

TAX INCREMENT DISTRICT NO. 11 DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the ____ day of _____, 2023, ("Effective Date") by and among Fox Commons Properties, LLC, a Delaware limited liability company qualified to do business in the State of Wisconsin ("Developer") and the City of Appleton, a Wisconsin municipal corporation (the "City").

RECITALS

Developer and the City acknowledge the following:

A. Developer or an affiliate thereof, owns or will acquire the real property located at 10 East College Avenue (Parcel 31-2-0290-01) Appleton, Wisconsin more particularly described in Exhibit A, attached hereto (collectively the "Property").

B. The Property is located within the City in Tax Increment District #11 (the "District") which was created in 2017 pursuant to Section 66.1105, Wis. Stats. along with a plan for the redevelopment of the District (the "District Plan") that provides for, among other things, the financial assistance set forth in this Agreement.

C. The City currently leases approximately 6,344 square feet of space in the Property pursuant to a Lease dated on or about February 26, 2001, by and between TAM, LLC, (as landlord) and the City (as tenant), as amended and assigned (the "Dance Studio Lease").

D. Developer has proposed improvements to the Property to create a mixed-use development that includes healthcare facilities, housing and a retail space that will serve as an active downtown destination and community hub (collectively the "Project") a portion of which will include two condominium units (Unit 1 and Unit 2).

E. The City has determined that the Project will spur economic development, expand the City's tax base and create new jobs; that such financial assistance is a Project Cost under the Tax Incremental Law; that the amount of financial assistance provided pursuant to this Agreement is the amount necessary to induce development of the Project; and, that the Project will not proceed without the financial assistance set forth in this Agreement.

F. Subject to obtaining financial assistance as set forth herein, Developer intends to undertake a redevelopment of the Property that will increase the value of the Property and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole, consistent with the District Plan. The City finds that this redevelopment of the Property and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents and serves a public purpose in accordance with state and local law.

F. The City, pursuant to Common Council Action dated June 7, 2023 has approved this Agreement and authorized the execution of this Agreement by the proper City officers on the City's behalf.

G. The Developer has approved this Agreement and authorized the appropriate officers to execute this Agreement on the Developer's behalf.

H. The base value of the Property for purposes of this Agreement, including calculating increment generated by the Project, is One Million Nine Hundred Seventy-Eight Thousand Nine Hundred and no/100 Dollars (\$1,978,900.00). The Developer estimates the project will create up to an additional Fifteen Million Three Hundred Twenty-One Thousand One Hundred Dollars (\$15,321,100) in incremental value.

I. All terms that are capitalized but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and the promises and undertakings set forth herein, which are incorporated into this Agreement by reference, the Parties mutually agree and covenant as follows:

ARTICLE I UNDERTAKINGS OF THE DEVELOPER

1.1 Developer and City acknowledge that several of the specific undertakings of the Parties may require approvals from directors, boards or the Common Council, as applicable. The City and Developer's obligations under this Agreement are conditioned upon the obtaining of all such approvals in the manner required by law. The Parties cannot assure that all such approvals will be obtained; however, they agree to use their best good faith efforts to obtain them on a timely basis.

1.2 Despite anything herein to the contrary, Developer's performance under this Agreement is subject to, and contingent upon, Developer purchasing the Property and obtaining commitments for construction financing for the Project on terms and conditions satisfactory to Developer.

1.3 Developer's Project shall include improvements to, and development of, the Property as set forth in Exhibit B that will result in an increase in the Property's assessed value. All aspects of the Project shall be in accordance with all applicable City zoning and building codes, ordinances and regulations.

1.4 Project Costs shall include, without limitation, costs incurred after approval of this agreement for the construction of improvements (including infrastructure improvements), environmental remediation costs, demolition, interior remodeling and development of the project.

1.5 Developer warrants and represents to the City that but for the assistance provided by the City under Article II, herein, Developer would not be able to proceed with the Project.

1.6 The City desires to promote the Property's pedestrian access and preserve the pattern of storefront entrances that currently exist on College Avenue frontage; however, as of the Effective Date, the Parties acknowledge the tenant composition of the Project is not yet finalized. Thus, the Project's actual number of storefront entrances that currently exist on College Avenue may differ from the Property's pattern of storefront entrances prior to the Effective Date. Even so, Developer shall provide pedestrian access along College Avenue while still accounting for the practical constraints of the development process and the tenant composition of the Project.

