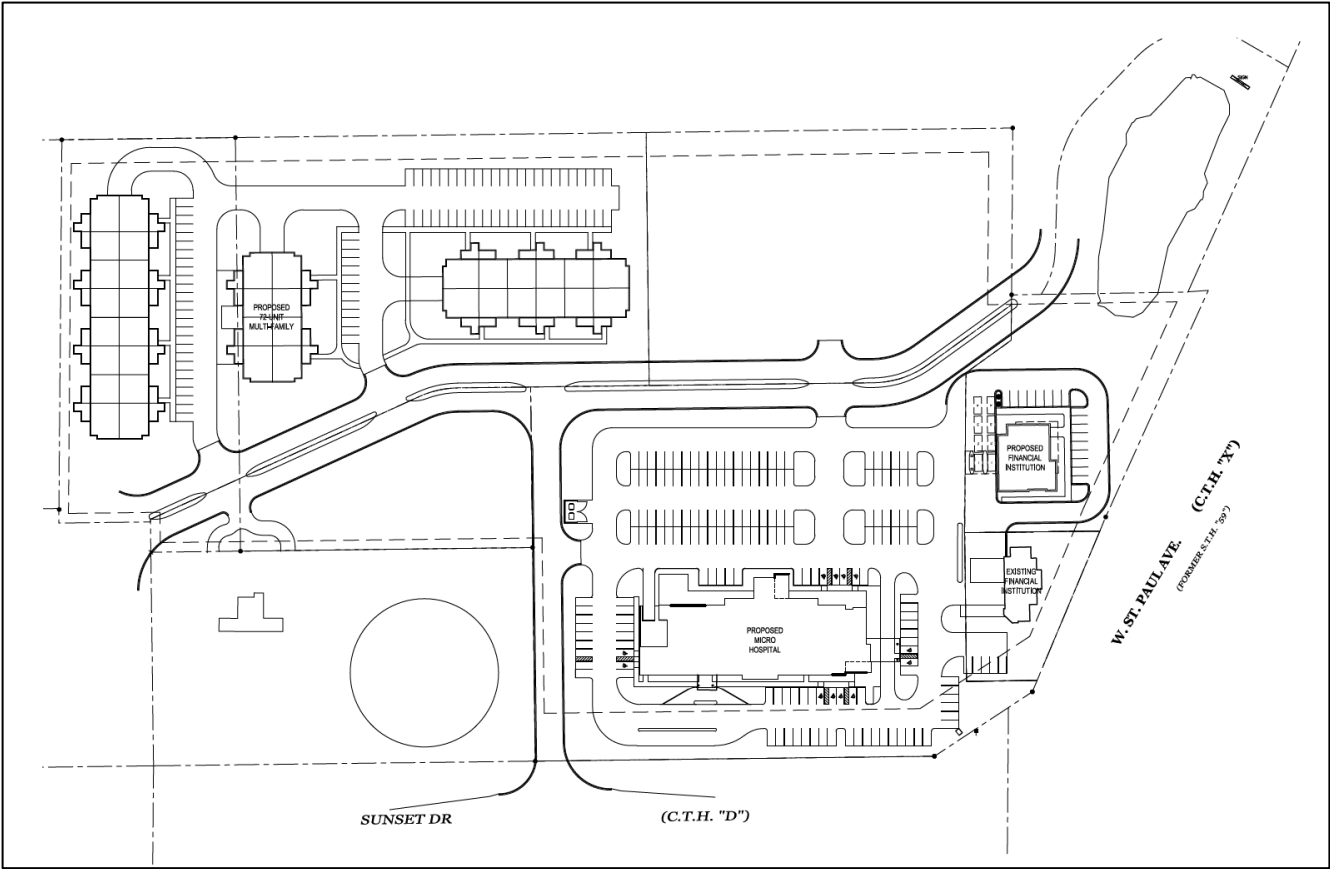


Exhibit D: Sidewalk Plan

