

**WALKING PATH EASEMENT
AGREEMENT
EXHIBIT 13**

Document Number

Recording Area

Name and Return Address

Joshua P. Roling
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202

Parcel Identification Number (PIN)

1 **WALKING PATH EASEMENT AGREEMENT**

2 This Walking Path Easement Agreement (this “Agreement”) is dated as of _____,
3 2022, by and between the VILLAGE OF ELM GROVE, a Wisconsin Municipality (“Village”)
4 and _____ APARTMENTS LLC, a Wisconsin limited liability company
5 (“Developer”).

6 **RECITALS:**

7 A. Developer is the owner of the real property legally described on Exhibit A attached
8 hereto and located in the Village (the “Apartment Property”) and intends to construct thereon
9 three (3), three (3)-story buildings containing not more than two hundred thirty-seven (237)
10 residential units (the “Apartment Project”).

11 B. Simultaneously herewith Developer and the Village have entered into a Development
12 Agreement in connection with development of the Apartment Property (the “Development
13 Agreement”).

14 C. Pursuant to the Development Agreement, Developer has agreed to construct a pedestrian
15 walking path (the “Walking Path”) and sidewalks (“the “Sidewalks”) on the Apartment Property,
16 and to grant easements to the Village over the portion of the Apartment Property depicted and
17 described on Exhibit B attached hereto (the “Easement Area”) for pedestrian use of the Walking
18 Path and Sidewalks, all as more particularly set forth herein.

19 IN WITNESS THEREOF, Developer and the Village for good and valuable consideration the
20 receipt and sufficiency of which is hereby acknowledged, IT IS AGREED:

21 1. Declaration of Perpetual Easement: Apartment Property. Developer hereby grants to the
22 Village a non-exclusive perpetual easement, for the benefit of the public, over and across
23 the Easement Area for pedestrian use of the Walking Path and Sidewalks. The Walking
24 Path and Sidewalks may be used for pedestrian use only. Use by any vehicles (including,
25 without limitation, skateboards, bicycles, and scooters) is expressly prohibited.

26 2. Construction and Maintenance. Developer, at Developer’s cost and expense, shall
27 construct the Walking Path and Sidewalks pursuant to the terms of the Development
28 Agreement. Developer shall be responsible to maintain or cause to be maintained the
29 Walking Path and Sidewalks in a manner consistent with Developer’s maintenance of
30 other private sidewalks and walkways located on the Apartment Property, including
31 reasonable snow and ice removal. If Developer fails to maintain or repair the Walking
32 Path or Sidewalks in accordance with this Agreement within sixty (60) days after written
33 notice from the Village identifying the failure (or, if it is not possible for Developer to
34 complete such maintenance or repair within sixty (60) days after written notice, if
35 Developer fails to commence such maintenance or repair within said sixty (60) day
36 period and thereafter diligently pursue such maintenance or repair), then the Village shall
37 have the right, but not the obligation, to undertake the required maintenance or repair and
38 to charge the reasonable cost thereof to Developer.

1 3. Rules and Regulations. Developer shall have the right to formulate reasonable rules and
2 regulations regarding the use of the Walking Path and Sidewalks, including, without
3 limitation, restricting or prohibiting night-time usage and prohibiting littering, blocking
4 or obstructing the Walking Path and Sidewalks, and prohibiting vehicular use (including,
5 without limitation use by skateboards, bicycles, and scooters). Developer shall further
6 have the right to close or limit access to the Walking Path and Sidewalks, or any portion
7 thereof, from time to time, as needed (i) for construction, maintenance, repair or
8 replacement of the Walking Path and Sidewalks and/or improvements adjacent to the
9 Walking Path and Sidewalks, (ii) to protect against unsafe conditions or (iii) to avoid the
10 acquisition of adverse or prescriptive rights. The Village shall have no responsibility to
11 enforce any promulgated rules and regulations pertaining to the Walking Path or the
12 Sidewalks, but shall be required to enforce any trespassing or other behavior that it would
13 enforce or otherwise address on any other owner's private property in the Village of Elm
14 Grove.

15 4. Indemnity. Developer agrees to indemnify and hold harmless the Village, its officers,
16 agents and employees against any and all actions, damages, judgments, costs, or fees of
17 any kind whatsoever arising out of any negligence or willful misconduct of Developer, its
18 agents, or employees relating to this Agreement.

19 5. Run with the Land/Release upon Conveyance. This Agreement shall be binding upon,
20 inure to the benefit of and run with the Apartment Property and be binding upon all the
21 owners thereof and their heirs, successors and assigns, provided that upon the conveyance
22 of by any owner, including without limitation, Developer or its affiliates, of any portion
23 of the Apartment Property, transferring owner shall be fully released from all liability or
24 obligations hereunder with respect to the portion of the Apartment Property so conveyed
25 arising after the date of such conveyance.