Therefore, Developer shall require ground floor tenants with storefront on College Avenue to have a primary entrance onto the College Avenue frontage.

1.7 Developer shall require all Project ground floor tenant spaces / units along College Avenue have primary customer entrances and transparent facades on College Avenue. To preserve a pattern of storefronts with frequent openings to the sidewalk, the Project shall maintain a minimum of four (4) separate entrances along the College Avenue frontage. The main entrance serving the north-south connection through the building does not count as one of the four (4) required entrances. Along the College Avenue frontage, the building facade of each ground floor tenant space / unit must contain at least fifty percent (50%) glazed elements (e.g., transparent windows and doors) from sidewalk grade to ten (10) feet above the sidewalk.

1.8 At the north and south sides of the Project, main entrances shall be established to strengthen and facilitate pedestrian circulation through the Project (from Oneida Street to College Avenue). These main entrances shall generally align with the existing and vacated Oneida Street corridor, with at least two (2) sets of ground floor double doors provided on each side (north and south). Within the scope of Developer's design, the Project's facade shall provide visual cues to encourage pedestrian access, including wall treatment in the form of signage, graphic art, lighting, and transparent materials.

1.9 Consistent with the Parties' goal to improve pedestrian accessibility when moving east/west through the Property as well as promoting general pedestrian flow to and through downtown consistent with the City's Comprehensive Plan and College North Neighborhood Plan (hereafter the "plans"):

1.9.1 Developer will use good faith, commercially reasonable efforts to, and to cause the owners of the tract to the west of the Project ("City Center West") and to the east of the Project ("City Center East") to agree to, amend the existing easement agreement recorded as Doc. 1065031 and recorded January 18, 1993 with the Register of Deeds, or enter a new easement agreement between owners of City Center East, City Center West and the Property to replace such existing easement agreement, with substantially the same rights, establishing east/west access between the three properties as well as north/south access between City Center Street and College Avenue consistent with the intent of the plans.

1.9.2 The above referenced easement shall encompass all pedestrian corridors which are general common elements of the condominium comprising the Project, as the same may be relocated from time to time, which are necessary for east/west and north/south pedestrian passage to and from City Center East, City Center West, the Project, and City Center Street and College Avenue (the "Pedestrian Access Easement"). The areas subject to the Pedestrian Access Easement shall be available for the tenants, guests, customers, and invitees of the Project, City Center West, and City Center East from 8:00 am until 5:00 pm Monday through Saturday, provided that such areas may be restricted or closed up to seven (7) times per month for private events at the Project. For avoidance of doubt, the Pedestrian Access Easement grant shall not be deemed a public dedication.

1.9.3 Between 5:00 pm and 8:00 am Sunday through Saturday and between 8:00 am and 5:00 pm on Sundays, authorized employees, tenants and the like of City Center East and City Center West shall have secured access to the Pedestrian Access Easement to enable travel to and from City Center East and West through the Project.

1.9.4 The Pedestrian Access Easement boundaries shall substantially conform to the depiction in Exhibit C accounting for reasonable variations to the boundaries as the Project's development process is finalized or as may be modified from time to time by Project's owner, so long as reasonable means of north/south and east/west access as noted in Section 1.9.2 is provided.

1.10 Developer agrees that no Project housing/residential units shall be used as a "Tourist Rooming House," (e.g., AirBNB, VRBO, etc.) as defined in Sec. 97.01(15k), Wis. Stats. for the duration of the Agreement and Developer shall implement any necessary covenants and/or restrictions to carry out the intent of this section.

ARTICLE II UNDERTAKINGS OF THE CITY

2.1 As a condition precedent to the City appropriating any funds under this Agreement, the City shall have entered into a termination agreement ("Lease Termination Agreement") for that certain Dance Studio Lease. To induce the City to enter the Lease Termination Agreement and, simultaneously with the execution thereof, Developer shall enter into an agreement with the City compensating the City for its early termination of the Dance Studio Lease ("Relocation Agreement"), on terms and conditions to be set forth in the Relocation Agreement.

2.2 The City shall appropriate sufficient funds for the performance of the City's obligations under this Agreement.

2.3 City shall cooperate with Developer throughout the Project and shall promptly review and/or process all submissions and applications in accordance with applicable City ordinances.

