

WALKING PATH EASEMENT
AGREEMENT

Document Number

Recording Area

Name and Return Address

Candace Flatley
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202

EGV 1105998005

Parcel Identification Number (PIN)

1 **WALKING PATH EASEMENT AGREEMENT**

2 This Walking Path Easement Agreement (this “Agreement”) is dated as of _____,
3 2023, by and between the VILLAGE OF ELM GROVE, a Wisconsin Municipality (“Village”)
4 and CAROLINE HEIGHTS 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 hereto
8 and located in the Village (the “Apartment Property”) and intends to construct thereon three (3),
9 three (3)-story buildings containing not more than two hundred thirty-seven (237) residential units
10 (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 other
30 private sidewalks and walkways located on the Apartment Property, including reasonable
31 snow and ice removal. If Developer fails to maintain or repair the Walking Path or
32 Sidewalks in accordance with this Agreement within sixty (60) days after written notice
33 from the Village identifying the failure (or, if it is not possible for Developer to complete
34 such maintenance or repair within sixty (60) days after written notice, if Developer fails to
35 commence such maintenance or repair within said sixty (60) day period and thereafter
36 diligently pursue such maintenance or repair), then the Village shall have the right, but not
37 the obligation, to undertake the required maintenance or repair and to charge the reasonable
38 cost thereof to Developer.

- 39 3. Rules and Regulations. Developer shall have the right to formulate reasonable rules and
40 regulations regarding the use of the Walking Path and Sidewalks, including, without
41 limitation, restricting or prohibiting night-time usage and prohibiting littering, blocking or
42 obstructing the Walking Path and Sidewalks, and prohibiting vehicular use (including,
43 without limitation use by skateboards, bicycles, and scooters). Developer shall further have
44 the right to close or limit access to the Walking Path and Sidewalks, or any portion thereof,
45 from time to time, as needed (i) for construction, maintenance, repair or replacement of the
46 Walking Path and Sidewalks and/or improvements adjacent to the Walking Path and
47 Sidewalks, (ii) to protect against unsafe conditions or (iii) to avoid the acquisition of
48 adverse or prescriptive rights. The Village shall have no responsibility to enforce any
49 promulgated rules and regulations pertaining to the Walking Path or the Sidewalks, but
50 shall be required to enforce any trespassing or other behavior that it would enforce or
51 otherwise address on any other owner's private property in the Village of Elm Grove.
- 52 4. Indemnity. Developer agrees to indemnify and hold harmless the Village, its officers,
53 agents and employees against any and all actions, damages, judgments, costs, or fees of
54 any kind whatsoever arising out of any negligence or willful misconduct of Developer, its
55 agents, or employees relating to this Agreement.
- 56 5. Run with the Land/Release upon Conveyance. This Agreement shall be binding upon,
57 inure to the benefit of and run with the Apartment Property and be binding upon all the
58 owners thereof and their heirs, successors and assigns, provided that upon the conveyance
59 of by any owner, including without limitation, Developer or its affiliates, any portion of
60 the Apartment Property, transferring owner shall be fully released from all liability or
61 obligations hereunder with respect to the portion of the Apartment Property so conveyed
62 arising after the date of such conveyance.
- 63 6. Estoppel Certificate. Within ten (10) days after request therefor, the parties hereto agree
64 to provide an estoppel certificate to the requesting party, its lenders, or any proposed
65 purchaser of all or any part of the Property, or such purchaser's lenders, stating that the
66 requesting party is not in default hereunder or if the requesting party is in default hereunder
67 setting forth any such defaults.
- 68 7. Severability. If any term, provision or condition contained in the Agreement shall, to any
69 extent, be invalid or unenforceable, the remainder of the Agreement (or the application of
70 such term, provision or condition to persons or circumstances other than those in respect
71 of which it is invalid or unenforceable) shall not be affected thereby, and each term,
72 provision or condition of the Agreement shall be valid and enforceable to the fullest extent
73 permitted by law.
- 74 8. Recording. The Agreement shall be recorded in the records of Waukesha County,
75 Wisconsin.
- 76 9. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of the
77 Agreement.

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

80 To the Village: Village Clerk
81 13600 Juneau Blvd.
82 Elm Grove, WI 53122

83 To Developer: c/o Mandel/Caroline Heights Apartments LLC
84 330 East Kilbourn St., Suite 600 South
85 Milwaukee, WI 53202
86 Attention: Phil Aiello

87 with a copy to: Foley & Lardner LLP
88 777 East Wisconsin Ave.
89 Milwaukee, WI 53202
90 Attention: Candace Flatley

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

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

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

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

100 *[SIGNATURES ON FOLLOWING PAGE]*

DEVELOPER:

Caroline Heights Apartments LLC

By: Mandel/Caroline Heights Apartments LLC

Its: Manager

By: BR Mandel LLC

Its: Manager

By: _____

Name: Barry R. Mandel

Its: Manager

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 2023 the above-named Barry R. Mandel, 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/Caroline Heights Apartments LLC, the Manager of Caroline Heights Apartments LLC.

