

**STORM WATER MANAGEMENT,
FACILITY MAINTENANCE AND
EASEMENT AGREEMENT**

1 This Storm Water Management, Facility Maintenance
2 and Easement Agreement is dated as of _____, 2023 (this
3 "Agreement") by and between the VILLAGE OF ELM GROVE,
4 a Wisconsin Municipality ("Village") and CAROLINE
5 HEIGHTS APARTMENTS LLC, a Wisconsin limited liability
6 company ("Developer"), collectively referred to as the "Parties."

7 **RECITALS:**

Name and Return Address

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

Tax Key Numbers: EGV 1105998005

8 A. School Sisters of Notre Dame Central Pacific Province,
9 Inc. ("SSND") as the original owner of the real property
10 located in the Village and legally described on Exhibit A
11 (the "Property") caused, and the Village approved, the
12 Property being divided into four parcels by certified
13 survey map, a copy of which is attached hereto as
14 Exhibit B (the "CSM"), which CSM has now been
15 recorded.

16 B. Developer is now the owner of the real property depicted
17 as Lot 2 on the CSM and legally described on Exhibit C
18 attached hereto and located in the Village (the
19 "Apartment Property").

20 C. Affiliates of Developer have the right to purchase from SSND two parcels of real estate
21 located in the Village, adjacent to the Apartment Property, depicted as Lots 1 and 4 of the
22 CSM, and legally described on Exhibit D attached hereto (collectively the "Single-Family
23 Parcels" and together with the Apartment Property, the "Property").

24 D. Simultaneously herewith Developer and the Village have entered into a Development
25 Agreement in connection with development of the Apartment Property and the preparation
26 of the Single-Family Parcels for development through on and off-site improvements (the
27 "Development Agreement"), pursuant to which, among other matters, Developer has
28 agreed to develop a multifamily residential apartment project on the Apartment Property
29 as more particularly described in the Development Agreement (the "Apartment Project")
30 and also agreed to certain restrictions in the Development Agreement with respect to any
31 development of the Single-Family Parcels.

32 E. Pursuant to the Development Agreement, Developer has agreed to construct a storm water
33 management system on and serving the Property, to enter into this Agreement covering the
34 ongoing maintenance of the SWM System (as hereinafter defined), to provide for erosion
35 control, and to provide for easements to be granted to Developer, SSND and the Village in
36 connection therewith, all as more particularly set forth herein.

37 F. As the current owner of the Single-Family Parcels, SSND has agreed to execute a Consent
38 to this Agreement, consenting to the recording of this Agreement against the Single-Family
39 Parcels, consenting to and granting the easements on, over, under and across the Single-
40 Family Parcels as more particularly set forth below, provided that so long as SSND does
41 not attempt to develop the Single-Family Parcels, SSND will have no obligations under
42 this Agreement other than as set forth above as to its consents and its grant of the above
43 described easements and SSND's agreement that this Agreement will run with and bind
44 the Single-Family Parcels and any future owners thereof, including, without limitation, any
45 Developer affiliate.

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

48 1. SWM System Construction. Pursuant to the terms of the Development Agreement,
49 Developer has agreed to construct, install, furnish, and provide facilities for storm and
50 surface water drainage management for the Property (the "SWM System") in substantial
51 accordance with the Plans and Specifications set forth in Exhibit E (the "Plans and
52 Specifications") or as may need to be modified to be in accordance with all applicable
53 State, Federal, and Village statutes, regulations, ordinances, and MMSD Chapter 13
54 regulations. The Plans and Specifications depict the planned location of each storm water
55 management practice undertaking affected by this Agreement and contain a summary of
56 key engineering calculations and other data used to design the infiltration pond, dry ponds
57 #1, #2 and #3, and StormTrap System (as shown on the Plans and Specifications) and also
58 show detailed cross-section and plan view of the infiltration basin and dry ponds #1, #2
59 and #3, and StormTrap System.

60 Upon completion of the SWM System, Developer's project engineer shall provide as-builts
61 of the SWM System and certification to Developer and the Village that the design and
62 construction of the dry ponds and infiltration basin (collectively, "Basins") comply with
63 all regulatory agency requirements, applicable technical standards and the Village's
64 requirements. After construction certification has been accepted by the Village engineer,
65 the Parties agree that they shall add addendum(s) to this Agreement which shall be recorded
66 with the Waukesha County Register of Deed by Developer showing any changes to the
67 exhibits attached hereto as a result of actual construction with proof of such recording being
68 delivered to the Village engineer for confirmation and the Village engineer shall then
69 deliver the recorded addendum(s) to the Village Clerk. The addendum(s) may contain
70 several additional exhibits.

71 2. Intentionally Deleted.

72 3. Grant of Perpetual Easements by Single-Family Parcels. By the execution of the Consent
73 attached hereto, SSND hereby (a) consents to the recording of this Agreement against the
74 Single-Family Parcels and agrees and acknowledges that this Agreement will run with and
75 bind the Single-Family Parcels, (b) grants and conveys to Developer, as the owner of the
76 Apartment Property, its successors and assigns, forever: (i) a non-exclusive perpetual

77 easement, for the benefit of the Apartment Property, on, over, under and across those
78 portions of the Single-Family Parcels on which the SWM System will be located, which
79 areas are described and illustrated on Exhibit F (“Single-Family Easement Areas” and
80 together with the Apartment Easement Areas (as hereinafter defined), the “Easement
81 Areas”), including the right, obligation and authority to install, construct, inspect, use,
82 operate, maintain, repair, remove, and replace (including reconstruction) the portions of
83 the SWM System and erosion control measures located or to be located in the Single-
84 Family Easement Areas, (ii) a non-exclusive perpetual easement for the benefit of the
85 Apartment Property, on, over, under and across the Single-Family Easement Areas for the
86 natural drainage of ordinary surface water and storm water from the Property to the Basins
87 on the Apartment Property included as part of the SWM System, (iii) a non-exclusive
88 perpetual easement for the benefit of the Apartment Property, on, over, under and across
89 those portions of the Single-Family Parcels as necessary or desirable for ingress and egress
90 to and from the SWM System; (iv) a springing temporary non-exclusive easement and right
91 of ingress and egress (“Temporary Easement”) for reasonable access across the Single-
92 Family Parcels to perform the construction, repair, reconstruction or replacement of the
93 SWM System; and (v) the right to grant the Village the easement rights described above
94 without obligation. The Temporary Easement shall automatically cease thirty (30) days
95 after the construction, repair, reconstruction or replacement work is completed and will be
96 reinstated automatically when any other such work commences, provided that after the
97 initial construction of the SWM System and final certification by the Developer’s engineer
98 and approval by the Village and except in the event of an emergency, Developer or its
99 successors or assigns, as owner of the Apartment Property, will provide the then owner of
100 the impacted Single-Family Parcel(s) with at least 10 days’ prior written notice if
101 Developer will be reinstating the Temporary Easement. For so long as SSND owns a
102 Single-Family Parcel, Developer, as the owner of the Apartment Property, and its
103 successors and assigns, shall maintain commercial general liability insurance insuring the
104 use of (or activities on) the Single-Family Easement Areas in an amount not less than
105 \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Such policy shall name SSND,
106 as an additional insured and shall provide that the insurer waives any right of subrogation.
107 Upon conveyance by SSND of the Single-Family Parcels, SSND is fully released from any
108 obligation or liability, express or implied, that it may have associated with this Agreement.
109 For the avoidance of doubt, provided SSND does not develop the Single-Family Parcels,
110 then SSND’s only obligations under this Agreement are the above consent and grant of
111 easements.