2.4 Subject to all of the terms, covenants and conditions of this Agreement and applicable provisions of law, and as an inducement by the City to Developer to carry out the Project, upon completion of the Project (which shall be defined as issuance of a Certificate of Use and Occupancy for all floors, including all common spaces, of the Project and, for avoidance of doubt, it is understood that said certificate may be issued with some tenant space being unoccupied, in "white box" finished status, and/or subject to final finishing per tenant requirements (hereafter "completion")) the City will provide payments to Developer solely from future Tax Increments (derived from both real and personal property) to assist with Developer's Project Costs. The City's total payment of Tax Increment Revenue to the Developer shall not exceed Four Million Three Hundred Fifty-Seven Thousand Five Hundred Fifty Dollars (\$4,357,550).

The Contribution will be paid to Developer as follows:

2.4.1 As the sole source for payment of the Contribution, the City agrees to pay the Developer an amount equal to ninety percent (90%) of the Tax Increment Revenue attributable to, and actually received from, the Property during the calendar year.

2.4.2 Payments under this Agreement shall be due in annual installments on August 15 of the calendar year following the first tax year after completion of the Project and continuing on each August 15 thereafter for a period of time described in Section 4.2.

2.4.3 The Contribution shall be a special and limited obligation of the City and not a general obligation. The City may prepay the Contribution, in its sole discretion, at any time, with no prepayment penalty.

2.5 This Agreement fully evidences the City's obligation to pay the Contribution. No separate instrument will be prepared to evidence the City's obligation to pay the Contribution. The Contribution shall not be included in the computation of the City's statutory debt limitation because the Contribution is limited and conditional and no taxes will be levied or pledged for its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation.

2.6 The City covenants to Developer that until the Contribution has been paid in full, the City shall not close the District prior to its statutory expiration date.

2.7 The City shall, upon Developer's request, provide to Developer an accounting of the status of the District including, but not limited to, the outstanding principal balance of the Contribution and annual Tax Increments received from the District.

2.8 Developer hereby acknowledges that, as a result of the special and limited nature of the City's obligation to pay the Contribution, Developer's recovery of the full amount of the Contribution depends on factors including, but not limited to, future mill rates, changes in the assessed value of the Property, the failure of the Property to generate the Tax Increments at the rate expected by Developer, reduction in Tax Increments caused by revenue-sharing, changes in the Tax Increment Law, and other factors beyond the City's and/or Developer's control.

2.9 The City shall grant Developer an option to purchase up to 280 yearly parking passes in the City-owned parking ramps on an annual basis, to be exercised and paid in full by December 1 of the calendar year prior. Annual rate paid shall be the rate established for City parking passes for the year of use, according to the city fee schedule. During the first calendar year of this Agreement, if Developer's single bulk purchase of parking passes occurs after July 1, Developer shall pay a pro-rated cost based upon the balance of the calendar year remaining after July 1. Thereafter, the parking pass rate shall not be prorated. This right to annually purchase up to 280 parking passes is not transferrable or assignable.

2.10 Upon request of the Developer, the City shall provide certified copies of resolutions and/or minute approvals from directors, boards or the Common Council as applicable.

ARTICLE III PAYMENT OF TAXES

3.1 As long as the District is in existence, the Property and all buildings and improvements thereon shall be owned and taxable for real estate tax and special assessment purposes with the exception of up to 35,000 square feet of condominium space Unit 2 to be occupied by tax exempt healthcare entity as referred to in Recital C provided Unit 2 is continuously occupied by the original tax-exempt healthcare entity that first occupies it: and, this exception shall expire at such time the original tax-exempt healthcare entity sells, transfers or otherwise ceases to occupy Unit 2. The City may waive any or all of the restrictions upon execution of a payment in lieu of taxes (PILOT) agreement on a form acceptable to the City.

3.2 Subject to Section 3.1 and unless disputed in good faith by Developer (or its successors or assigns), throughout the duration of this Agreement, all ad valorem property taxes

properly assessed against the Property will be paid timely and in full. For avoidance of doubt, nothing in this section shall be construed to limit Developer's rights to contest any ad valorem property taxes assessed against the Property.