26 6. Estoppel Certificate. Within ten (10) days after request therefor, the parties hereto agree
27 to provide an estoppel certificate to the requesting party, its lenders, or any proposed
28 purchaser of all or any part of the Property, or such purchaser's lenders, stating that the
29 requesting is not in default hereunder or if the requesting party is in default hereunder
30 setting forth any such defaults.

31 7. Severability. If any term, provision or condition contained in the Agreement shall, to any
32 extent, be invalid or unenforceable, the remainder of the Agreement (or the application of
33 such term, provision or condition to persons or circumstances other than those in respect
34 of which it is invalid or unenforceable) shall not be affected thereby, and each term,
35 provision or condition of the Agreement shall be valid and enforceable to the fullest
36 extent permitted by law.

37 8. Recording. The Agreement shall be recorded in the records of Waukesha County,
38 Wisconsin.

39 9. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of the
40 Agreement.

1 10. Notices. Any notice given hereunder shall be in writing and personally delivered, mailed
2 by registered or certified mail, return receipt requested, or delivered via overnight
3 courier:

4 To the Village: Village Clerk
5 13600 Juneau Blvd.
6 Elm Grove, WI 53122

7 To Developer: c/o Mandel/_____ Apartments LLC
8 330 East Kilbourn St., Suite 600 South
9 Milwaukee, WI 53202
10 Attention: Phil Aeillo

11 with a copy to: Foley & Lardner LLP
12 777 East Wisconsin Ave.
13 Milwaukee, WI 53202
14 Attention: Candace Flatley

15 Any party may, by notice as provided above, designate a different address from time to
16 time. Any such notice shall be effective on the date of receipt.

17 11. Amendment. This Agreement may not be modified, amended, or terminated except in a
18 writing signed by each party hereto.

19 12. No Termination. In no event may any party terminate this Agreement as the result of a
20 default by any other party, and each party waives any such right to seek termination of
21 this Agreement.

22 13. No Third Party Beneficiaries. No person or entity shall be deemed a beneficiary of the
23 terms of this Agreement, unless specifically provided for herein.

24 *[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, Developer and Village have caused this Agreement to be signed by their appropriate officers and their corporate seals to be hereunto affixed in two (2) original counter-parts the day and year first above written.

VILLAGE:

VILLAGE OF ELM GROVE

By: _____
Neil H. Palmer, Village President

ATTEST:

_____, Village Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 202_, the above-named Neil H. Palmer, Village President, to me known to be the person and officer who executed the foregoing instrument and acknowledged that he executed the same as such officer by the Village of Elm Grove.

Subscribed and sworn to before me
this _____ day of _____, 202_.

NOTARY PUBLIC, State of Wisconsin
Print Name: _____
My Commission: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

DEVELOPER:

_____ Apartments LLC

By: Mandel/_____ Apartments LLC
Its: Manager

By: BR Mandel LLC
Its: Manager

By: _____
Name:
Its:

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 202_ the above-named _____, to me known to be the person who executed the foregoing acknowledged that he executed the same as the Manager of BR Mandel LLC, the Manager of Mandel/_____ Apartments LLC, the Manager of _____ Apartments LLC.

Subscribed and sworn to before me
this _____ day of _____, 202_.