- 112 4. Grant of Perpetual Easements to Lot 1 and Lot 3 of the CSM and to Lot 4 of the CSM.
113 Developer hereby grants and conveys to SSND, as the owner of Lot 1 and Lot 3 of the
114 CSM, its successors and assigns, forever a non-exclusive perpetual easement, for the
115 benefit of Lot 1 and Lot 3 of the CSM, the right to drain ordinary surface water and storm
116 water on, over, under and across those portions of the Apartment Property to Lot 4 of the
117 CSM, all as described on Exhibit G (“Lot 1 Drainage Easement”) and all of which are part
118 of the SWM System. Developer hereby grants and conveys to SSND, as the owner of Lot
119 4 of the CSM, its successors and assigns, forever a non-exclusive perpetual easement, for
120 the benefit of Lot 4 of the CSM, the right to drain ordinary surface water and storm water

121 on, over, under and across the Apartment Property to the Basin located on Lot 4 of the
122 CSM, as described on Exhibit H (“Lot 4 Drainage Easement” and together with Lot 1
123 Drainage Easement, the “Apartment Easement Areas”) and which Basin is part of the
124 SWM System.

125 5. Outlots. As more particularly set forth in Section IX.C. of the Development Agreement,
126 an affiliate of the Developer intends to purchase the Single-Family Parcels and to convey
127 the Single-Family Parcels to a developer of single family residences. Pursuant to the
128 Development Agreement, in order to develop the Single-Family Parcels as individual
129 residential lots the single family developer will be required to record a plat as to each
130 Single-Family Parcel. The plat for Lot 4 of the CSM will create outlots upon which the
131 Basins and other parts of the SWM System will have been constructed (collectively, the
132 “Outlots”). The Developer intends to require the single family developer to convey the
133 Outlots to the owner of the Apartment Property once the plat for Lot 4 has been recorded.
134 Immediately following the conveyance of the Outlots to the owner of the Apartment
135 Property, the owner of the Apartment Property shall grant a non-exclusive perpetual
136 easement to the then owner(s) of remaining portions of Lot 4 of the CSM and its/their
137 successors and assigns, granting such remaining portions of Lot 4 of the CSM the right to
138 drain ordinary surface water and storm water on, over, under, across and the Outlots to the
139 Basins and other areas located on the Outlots and included as part of the SWM System.
140 For the avoidance of doubt, the Outlots and, if the Outlots are not created for any reason,
141 the land upon which the Outlots are intended to be located, is and will remain subject to
142 the easements and rights set forth in the Agreement no matter their ownership.

143 6. Maintenance Plan. In accordance with Village of Elm Grove Code – Part III, Land Use
144 Legislation/Water Control/Article III Stormwater Management 325-21 to 325-45,
145 Developer, as the owner of the Apartment Property, together with its successors and
146 assigns, but only while each owns the Apartment Property, agrees to maintain storm water
147 management practice(s) on the Property in accordance with the Storm Water Maintenance
148 Plan agreed to by Developer and the Village and attached hereto as Exhibit I (the “SWM
149 Maintenance Plan”). The SWM Maintenance Plan describes those ongoing maintenance
150 activities that must be carried out to maintain compliance with this Agreement. In
151 particular, Developer, as the owner of the Apartment Property, together with its successors
152 and assigns, but only while each owns the Apartment Property, shall be responsible for the
153 perpetual maintenance, operation, and, as needed, replacement of the SWM System in
154 accordance with the SWM Maintenance Plan, including any erosion control required in
155 connection with any such activities and shall be responsible for the inspection on not less
156 than an annual basis of the SWM System as required under the SWM Maintenance Plan or
157 to satisfy applicable storm and surface water management performance standards as may
158 be promulgated by any governmental authority with jurisdiction and that are both
159 applicable to and then enforceable against the SWM System. This includes, but is not
160 limited to, the responsibility for, on a routine and emergency basis, and as needed,
161 conducting all dredging and/or cleaning of the SWM System and maintaining or replacing
162 storm water management or conveyance facilities to assure that they perform, at a
163 minimum, in accordance with the performance standards set forth in the SWM

164 Maintenance Plan or to satisfy applicable storm and surface water management
165 performance standards as may be promulgated by any governmental authority with
166 jurisdiction and that are both applicable to and then enforceable against the SWM System.
167 Developer, as the owner of the Apartment Property, together with its successors and
168 assigns, but only while each owns the Apartment Property, shall also comply with all
169 provisions of Sections 325-21 through 325-45 of the Village Code of Ordinances and the
170 provisions of any then applicable State or Federal statute or regulation concerning storm
171 water management and discharge or, but only if applicable to and required for then existing
172 facilities such as the SWM System, as such ordinances, statutes or regulations are amended
173 from time-to-time.

174 Upon written notification by the Village, and only if the Village has good faith reason to
175 believe the SWM System has not been maintained in compliance with this Agreement, the
176 Developer or its successors or assigns shall, at their own cost and within a reasonable time
177 period determined by the Village, have an inspection of the storm water management
178 practice conducted by an independent, qualified professional, file a report with the Village
179 (a "Report") and complete any maintenance or repair work recommended in the Report.
180 Developer, or its successors or assigns shall be liable for the failure to undertake any
181 required maintenance or repairs. The Village shall be entitled to be reimbursed for and
182 awarded its reasonable attorney and engineering fees in enforcing this Agreement even if
183 litigation is not commenced. The Village shall not request a Report more than once in any
184 calendar year unless there is a Village Declared Emergency.

185 In addition, and independent of the requirements of the SWM Maintenance Plan, the
186 Village, or its designee, is authorized to access the Easement Areas upon at least one day's
187 prior written notice except in the event of a Village Declared Emergency, as necessary to
188 conduct inspections of the storm water management practices or drainage easements to
189 ascertain compliance with the intent of this Agreement and the activities prescribed in the
190 SWM Maintenance Plan. Upon notification by the Village of required maintenance or
191 repairs, Developer or its successors or assigns shall complete the specified maintenance or
192 repairs within a reasonable time frame determined by the Village.

193 7. Erosion Control: Apartments. Developer, as the owner of the Apartment Property,
194 together with its successors and assigns, but only while each owns the Apartment Project,
195 shall at all times promptly repair any siltation or erosion damage to adjoining surfaces and
196 drainage ways resulting from land developing, disturbing or construction activities on the
197 Apartment Property. Developer, as the owner of the Apartment Property, together with
198 its successors and assigns, but only while each owns the Apartment Property, shall maintain
199 all drainage systems, erosion control measures and other facilities located on the Apartment
200 Property in a manner consistent with other similarly situated developments in the
201 southeastern Wisconsin area.

202 In particular, Developer shall install and maintain Village-approved erosion control
203 methods/procedures in the approved erosion control plan for the Property as set forth in the
204 Plans and Specifications (as such term is defined in the Development Agreement) (the

205 “Erosion Control Plan”) prior to and until commencement of any ground disturbing
206 activities by Developer on the Property. Developer shall thereafter provide and maintain
207 erosion control in accordance with Wisconsin Department of Natural Resources (the
208 “DNR”) Best Management Practices until the Apartment Project and, but only if
209 applicable, the Single-Family Parcels are landscaped in accordance with Developer’s Plans
210 and Specifications.