3.3 In the event that any property owned by Developer within the District becomes exempt from ad valorem property taxes during the life of the District, then for the remaining life of the District, the Developer will make (or cause to be made) annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such other property had it not been exempt. This provision shall not apply to up to 35,000 square feet of Unit 2 for the duration of time Unit 2 is occupied by the tax-exempt healthcare entity that occupies Unit 2 after completion as described in Sec. 2.4 of this Agreement. If the Developer conveys the Property within the District to any party (related or unrelated), the terms of such sale shall impose as a covenant upon all successor owners of the property the foregoing obligation for payments in lieu of taxes during the life of the District. The City shall be a beneficiary of such covenant and entitled to enforce same against the successor owners.

ARTICLE IV CONDITIONS TO PAYMENT; TERMINATION OF AGREEMENT

4.1 The City shall have no obligation to pay any portion of the Contribution to Developer unless and until all of the following conditions shall have been met:

4.1.1 The Project's completion on or before December 31, 2025.

4.1.2 The Property's assessed value is no less than Seventeen Million Three Hundred Thousand Dollars (\$17,300,000).

4.1.3 The conditions herein are subject to reasonable extensions, not to exceed six (6) months in each instance, for Force Majeure which shall include, but not be limited to, any delays caused by pandemic or other acts beyond the reasonable control of the Developer. Such extensions shall be by mutual written agreement and, in considering any requested extension, the City and Developer agree that each will act in good faith, cooperate in expeditious and timely approvals, and said extensions shall not be unreasonably withheld, conditioned or delayed by City.

4.2 Subject to Section 4.1.3 this Agreement, and the Parties obligations under this Agreement, shall terminate when any of the following shall have occurred:

4.2.1 The conditions in Section 4.1 are not met.

4.2.2 The Contribution is paid in full or August 15, 2042 (the "End Date"), whichever occurs first. The End Date shall be subject to extension commensurate with any extension granted pursuant to Sec. 4.1.3 provided the End Date shall not extend beyond August 15, 2043.

ARTICLE V CONFLICT OF INTEREST

5.1 No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

ARTICLE VI
WRITTEN NOTICES

6.1 Any written notice required under this Agreement shall be sent to the following individuals:

FOR THE CITY:

City of Appleton
Community and Economic Development Department
100 North Appleton Street
Appleton, WI 54911-4799
Attention: Director

With a copy to:

City of Appleton
City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4799
Attention: City Attorney

FOR DEVELOPER:

Fox Commons Properties, LLC
1100 N. Dr. Martin Luther King Jr. Drive
Suite 610
Milwaukee, WI 53203
Attention: James R. Kleinfeldt

ARTICLE VII
ASSIGNMENT

7.1 This Agreement shall inure the benefit of and bind the Parties hereto and its respective successors and assigns provided that Developer may not assign all or part of this Agreement without prior written consent of the city, unless such assignment is to an affiliate of Developer or purchaser of the Property, in which instance the Developer shall provide the City with written notice no less than 10 business days prior to said assignment.

ARTICLE VIII
NO PARTNERSHIP OR VENTURE

8.1 Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the City and Developer or any contractor or subcontractor employed by Developer in the construction of the Project.

ARTICLE IX
MISCELLANEOUS

9.1 Under no circumstances shall any officer, official, director, member, manager, commissioner, agent, or employee of City or Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

9.2 The laws of the State of Wisconsin shall govern this Agreement.

9.3 This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

9.4 No modification, alteration, or amendment of this Agreement shall be binding upon any party until such modification, alteration, or amendment is reduced to writing and executed by all Parties to this Agreement.

9.5 Any captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions of this Agreement.

9.6 If any provisions of this Agreement shall be held or deemed to be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision or provisions of this Agreement or any constitution or statute or rule of public policy, or for any other reason, then such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. To the maximum extent possible, this Agreement shall be construed in a manner consistent with the powers of the City, including but not limited to, the City's powers under the Blight Elimination and Slum Clearance Law and the Tax Increment Law, to achieve its intended purpose. Reference is made to Section 66.1333(17) of the Wisconsin Statutes and Chapter 105, Laws of 1975 § 4, which provide that the Blight Elimination and Slum Clearance Law and the Tax Increment Law should be construed liberally to effectuate their purposes.

