

**NO BUILD  
EASEMENT AGREEMENT**

Document Title

Recording Area

This Document was drafted by and after  
recording return to:

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Madison, WI 53703  
Attn: Kevin A. Martin

PINs: See Exhibit A and Exhibit B

## **NO BUILD EASEMENT AGREEMENT**

THIS NO BUILD EASEMENT AGREEMENT (“Agreement”) is dated as of the \_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between the City of Appleton, a Wisconsin municipal corporation (“Grantor”), and the Fox Commons Condominium Association, Inc., a Wisconsin nonstock corporation (“Grantee”).

### **RECITALS**

A. Grantor is the owner of certain real property located in the City of Appleton, County of Outagamie, Wisconsin, legally described on Exhibit A attached hereto (“Parcel 1”).

B. Grantee is the governing association for the Fox Commons Condominium (the “Condominium”), created under the Condominium Ownership Act of the State of Wisconsin pursuant to that certain Declaration of Condominium for Fox Commons Condominium recorded in the office of the Register of Deeds of Outagamie County on August 15, 2023, as Document Number 2297870 and the Fox Commons Condominium Plat recorded in the office of the Register of Deeds of Outagamie County on August 15, 2023, as Document Number 2297871, with respect to the land and buildings located in the City of Appleton, County of Outagamie, Wisconsin legally described on Exhibit B attached hereto (“Parcel 2”).

C. Grantee and/or certain owners of units within the Condominium desire to rehabilitate and repurpose the building located on Parcel 2 (the "Building").

D. Grantee has requested a no build easement on and over a certain portion of Parcel 1, as legally described and depicted on Exhibit C attached hereto (the “Easement Area”), in order to satisfy building code requirements applicable to the north and west-facing walls of the Building.

E. Grantor is willing to grant the requested easement so as to permit the rehabilitation, operation, maintenance, and reconstruction of the Building on Parcel 2, subject to the terms and conditions set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows: Grantor hereby declares, conveys, and grants the following described Easement to the Grantee, and the Grantee hereby accepts such Easement from the Grantor, as follows:

1. Grant of Easement. Grantor hereby declares, establishes, grants, and conveys for the benefit of, and deemed appurtenant to, Parcel 2, a perpetual, negative easement prohibiting the construction of any new or additional above-ground structures, including, but not limited to, a dumpster enclosure, garage, shed, fence, or any other above-ground building or structures within the Easement Area (the “Easement”). The Easement shall be perpetual.

2. Binding Effect. This Agreement and the terms, conditions, restrictions, covenants, and agreements set forth herein, including the benefits and burdens, shall run with the land, and shall be binding upon and inure to the benefit of the owners or governing associations, as applicable, of Parcel 1 and Parcel 2. The Easement granted hereunder is an easement appurtenant to Parcel 2 and may not be assigned, transferred or conveyed separately from, or severed from, the title to Parcel 2.

3. Amendment or Termination. This Agreement may only be amended or terminated by the recording of a written instrument in the Office of the Register of Deeds of Outagamie County, Wisconsin, executed by or on behalf of the owners or governing associations, as applicable, of Parcel 1 and Parcel 2.

4. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

5. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

6. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

7. Enforcement. Grantee, or its successors or assigns, shall have the right to enforce the provisions hereof by proceedings at law or in equity against any person or persons violating or attempting to violate any provision of the Agreement, either to restrain or cure the violation or to recover damages, or both. If any suit or action is brought to enforce the provisions of this Agreement, the party who prevails in such action or suit shall be entitled to recover its court costs and reasonable attorneys' fees from the other party.

8. No Merger. This Agreement shall not be extinguished by reason of the fact that any interest in Parcel 1 may be held directly or indirectly by or for the account of any person who shall hold directly or indirectly any interest in all or any portion of Parcel 2; and no merger shall occur unless and until each and every owner of Parcel 1 and Parcel 2 shall execute a written instrument effecting a merger, which instrument shall be recorded in the Office of the Register of Deeds of Outagamie County, Wisconsin.

9. No Public Dedication. Nothing in this Agreement shall be deemed a gift or dedication of any portion of the Easement Area to the general public or for any public purpose whatsoever.

10. Notices. All notices under this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party or parties at its or their last known address. If a party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills, if any, are sent. Any party may change its address for notice by providing written notice to the other party.

Exhibits:

- Exhibit A - Legal Description of Parcel 1
- Exhibit B - Legal Description of Parcel 2
- Exhibit C - [Legal Description and](#) Depiction of Easement Area

*[Remainder of Page Intentionally Left Blank – Signature Pages Follow]*







**EXHIBIT A**

**Legal Description of Parcel 1**

~~{To be added.}~~

Lot 1 of Certified Survey Map No. 8298, being part of the Northeast 1/4 of the Southwest 1/4 of Section 26, Township 21 North, Range 17 East, City of Appleton, Outagamie County, Wisconsin.