211 Unless construction commences within thirty (30) days after completion of all demolition
212 activity on the Apartment Property by Developer, weather permitting, Developer shall
213 restore the Property to an erosion-controlled and dust-free condition, which may include
214 temporary vegetation and/or other approved erosion control devices, in conformity with
215 the Plans and Specifications and in accordance with all applicable Village ordinances, and
216 State and Federal statutes and regulations.

217 Developer, and each of its agents, contractors, and subcontractors shall at all times remain
218 in compliance with all applicable municipal and state erosion control restrictions and
219 requirements including, but not limited to the DNR’s Best Management Practices and
220 conditions of its DNR Chapter 30 permit until the Apartment Project is landscaped in
221 accordance with the Plans and Specifications. Until completion of the Apartment Project,
222 Developer shall implement erosion control plans as set forth in the Erosion Control Plan
223 and conforming to the requirements of the Village Code of Ordinances and in connection
224 therewith:

225 A. Developer shall notify the Public Works Director of the Village 48 hours prior to
226 the commencing of any land disturbing activity on the Property.

227 B. Developer shall notify the Public Works Director of completion of any erosion
228 control measures at the Property within 24 hours after their installation.

229 C. Developer shall install all erosion control measures as identified in the Erosion
230 Control Plan.

231 D. During construction of the Dedicated Improvements (as defined in the
232 Development Agreement), the SWM System and the Apartment Project, Developer
233 shall at all times promptly repair any siltation or erosion damage to adjoining
234 surfaces and drainage ways on adjacent private property and public rights-of-ways
235 resulting from land developing, disturbing or construction activities by Developer
236 on the Property.

237 E. During construction of the Dedicated Improvements, the SWM System and the
238 Apartment Project, Developer shall inspect the construction erosion control
239 measures on the Property after each rain of 0.5 inches or more and at least once
240 each week and make all needed repairs without delay. Developer shall prepare a
241 written report detailing each inspection using a format approved by the Department
242 of Natural Resources. A copy of each report shall be provided to the Village upon
243 completion. The Village retains the right, but not the obligation, to perform its own

244 periodic erosion control inspections. Inspections performed by the Village do not
245 relieve the Developer from its obligation to perform periodic inspections described
246 above.

247 F. Developer shall keep a copy of the Erosion Control Plan for construction on the
248 Apartment Property.

249 G. If, during construction of the Dedicated Improvements, the SWM System and the
250 Apartment Project, any erosion control facilities or measures (including but not
251 limited erosion logs, erosion bales, ditch checks, inlet protection, temporary
252 sediment basins, tracking pads, swales and berms) are washed out or otherwise
253 rendered ineffective as determined by the Building Inspector, Public Works
254 Director or Village Engineer, Developer shall replace said facilities within 24 hours
255 of being so notified in writing by the Building Inspector, Village Engineer or Public
256 Works Director. If Developer fails to reinstall said facilities or measures within 48
257 hours of being so notified by the Building Inspector, Village Engineer or Public
258 Works Director, the Village may, but is not required to, reinstall said facilities and
259 charge one hundred ten percent (110%) of all costs incurred by the Village in so
260 reinstalling said facilities to Developer. The Village may collect this amount from
261 the security the Village may be holding pursuant to the Development Agreement.

262 H. All disturbed areas on all parcels of the Property on which construction is not
263 actively ongoing shall be restored by Developer to grade and re-vegetated, weather
264 permitting, within thirty (30) days of the cessation of any site preparation and
265 construction activities on and as to the Single-Family Parcels and the cessation of
266 all demolition, site preparation and construction activities on the Apartment Project
267 until the Apartment Project is landscaped in accordance with the Plans and
268 Specifications.

269 8. Erosion Control: Single Family. Until such time as a Single-Family Parcel is conveyed to
270 a third party unaffiliated with Developer, Developer, as the owner of the Apartment
271 Property, together with its successors and assigns, but only while each owns the Apartment
272 Property, shall maintain all drainage systems, erosion control measures and other facilities
273 located on all Single-Family Parcels so owned in a manner consistent with other similarly
274 situated developments in the southeastern Wisconsin area. Upon the conveyance of a
275 Single-Family Parcel to third party unaffiliated with Developer, then the then owner of that
276 Single-Family Parcel shall maintain all drainage systems, erosion control measures and
277 other facilities located on the applicable Single-Family Parcel in a manner consistent with
278 other similarly situated developments in the southeastern Wisconsin area, except if and
279 only to the extent such maintenance is to the SWM System and the responsibility of the
280 Apartment Property owner under the SWM Maintenance Plan.

281 9. Single-Family Parcel Obligations. No improvements, including without limitation,
282 buildings, monuments, gazebos, or landscaping or similar items shall be constructed,
283 installed, placed or maintained on the Single-Family Easement Areas which may cause

284 damage to or interfere in any way with the flow of storm water or which would in any way
285 unreasonably or materially increase the costs to Developer of any maintenance or repair
286 within the Easement Areas; provided that a developer of a Single-Family Parcel shall be
287 permitted to install any such landscaping if required by applicable laws. No changes of
288 grade shall be made to a Single-Family Parcel which would alter, interrupt, reduce or
289 increase the flow of surface water runoff from such parcels in violation of the SWM Plan
290 or Erosion Control Plan, without the consent of Developer as owner of the Apartment
291 Property, which consent may be withheld in Developer's sole discretion.

292 10. Failure to Maintain SWM System/Easement Grant: Village. If Developer, as the owner
293 of the Apartment Property, together with its successors and assigns, but only while each
294 owns the Apartment Property, defaults in its obligations hereunder to maintain and repair
295 the SWM System, then the Village may give Developer, its successors or assigns, as owner
296 of the Apartment Property, written notice requiring that the failure be cured within thirty
297 (30) days (or such other longer reasonable period of time) thereafter, except in the event of
298 an emergency. If Developer or its successors or assigns fails to comply with the demands
299 of the notice or if such failure cannot reasonably be cured within such thirty (30) day or
300 other specified period, then provided Developer or its successors or assigns, has
301 commenced and is diligently pursuing such cure, then such longer period of time as may
302 be reasonably necessary to cure such failure, then if not cured the Village shall have the
303 right but not the obligation to provide the required repair or maintenance and to charge the
304 cost thereof, including administrative charges, to Developer or its successors or assigns
305 and if Developer, or its successors or assigns, do not pay such amounts within thirty (30)
306 days after written demand therefor, together with an itemization and reasonable evidence
307 of such costs, then the Village may levy the costs and expenses of such inspections,
308 maintenance or repair related actions as a special charge against the Apartment Property
309 and collected as such in accordance with the procedures under s. 66.0627 Wis. Stats. or
310 subch. VII of ch. 66 Wis. Stats. For the avoidance of doubt, and notwithstanding the
311 foregoing, no notice shall be required in the event of a Village Declared Emergency. In
312 furtherance of such right, Developer grants the Village, forever, a non-exclusive easement
313 over and across the Apartment Property and a sub-easement across the Single-Family
314 Parcels, and once created the Outlots, for the purpose of access to the SWM System to
315 exercise the Village's rights for the inspection, maintenance and repair thereof, but only to
316 the extent reasonably necessary or such inspection, repair or maintenance purposes.