9.7 The Parties make no warranties or representations except as expressly set forth herein.

[Signatures on following pages]

DEVELOPER:

Fox Commons Properties LLC

By: _____
James R. Kleinfeldt, Manager

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came, before me this ____ day of _____, 2023, James R. Kleinfeldt, Manager, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

DRAFT - Subject to Approval

SCHEDULE OF EXHIBITS

- A. Legal Description of Property
- B. Proposed Improvements
- C. Easement

DRAFT - Subject to Approval

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Tax Key No. 31- 2029001

ALL OF LOT 6 AND PART OF LOT 5 OF BLOCK 27, AND ALL OF LOT 7 AND PART OF LOTS 1, 2, 3, 6 AND 8 OF BLOCK 28 OF THE APPLETON PLAT, AND PART OF VACATED ONEIDA STREET LYING BETWEEN BLOCKS 27 AND 28, AND PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 299 AS RECORDED IN VOLUME 2 OF CERTIFIED SURVEY MAPS, ON PAGE 299, AS DOCUMENT NO. 821847, ALL BEING IN THE CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN, ACCORDING TO THE RECORDED ASSESSOR'S MAP OF SAID CITY, MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID BLOCK 28, ALSO BEING THE POINT OF INTERSECTION OF THE NORTH LINE OF COLLEGE AVENUE WITH THE EAST LINE OF VACATED ONEIDA STREET; THENCE SOUTH 89° 56' 34" WEST ALONG THE NORTH LINE OF COLLEGE AVENUE EXTENDED AND THE SOUTH LINE OF SAID BLOCK 27, 223.16 FEET; THENCE NORTH 00° 01' 21" WEST, 140.11 Feet TO THE SOUTH LINE OF CITY CENTER STREET; THENCE NORTH 89° 56' 34" EAST, ALONG SAID SOUTH LINE OF CITY CENTER STREET, 163.16 FEET TO THE NORTHEAST CORNER OF SAID LOT 6 OF BLOCK 27; THENCE NORTH 65° 11' 47" EAST, 66.10 FEET TO THE WEST LINE OF SAID BLOCK 28; THENCE NORTH 00° 01' 21" WEST ALONG SAID WEST LINE, 67.45 Feet; THENCE NORTH 89° 56' 34" EAST, 176.26 FEET; THENCE SOUTH 00° 01' 21" EAST, 60.91 Feet; THENCE SOUTH 89° 56' 34" WEST, 30.10 Feet; THENCE SOUTH 00° 01' 21" EAST, 17.00 FEET; THENCE NORTH 89° 56' 34" EAST, 12.17 Feet; THENCE SOUTH 00° 01' 21" EAST, 157.31 Feet TO SAID NORTH LINE OF COLLEGE AVENUE; THENCE SOUTH 89° 56' 34" WEST ALONG SAID NORTH LINE, 120.83 Feet; THENCE NORTH 00° 01' 21" WEST, 80.45 FEET; THENCE SOUTH 89° 56' 34" WEST, 37.50 FEET TO SAID WEST LINE OF BLOCK 28; THENCE SOUTH 00° 01' 21" EAST ALONG SAID WEST LINE, 80.45 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

PROPOSED IMPROVEMENTS

The project budget is \$33,622,572.67 and is depicted as follows (with the understanding that depicted plans are conceptual at the time of this agreement and subject to modification within the scope and spirit of the project):