Subscribed and sworn to before me
this _____ day of _____, 2023.

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

EXHIBIT A

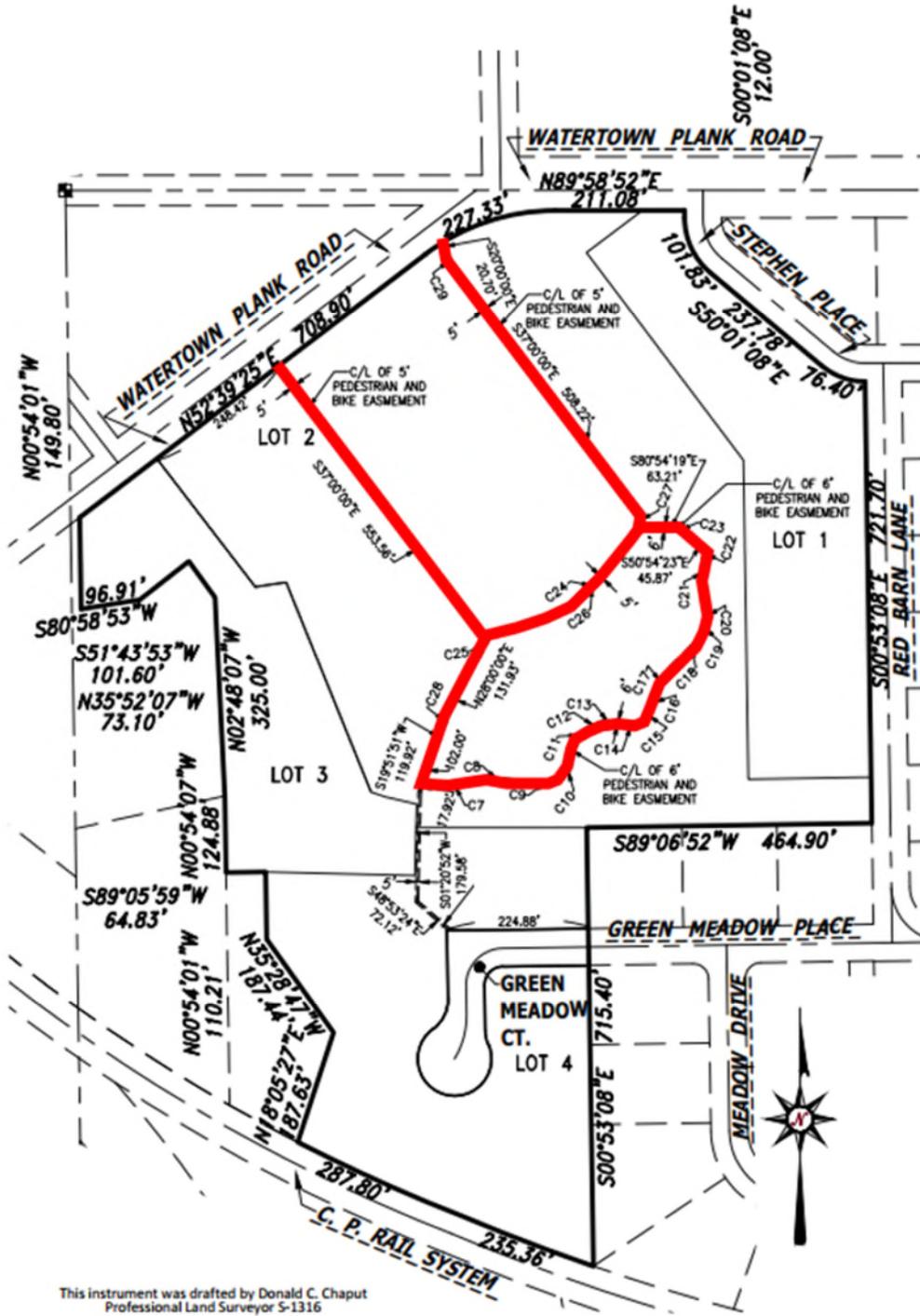
Apartment Property Legal Description

LOT 2 OF CERTIFIED SURVEY MAP NO. 12401, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR WAUKESHA COUNTY, WISCONSIN ON DECEMBER 14, 2022, IN VOLUME 128 OF CERTIFIED SURVEY MAPS, PAGES 144-151, AS DOCUMENT NO. 4702106, SAID CERTIFIED SURVEY MAP BEING A REDIVISION OF PART OF THE NORTHWEST 1/4 AND SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWN 7 NORTH, RANGE 20 EAST, IN THE VILLAGE OF ELM GROVE, WAUKESHA COUNTY, WISCONSIN.

Tax Parcel No. EGV 1105998005

EXHIBIT B

Easement Area



This instrument was drafted by Donald C. Chaput
Professional Land Surveyor S-1316

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'