317 11. Failure to Maintain SWM System: Single-Family. If Developer, as the owner of the
318 Apartment Property, together with its successors and assigns, but only while each owns
319 the Apartment Property, defaults in its obligations hereunder to maintain and repair the
320 SWM System, then if such failure has or is reasonably likely to have a materially adverse
321 impact on drainage for all of, or any lot located within, a Single-Family Parcel, then the
322 owner of the impacted lot or a Single-Family Parcel may give Developer, its successors
323 or assigns, as owner of the Apartment Property, written notice requiring that the failure be
324 cured within thirty (30) days thereafter (or if such failure cannot reasonably be cured within
325 thirty (30) days, then such longer period of time as may be reasonably necessary to cure
326 such default). If Developer or its successors or assigns fails to comply with the demands

327 of the notice or if such failure cannot reasonably be cured within such thirty (30) day or
328 other specified period, then provided Developer or its successors or assigns, has
329 commenced and is diligently pursuing such cure, then such longer period of time as may
330 be reasonably necessary to cure such failure, then if not cured such impacted owner shall
331 have the right, as its sole remedy, to sue for specific performance.

332 12. Indemnity. Developer agrees to indemnify and hold harmless the Village, its officers,
333 agents and employees against any and all actions, damages, judgments, costs, or fees of
334 any kind whatsoever arising out of any negligence or willful misconduct of Developer, its
335 agents, or employees relating to this Agreement.

336 13. Run with the Land/Release upon Conveyance. This Agreement shall be binding upon,
337 inure to the benefit of and run with the Apartment Property and the Single-Family Parcels
338 and be binding upon all the owners thereof and their heirs, successors and assigns, provided
339 that upon the conveyance of by any owner, including without limitation, Developer, its
340 affiliates and SSND, of any portion of the Property, transferring owner shall be fully
341 released from all liability or obligations hereunder with respect to the portion of the
342 Property so conveyed arising after the date of such conveyance.

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

348 15. Severability. If any term, provision or condition contained in the Agreement shall, to any
349 extent, be invalid or unenforceable, the remainder of the Agreement (or the application of
350 such term, provision or condition to persons or circumstances other than those in respect
351 of which it is invalid or unenforceable) shall not be affected thereby, and each term,
352 provision or condition of the Agreement shall be valid and enforceable to the fullest extent
353 permitted by law.

354 16. Recording. The Agreement and all addendums thereto shall be recorded in the records of
355 Waukesha County, Wisconsin.

356 17. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of the
357 Agreement.

358 18. Notices. Any notice given hereunder shall be in writing and personally delivered, mailed
359 by registered or certified mail, return receipt requested, or delivered via overnight courier:
360 To the Village: Village Clerk, 13600 Juneau Blvd., Elm Grove, WI 53122 and to
361 Developer: c/o Mandel/Caroline Heights Apartments LLC, 330 East Kilbourn St., Suite
362 600 South, Milwaukee, WI 53202, Attention: Phil Aiello, with a copy to Foley & Lardner
363 LLP, 777 East Wisconsin Ave., Milwaukee, WI 53202, Attention: Candace Flatley and to
364 SSND: School Sisters of Notre Dame Central Pacific Province, Inc., 10700 West Research
365 Drive, Suite 145, Wauwatosa, WI 53226, Attention: Debra Sciano, with a copy to Godfrey

366 & Kahn, S.C., 833 East Michigan Street, Suite 1800, Milwaukee, WI 53202, Attention:
367 Elizabeth R. Johnson. Any party may, by notice as provided above, designate a different
368 address from time to time. Any such notice shall be effective on the date of receipt.

369 19. Amendment. This Agreement may not be modified, amended, or terminated except in a
370 writing signed by each party hereto.

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

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

376 *[SIGNATURES ON FOLLOWING PAGES]*

EXHIBIT A
Legal Description –Property

EXHIBIT A

LEGAL DESCRIPTION

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 20 EAST, IN WAUKESHA COUNTY, WISCONSIN.

EXCEPTING THEREFROM ALL OF THE FOLLOWING DESCRIBED PROPERTIES:

THAT PART CONVEYED IN DEED RECORDED NOVEMBER 30, 1977 IN BOOK 274 PAGE 1006,
THAT PART CONVEYED IN WARRANTY DEED RECORDED MAY 21, 1921 IN BOOK 166 PAGE 88,
THAT PART CONVEYED BY WARRANTY DEED RECORDED December 27, 1988 IN BOOK 1072 PAGE 0546,
THAT PART CONVEYED BY QUIT CLAIM DEED RECORDED JUNE 18, 1942 IN BOOK 323 PAGE 527,
THAT PART CONVEYED BY QUIT CLAIM DEED RECORDED JANUARY 22, 1951 IN BOOK 538 PAGE 468,
THAT PART CONVEYED IN QUIT CLAIM DEED RECORDED MAY 11, 1954 IN BOOK 632 PAGE 410,
THAT PART CONVEYED IN WARRANTY DEED RECORDED JUNE 4, 1959 IN BOOK 810 PAGE 455,
THAT PART CONVEYED IN WARRANTY DEED RECORDED APRIL 24, 1961 IN BOOK 880 PAGE 216,
THAT PART CONVEYED BY DEED RECORDED MAY 24, 1961 IN BOOK 882 PAGE 458,
THAT PART CONVEYED BY DEED RECORDED OCTOBER 22, 1963 IN BOOK 962 PAGE 242,
THAT PART CONVEYED BY WARRANTY DEED RECORDED SEPTEMBER 30, 1965 IN BOOK 1028 PAGE 31,
THAT PART CONVEYED BY WARRANTY DEED RECORDED MARCH 1, 1968 IN BOOK 1112 PAGE 575,
THAT PART CONVEYED BY DEED RECORDED IN VOLUME 10 PAGE 231,
THAT PART CONVEYED BY DEED RECORDED OCTOBER 25, 1870 IN VOLUME 42 PAGE 609.

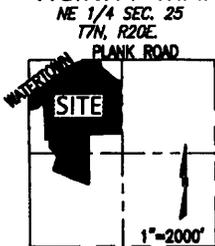
EXHIBIT B
Certified Survey Map – Property

EXHIBIT B

CERTIFIED SURVEY MAP NO. _____

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.

VICINITY MAP



Bearings are referenced to grid North of the Wisconsin State Plane Coordinate System (South Zone), dated January 2019, in which the West line of the Northeast 1/4 of Section 25, bears N00°54'01"W.

Owner/Subdivider:
Mandel Group Properties LLC
330 E. Kilbourn Ave.
Suite 600 South
Milwaukee, WI, 53202

LEGEND

- Indicates found 1/2" iron rod.
- Indicates found 1" iron pipe.
- Indicates found 2" iron pipe.
- ⊙ Indicates found stone monument.
- Indicates set 1" iron pipe, 18" in length, 1.13 lbs. per lineal foot.
- () Indicates recorded as.
- Ⓢ Indicates lands dedicated to the public.

