

**COMMERCIAL PLANNED UNIT
DEVELOPMENT AGREEMENT
FOX RUN MIXED-USE**

Parcel ID Number: WAKC 1328 999 001 and WAKC 1328 999 002

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 **Fox Run 3, LLC, a Wisconsin limited-liability 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 the Site as a mixed-use development shall be substantially as shown on Exhibit B, subject to the further and final approval by the City, and shall include:

a. 13.4 acres of land to be divided into 5 lots and 2 outlots as described on CSM12027.

b. Lot 2 in the southeast corner of the Development will remain as a financial institution use.

c. Future development will occur on Lots 1, 3, 4, and 5 in accordance with this Agreement and all other requirements imposed by the City in accordance with its policies and ordinances.

d. The individual development plans for lots 1, 3, 4, and 5 will be included in this Agreement as amendments

after receiving City Approval. The proposed use for Lot 1 is medical use, the proposed use for Lots 3 and 4 will be commercial use, and the proposed use for Lot 5 will be residential use.

- e. Related Site improvements for the overall Development including access drives, parking, landscaping, lighting and storm water management.
- f. All access drives shall be named and have signs indicating their names.

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 roads, 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. However, neither this section 3 nor any other provision of this Agreement shall be construed to require the construction of any building on the Site.

4. Outlot and Other Development. Specific building and architectural plans for Lots 1, 3, 4 and 5 have not been submitted, but they shall be developed generally consistent with the approved Site plan, subject to review and approval by the Plan Commission consistent with Section 8, below. Buildings are required to meet Plan Commission's established design standards attached as Exhibit C. Parking lot and Site lighting fixtures shall be substantially consistent with the approved lighting plan for the Site.

5. Preferred Uses. The Developer acknowledges that the City's preferred uses for the B-5 district include:

Bakeries; banks, credit unions, and other financial institutions with the exception of payday lenders; barber shops, beauty shops, book or stationery stores, business offices, camera and photographic supply stores, clinics, clothing stores, computer and computer supply stores, confectioneries and ice cream stores, delicatessens, department stores, drug stores, electronic equipment sales, equipment and repair, fish markets, florists, fruit stores, furniture stores, furriers and fur apparel, garden centers, gift stores, hardware stores, hobby and craft shops, insurance sales offices, interior decorators, jewelry stores, martial arts studios, meat markets, music stores, office supplies and business machine stores, optical stores, paint, glass, and wallpaper stores, pet and pet supply stores, photography and art studios, physical fitness centers, printing, photocopying, professional offices, real estate sales offices, restaurants, shoe stores,

leather goods stores, sporting goods stores, tailor or dressmaking shop, theaters, and vegetable stores.

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

- a. Drive-throughs for financial institutions, drug stores, and similar retail uses, but not restaurants, shall be permitted uses.
- b. Outdoor patio seating shall be permitted at all restaurants.
- c. Lots need not have any frontage on public streets, provided that adequate alternative access, including private driveway easements, is provided.
- d. Lots 1, 2, 3, and 4 shall have a common shared parking easement to allow cross parking between these four lots.
- e. 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.
- f. All lot lines other than the exterior lot lines of the Site shall be ignored in calculating green spaces, landscape islands, and parking areas and in identifying buffers, and screening.
- g. Buildings on Lots 1, 2, and 3 shall be set back a minimum of 25 feet from the property line adjacent to the Sunset Drive right-of-way and the St. Paul Avenue right-of-way.
- h. 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.
- i. All parking requirements in section 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.
- j. 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.

7. 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 April 22, 2020 meeting and adopted by the Council at their May 5, 2020 meeting are hereby incorporated by reference and made binding upon Developer and Developer's successors in interest.

8. 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 on Lots 1, 3, 4, and 5, 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, 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). The Development on Lots 1, 3, 4 and 5 shall require Plan Commission and Common Council approval.

9. Public Art. The Developer, at Developer's option, shall either install a permanent public art piece on the Development or make a money contribution of \$43,726.00 to a City-designated fund used for public art installations around the City. If Developer opts to install an art piece on the Development, then the art piece must be approved by the City of Waukesha Public Art Committee and Plan Commission and installed by Developer, at Developer's sole expense, within one year of the date of occupancy of the first new tenant in the Development. The size, location, scope, style, genre, and subject of the public art installation shall require the mutual consent of each of the City and Developer, with such consent not to be unreasonably withheld, conditioned, or delayed. Developer shall spend not less than \$43,726.00 on the art installation. The public art installation shall be maintained and insured by the Developer, at Developer's expense, only if installed on the Development.