Tax Parcel Number: 312027200

**EXHIBIT B**

**Legal Description of Parcel 2**

Units 1 and 2 and so much of the undivided interest in the common areas and facilities appurtenant to such Units in the percentage specified and established in the hereinafter-mentioned Declaration, in a Condominium commonly known as FOX COMMONS CONDOMINIUM, created under the Condominium Ownership Act of the State of Wisconsin by Declaration of Condominium for Fox Commons Condominium recorded on August 15, 2023, in the office of the Register of Deeds for Outagamie County, Wisconsin, as Document No. 2297870. Said condominium being located in the City of Appleton, Outagamie County, Wisconsin on the real estate described in said Declaration and incorporated herein by this reference thereto.

Tax Parcel Number: 312029001



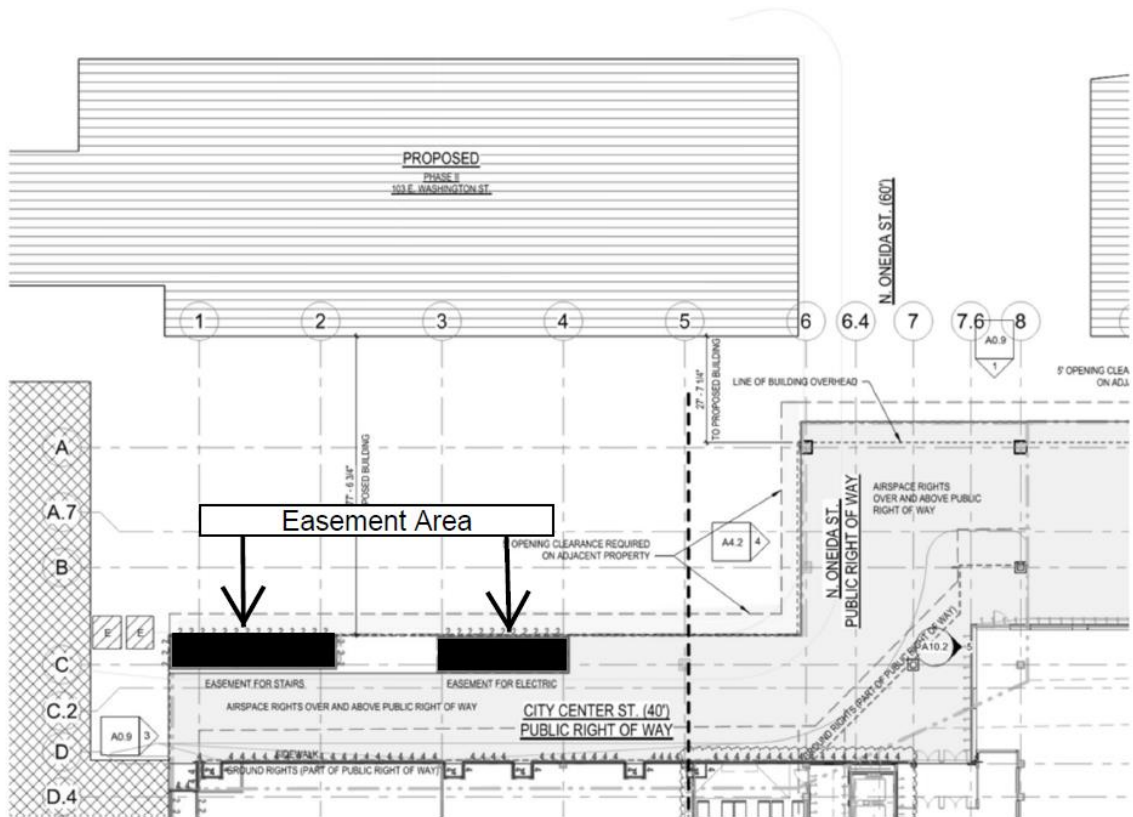
## **EXHIBIT C**

### **Legal Description of the Easement Area**

Beginning at the Southeast Corner of Lot 1 of Certified Survey Map No. 8298 (Doc. 2264330); thence S89°56'34"W along the North line of City Center Street and the South line of said Lot 1, 164.31 feet; thence N00°01'21"W, 5.00 feet; thence N89°56'34"E, 159.30 feet; thence N00°01'21"W, 50.11 feet; thence N89°56'34"E, 5.00 feet to the West line of N. Oneida Street and the East line of Lot 1 of said Map No. 8298; thence S00°01'21"E along said West line and said East line, 55.11 feet to the point of beginning. Said EASEMENT is subject to all easements, and restrictions of record. Said EASEMENT encumbers 1,072 SF (0.0246 Ac) of said GRANTOR'S land.

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**EXHIBIT C**  
**Depiction of Easement Area**



*Exhibit C to No Build Easement Agreement*

<b>Summary report:</b>	
<b>Litera Compare for Word 11.4.0.111 Document comparison done on 11/21/2023 9:05:01 PM</b>	
<b>Style name:</b> MBFDefault	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://michaelbest-mobility.imatech.com/MBF/36056159/3	
<b>Modified DMS:</b> iw://michaelbest-mobility.imatech.com/MBF/36056159/4	
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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>10</b>