Date: August 3, 2021

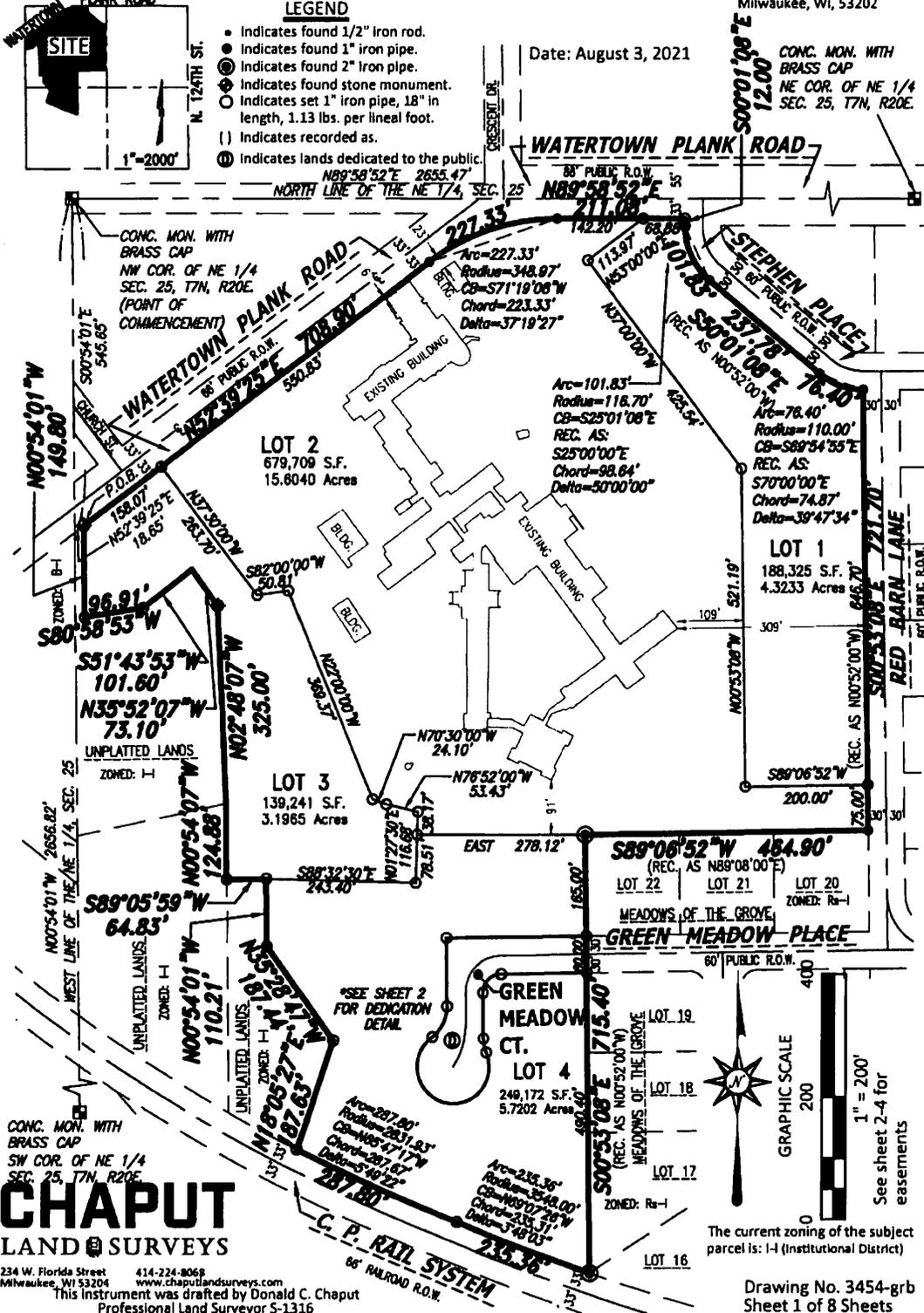


EXHIBIT C

Legal Description – Apartment Property

EXHIBIT C – Apartment Property Legal Description

CHAPUT
LAND SURVEYS

Lot 2 Legal Description

October 21, 2021

That 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.
Commencing at the Northwest corner of the Northeast 1/4 of said Section 25; thence South 00°54'01" East along the West line of said Northeast 1/4 a distance of 545.65 feet to a point on the South line of Watertown Plank Road; thence North 52°39'25" East along said South line 176.72 feet to the point of beginning of lands hereinafter described; thence North 52°39'25" East along said South line 550.83 feet to a point on the arc of a curve; thence Northeasterly along said South line and the arc of a curve 227.33 feet, whose center lies to the South, whose radius is 348.97 feet and whose chord bears North 71°19'08" East 223.33 feet to a point; thence North 89°58'52" East along said South line 142.20 feet to a point; thence South 53°00'00" West 113.97 feet to a point; thence South 37°00'00" East 425.54 feet to a point; thence South 00°53'08" East 521.19 feet to a point; thence North 89°06'52" East 200.00 feet to a point on the West line of Red Barn Lane; thence South 00°53'08" East along said West line 75.00 feet to a point; thence South 89°06'52" West along the North line of Meadows of the Grove Subdivision, 464.90 feet to a point; thence Due West 278.12 feet to a point; thence North 01°27'30" East 38.17 feet to a point; thence North 76°52'00" West 53.43 feet to a point; thence North 70°30'00" West 24.10 feet to a point; thence North 22°00'00" West 369.37 feet to a point; thence South 82°00'00" West 50.81 feet to a point; thence North 37°30'00" West 263.70 feet to the point of beginning.

Project No. 3454

EXHIBIT D

Legal Description – Single-Family Parcels

Exhibit D – Red Barn Parcel Legal Description



Lot 1 Legal Description

October 21, 2021

That 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, Commencing at the Northwest corner of the Northeast 1/4 of said Section 25; thence South 00°54'01" East along the West line of said Northeast 1/4 a distance of 545.65 feet to a point on the South line of Watertown Plank Road; thence North 52°39'25" East along said South line 727.55 feet to a point on the arc of a curve; thence Northeasterly along said South line and the arc of a curve 227.33 feet, whose center lies to the South, whose radius is 348.97 feet and whose chord bears North 71°19'08" East 223.33 feet to a point; thence North 89°58'52" East along said South line 142.20 feet to the point of beginning of lands hereinafter described; thence North 89°58'52" East along said South line 68.88 feet to a point on the arc of a curve; thence Southeasterly along the South line of Stephen Place and the arc of a curve 101.83 feet, whose center lies to the Northeast, whose radius is 116.70 feet and whose chord bears South 25°01'08" East 98.64 feet to a point; thence South 50°01'08" East along said South line 237.78 feet to a point on the arc of a curve; thence Southeasterly along said South line and the arc of a curve 76.40 feet, whose center lies to the North, whose radius is 110.00 feet and whose chord bears South 69°54'55" East 74.87 feet to a point; thence South 00°53'08" East along the West line of Red Barn Lane 646.70 feet to a point; thence South 89°06'52" West 200.00 feet to a point; thence North 00°53'08" West 521.19 feet to a point; thence North 37°00'00" West 425.54 feet to a point; thence North 53°00'00" East 113.97 feet to the point of beginning.