10. 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/or 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.

11. 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 between the City and Developer, 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 notify Developer in writing, and Developer shall have thirty (30) days from the date of such notice to bring the storm water facilities into compliance with the Stormwater Management Practice Maintenance Agreement. If Developer fails so to bring the facilities into compliance, within the thirty (30) day period, then the City may perform such maintenance, and charge the cost thereof against the Property as a special assessment, without notice and without hearing.

12. Public Rights-of-Way. The Developer shall design any required road improvements consistent with the City's codes, specifications, and regulations. "Road improvements" shall include those improvements within the City's right-of-way. Approval of said final plans shall not be unreasonably withheld and shall be granted by the City upon standards and with conditions in accordance with similar projects undertaken by the City. The Developer shall construct any required road improvements at the Developer's expense, and in accordance with the plans approved by the City, within one (1) year of the date of occupancy. After construction of the road improvements is completed, Developer shall warrant the road improvements against defects due to faulty materials or workmanship, provided that such defects appear within a period of two (2) years after the date of completion of construction.

13. Lighting and Landscaping, Security for Performance. 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 which shall not exceed thirty (30) days after notice and may require, after consulting with the Developer, additional landscaping where necessary to contribute to safety or to improve the appearance of plain, unsightly views of structures.

Completion of landscaping along the common drives and outlots shall be completed before occupancy of the first new tenant in the Development; however, the City shall grant up to an additional six (6) months to complete landscaping if the work cannot in good faith be completed before winter weather makes continuation of landscaping work impossible. Completion of landscaping on each Lot shall be completed before occupancy of the building. The party responsible for obtaining a building permit on each respective lot shall deliver to the City performance bonds or letters of credit for 120% of the value of the landscaping work, and performance bonds or letters of credit of \$15,000 for the transformer location on their relevant Lot before issuance of a building permit for such lot. Performance Bonds or Letters of Credit shall be released to Developer or responsible party no later than thirty (30) days after the work secured by them is completed and request is made to the City.

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 shall notify Developer in writing, and Developer shall have thirty (30) days from the date of such notice to complete. If not completed at that time the City may, at its

election, use the proceeds of the performance bond or Letter of Credit 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 or Letter of Credit to move the transformer to the approved location or mitigate its visibility.

14. 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 the responsibility of the owners, lessees, operators, and occupants of the Development as well as their respective successors and assigns.

15. Entry onto Site, Inspection. The City shall have the right to the extent permitted by law enter onto the Site to inspect, and if required, approve all construction of public improvements, including all sewer facilities, water mains, and sidewalks, provided that the City's officials shall not interfere unreasonably with the use and enjoyment of the Site by the owners, operators, invitees and permittees.

16. 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 the 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 any violating buildings, improvements, fences, trees, or shrubbery from the easements. The City and Developer acknowledge and agree that as of the date of this Agreement the form and substance of all easements pertaining to the previously-described facilities are approved.

17. Cross-Access Easement and Maintenance Agreement. The Developer shall execute and record against the entire Site an instrument creating cross-access easements among the Lots within the Site to effectuate, and in conformity with, the site plans approved by the City, and requiring the owners of the Lots within the Site to maintain, repair, use, design, and construct all parking areas, drives, walks, roadways, signage, delivery areas, and other common-use areas in the Site equitably and in conformity with the site plans approved by the City. The content and form of the instrument must be approved by the City before execution and recording, which shall not be unreasonably withheld, and the City may require reasonable amendments to better effectuate the intent of the Site plans and to better serve the safety and general welfare of the public.

18. Impact Fees. The parties acknowledge that the City's impact fee ordinances, now in and as 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.

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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: Fox Run 3 LLC
c/o Somerstone, LLC
19035 W. Capitol Drive Suite 108
Brookfield, WI 53045

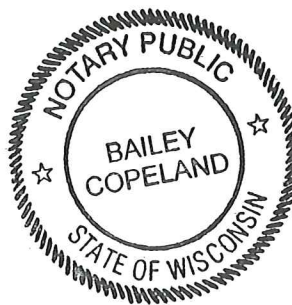
Dated the 20th day of July, 2020.