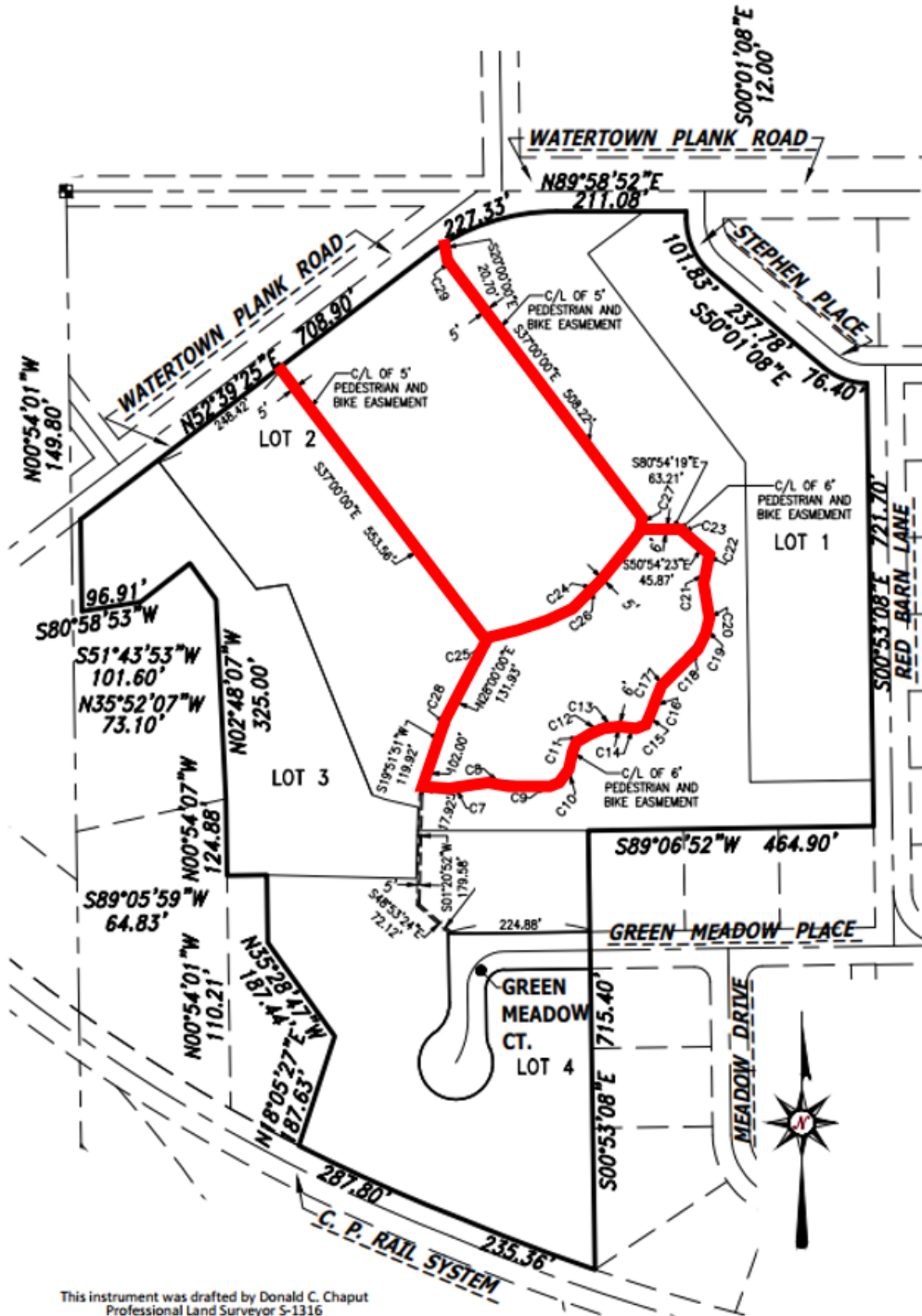
NOTARY PUBLIC, State of Wisconsin
Print Name: _____
My Commission: _____

EXHIBIT A

Apartment Property Legal Description

EXHIBIT B

Easement Area



CURVE INFORMATION

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	57.47'	60.00'	54°52'54"	N26°33'19"E	55.30'
C2	269.40'	60.00'	257°15'13"	S74°37'51"E	93.75'
C3	23.43'	60.00'	22°22'19"	S12°04'18"E	23.28'
C4	47.12'	30.00'	90°00'00"	S44°06'52"W	42.43'
C5	94.25'	60.00'	90°00'00"	S44°06'52"W	84.85'
C6	75.92'	133.81'	32°30'34"	N15°22'09"E	74.91'
C7	86.54'	140.00'	35°24'58"	S89°02'40"E	85.17'
C8	44.96'	119.97'	21°28'17"	N85°02'48"E	44.70'
C9	81.27'	394.10'	11°48'52"	S87°59'12"E	81.12'
C10	48.74'	33.12'	84°19'12"	N40°01'25"E	44.46'
C11	53.45'	58.82'	52°03'50"	S24°01'35"W	51.63'
C12	36.41'	82.04'	25°25'45"	S65°21'59"W	36.11'
C13	32.19'	54.95'	33°33'57"	N85°22'27"W	31.73'
C14	23.52'	32.18'	41°53'00"	S88°42'37"E	23.00'
C15	32.40'	38.60'	48°05'15"	N46°42'57"E	31.46'
C16	22.13'	113.58'	11°09'53"	N16°57'22"E	22.10'
C17	55.74'	98.77'	32°20'04"	S27°25'55"W	55.00'
C18	59.14'	762.70'	4°26'34"	N44°17'14"E	59.13'
C19	40.36'	73.04'	31°39'48"	N26°49'51"E	39.85'
C20	26.47'	62.84'	24°08'06"	N00°04'13"W	26.28'
C21	77.12'	204.85'	21°34'07"	S02°59'23"E	76.66'
C22	12.57'	29.00'	24°49'51"	S20°44'26"W	12.47'
C23	14.14'	27.00'	29°59'56"	N65°54'21"W	13.98'
C24	341.13'	332.18'	58°50'19"	N53°00'00"E	326.33'
C25	12.24'	332.18'	2°06'41"	N81°21'49"E	12.24'
C26	316.48'	332.18'	54°35'18"	N53°00'50"E	304.65'
C27	12.40'	332.18'	2°08'20"	N24°39'01"E	12.40'
C28	28.04'	197.50'	8°08'09"	S23°55'56"W	28.02'
C29	25.39'	73.77'	19°43'03"	S26°58'41"E	25.26'