Project No. 3454

Exhibit D – Green Meadow Parcel Legal Description

CHAPUT
LAND SURVEYS

Lot 4 Legal Description

October 25, 2021

That 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.
Commencing at the Northwest corner of the Northeast 1/4 of said Section 25; thence South 00°54'01" East along the West line of said Northeast 1/4 a distance of 1118.63 feet to a point; thence North 89°05'59" East 309.20 feet to the point of beginning of lands hereinafter described; thence South 88°32'30" East 243.40 feet to a point; thence North 01°27'30" East 78.51 feet to a point; thence Due East 278.12 feet to a point; thence South 00°53'08" East along the West line of Meadows of the Grove Subdivision, 165.00 feet to a point; thence South 89°06'52" West 230.58 feet to a point; thence South 00°53'08" East 111.48 feet to a point on the arc of a curve; thence Southwesterly 57.47 feet along the arc of a curve whose center lies to the Northwest, whose radius is 60.00 feet and whose chord bears South 26°33'19" West 55.30 feet to a point on the arc of a curve; thence Northeasterly 269.40 feet along the arc of a curve whose center lies to the North, whose radius is 60.00 feet and whose chord bears South 74°37'51" East 93.75 feet to a point on the arc of a curve; thence Northwesterly 23.43 feet along the arc of a curve whose center lies to the East, whose radius is 60.00 feet and whose chord bears North 12°04'18" West 23.28 feet to a point; thence North 00°53'08" West 73.96 feet to a point on the arc of a curve; thence Northeasterly 47.12 feet along the arc of a curve whose center lies to the Southeast, whose radius is 30.00 feet and whose chord bears North 44°06'52" East 42.43 feet to a point; thence North 89°06'52" East 140.58 feet to a point; thence South 00°53'08" East along the West line of Meadows of the Grove Subdivision, 490.40 feet to a point on the North line of the C.P. Rail System and the arc of a curve; thence Northwesterly 235.36 feet along said North line and the arc of a curve, whose center lies to the Northeast, whose radius is 3548.00 feet and whose chord bears North 69°07'26" West 235.31 feet to a point on the arc of a curve; thence Northwesterly 287.80 feet along said North line and the arc of a curve, whose center lies to the Northeast, whose radius is 2831.93 feet and whose chord bears North 65°47'17" West 287.67 feet to a point; thence North 18°05'27" East 187.63 feet to a point; thence North 35°28'47" West 187.44 feet to a point; thence North 00°54'01" West 110.21 feet to the point of beginning.

Project No. 3454

EXHIBIT E
Plans and Specifications

Final Village of Elm Grove
Approved Plans and
Specifications to be inserted

EXHIBIT E

The Conceptual Stormwater Management Report – School Sisters of Notre Dame Development – Elm Grove, WI prepared by KSingh & Associates and dated December 21, 2020 (First Submittal), April 27, 2021 (Second Submittal), and July 20, 2021 (Third Submittal) is hereby incorporated by reference.