Fox Run 3 LLC

James Rosen
Title: Manager

STATE OF WISCONSIN }
Waukesha County } ss.

James Rosen, known to me to be the person who executed this Agreement, personally came before me the 20th day of July, 2020, signed this Commercial Planned Unit Development Agreement in my presence, and acknowledged the same.



Bailey Copeland
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires 8.31.2022)

City of Waukesha

Shawn N. Reilly
By Shawn N. Reilly, Mayor

Gina L. Kozlik
Gina L. Kozlik, City Clerk-Treasurer

STATE OF WISCONSIN }
Waukesha County } ss.

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 29th day of July, 2020, signed this Commercial Planned Unit Development Agreement in my presence, and acknowledged the same.

Renee C. Rossa
Name: Renee C. Rossa
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires 3-29-24)



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: Lots 1 through 7 of Certified Survey Map NO. 12027 as recorded.

Exhibit B
Site Plans

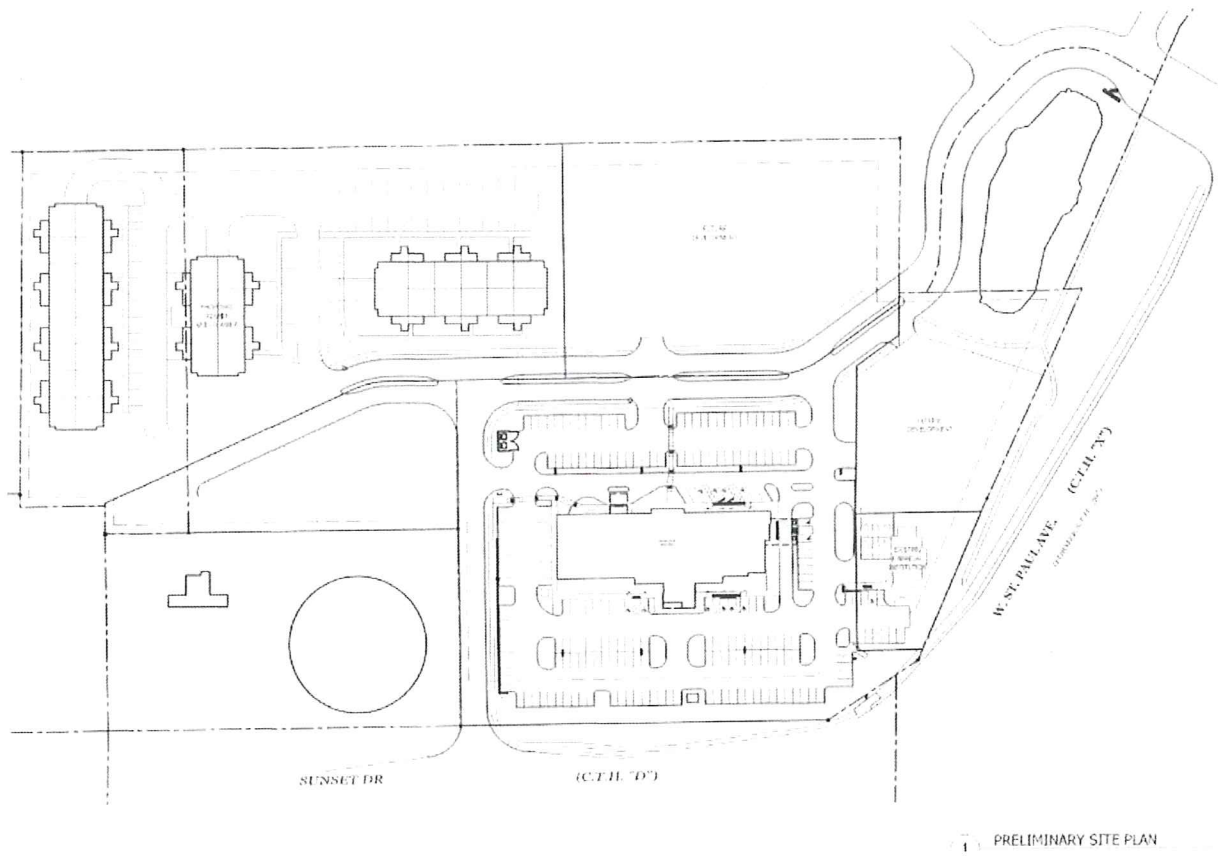


Exhibit C
Plan Commission Standards for Development

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.