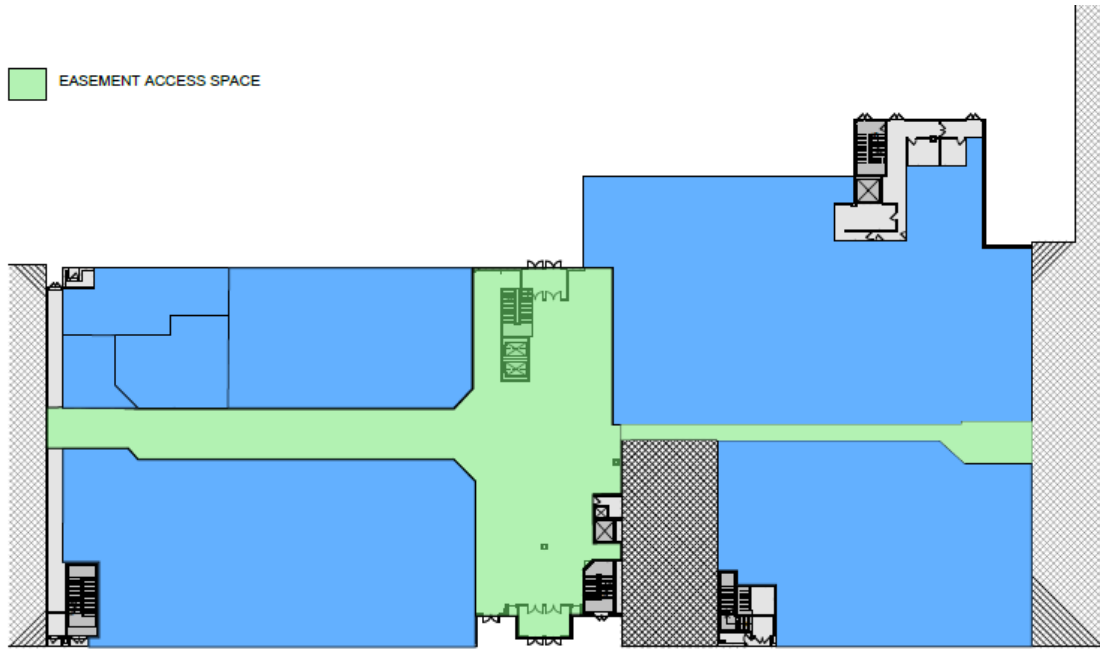


EXHIBIT B
PROPOSED IMPROVEMENTS (CONTINUED)



EXHIBIT C – EASEMENT

FOX COMMONS PASSAGES WITH CORRESPONDING EASEMENT AREA



1 First Floor Plan
1/27/12

First Floor Tenant Layout

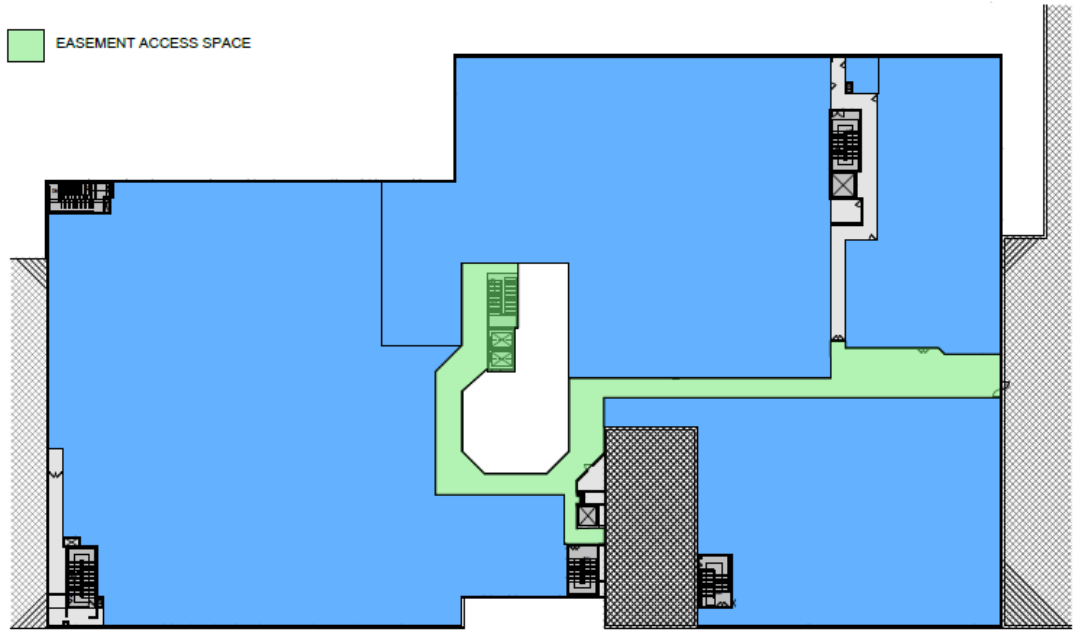
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Fox Commons - Core and Shell

DRAFT

EXHIBIT C – EASEMENT

FOX COMMONS PASSAGES WITH CORRESPONDING EASEMENT AREA (CONTINUED)



1 Second Floor Plan

Second Floor Tenant Layout

Fox Commons - Core and Shell

DRAFT -