EXHIBIT F
Single-Family Easement Areas

Exhibit F – Single Family Easement Areas

Note: Easement runs 10' onto Lots 4, 5, 6, 7, 8, and 9

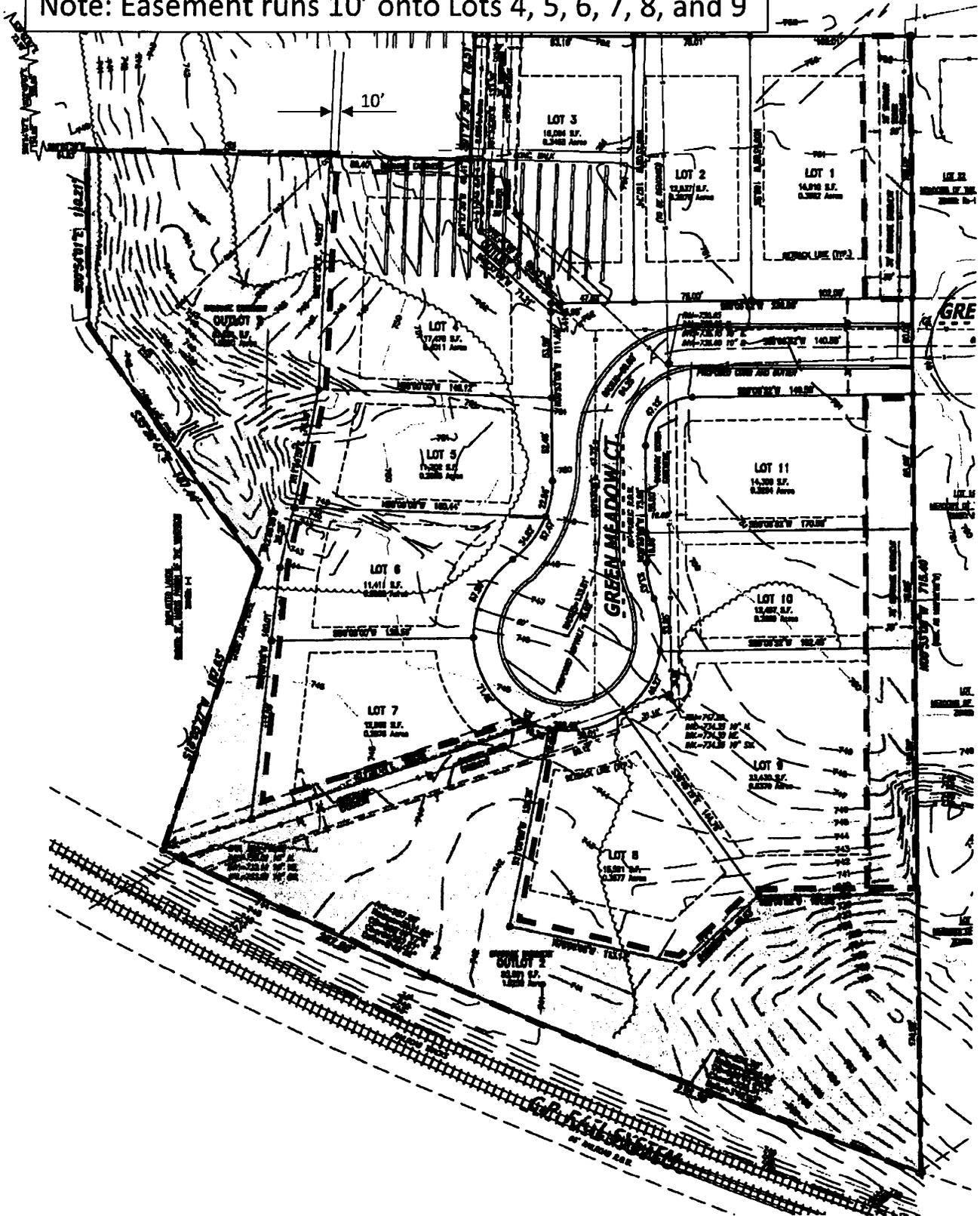


Exhibit F – Single Family Easement Areas

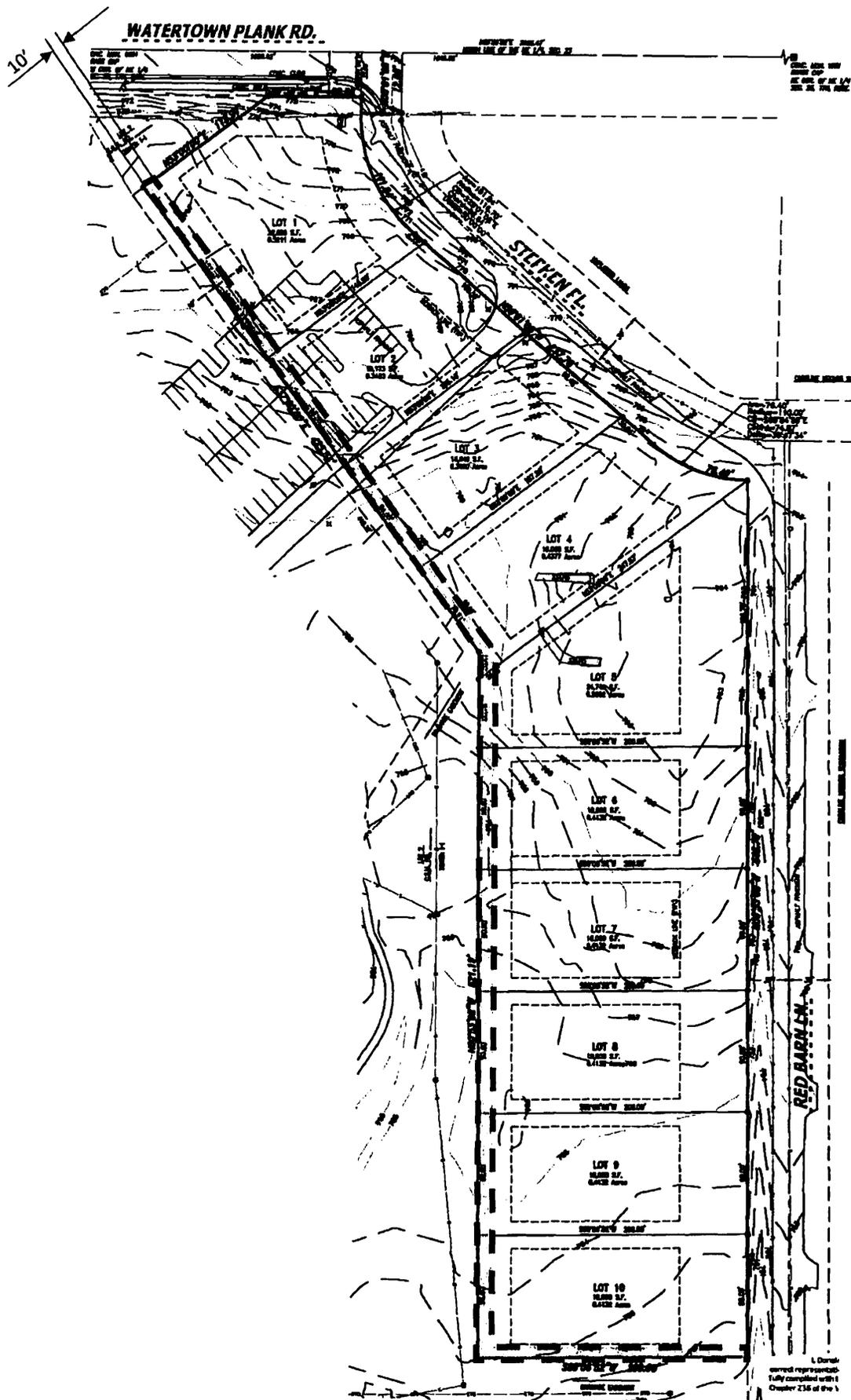


EXHIBIT G
Lot 1 Drainage Easement

CERTIFIED SURVEY MAP NO. _____

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.

DRAINAGE EASEMENTS

Notes:

- Any future development of Lot 1 may drain storm water to the drainage easement on Lot 2
- Any future development of Lot 4 may drain storm water to the drainage easement on Lots 2 & 4

Date: August 3, 2021

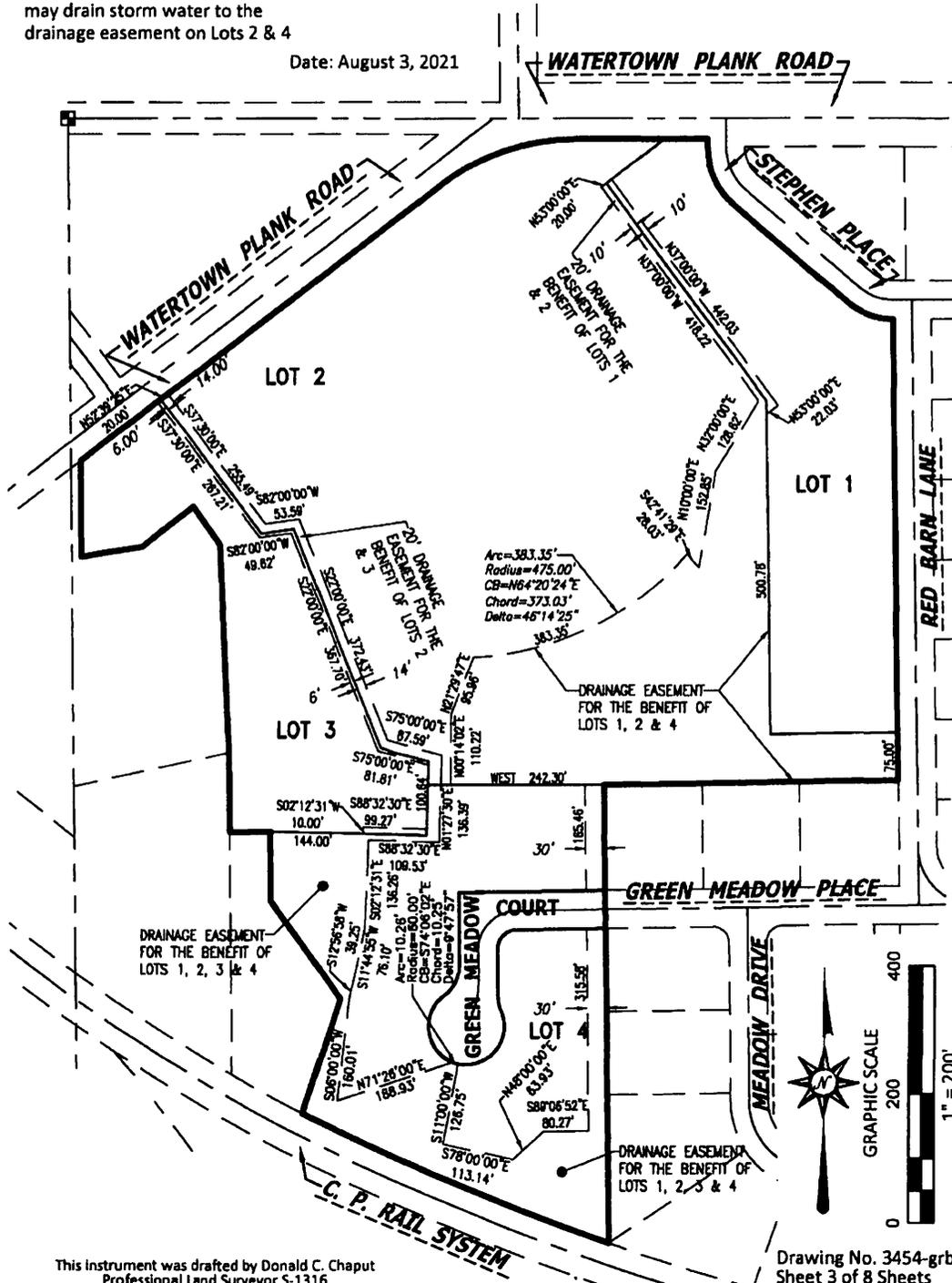


EXHIBIT H
Lot 4 Drainage Easement

CERTIFIED SURVEY MAP NO. _____

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.

DRAINAGE EASEMENTS

- Notes:**
- Any future development of Lot 1 may drain storm water to the drainage easement on Lot 2
 - Any future development of Lot 4 may drain storm water to the drainage easement on Lots 2 & 4

Date: August 3, 2021

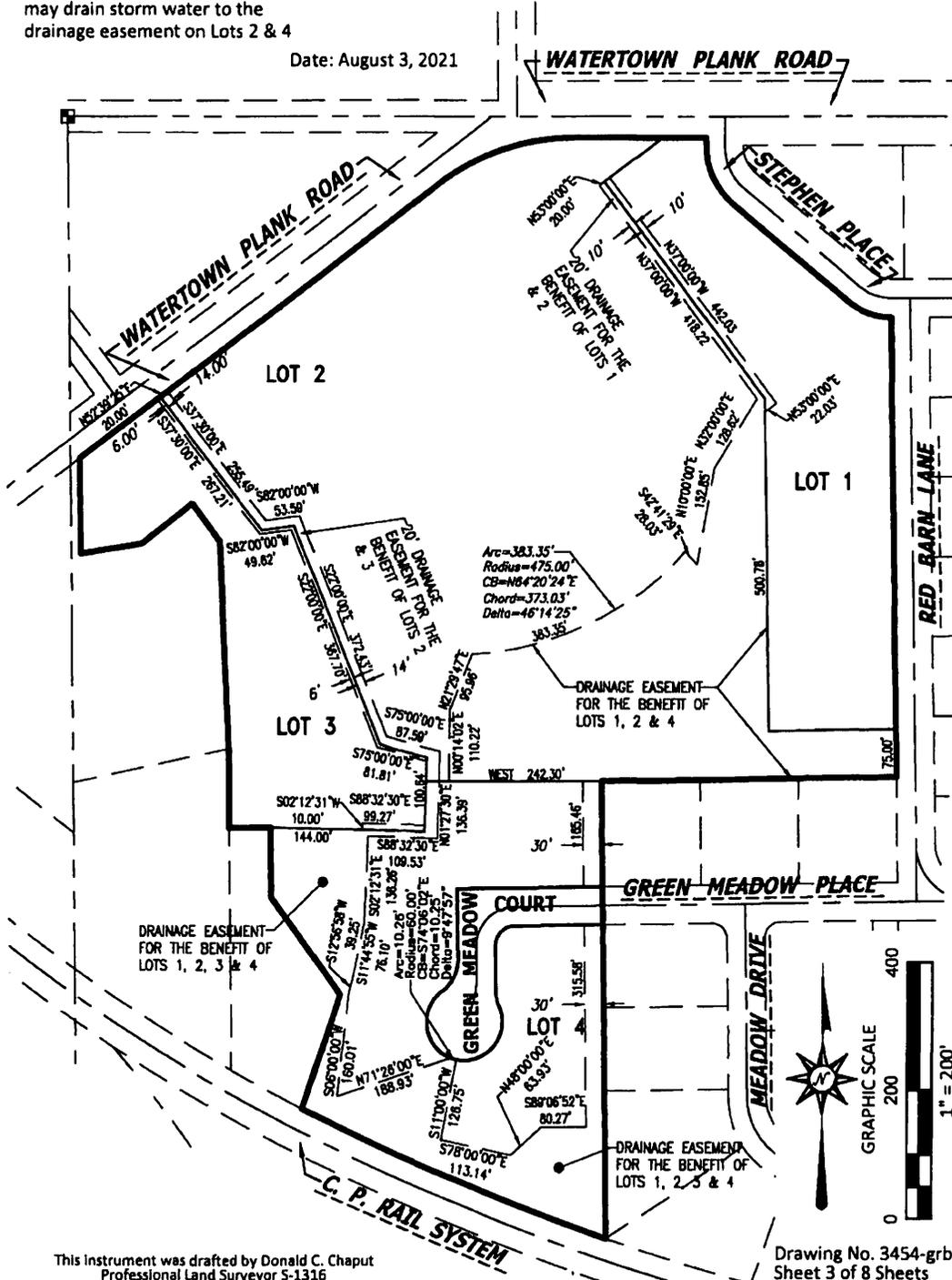


EXHIBIT I
SWM Maintenance Plan

EXHIBIT I

Storm Water Practice Maintenance Plan

This exhibit explains the basic function of each of the storm water practices listed in Exhibit B and prescribes the minimum maintenance requirements to remain compliant with this Agreement. The maintenance activities listed below are aimed to ensure these practices continue serving their intended functions in perpetuity. The list of activities is not all inclusive, but rather indicates the minimum type of maintenance that can be expected for this particular site. Access to the stormwater practices for maintenance vehicles is shown in Exhibit B. Any failure of a storm water practice that is caused by a lack of maintenance will subject the Owner(s) to enforcement of the provisions listed on page 1 of this Agreement by the Village.

System Description:

An underground stormwater storage system, StormTrap system, will be installed within the main parking loop area. This system is utilized to store excess stormwater during large rain events and to reduce peak flows. The StormTrap system drains to a storm sewer pipe that runs over the parking garage between buildings 1 and 3 and ultimately outlets in Dry Pond #1. Dry Pond #1 also receives flow from roof drains from buildings 1 and 3, as well as flow from the eastern bioswale. Dry Pond #1 and Dry Pond #2 both outlet to pipes which discharge to the South Campus East Swale on the southeastern portion of the site. Dry pond #2 receives flow from the eastern homes via pipe routing. Dry pond #3 outlets to a pipe which discharges to the existing Southeast Basin. Dry Pond #3 receives flow from both the infiltration basin, as well as flow from the south campus road swales which accumulate flow from the south campus homes and surrounding area. . The infiltration basin has freeboard at the 100-year even but has an overland flow route via weir that is outletted to the south campus west swale, which outlets to Dry Pond #3 and ultimately is discharged to the existing Southeast Basin. The infiltration basin is designed to infiltrate runoff from its tributary area and reduce pre-development downstream peak flows The infiltration basin also receives flow via pipe routing from the western swale which accumulates runoff from the western portion of the site. The existing Southeast Basin also receives from offsite areas, but this is offset in existing vs. proposed conditions. The storm system must be maintained as specified in this Agreement (see Figures 1, 2 and 3). Catch basins are to be installed within the main parking loop area. Up-Flo filters will also be utilized to help reach TSS reduction goal of 60%. The entire site will achieve a 64.24% TSS reduction.

The underground stormwater storage system receives direct runoff from a 5.220 acre drainage area. The infiltration basin receives direct runoff from a 6.002 acre drainage area. Dry Pond #1 receives direct runoff from a 8.634 acre drainage area. Dry Pond #2 receives direct runoff from a 2.150 acre drainage area. Dry Pond #3 receives direct runoff from a 3.480 acre drainage area. The southeast basin receives direct runoff from a 0.718 acre drainage area. 0.626 acres drainage flow are undetained and flow offsite. "As-built" construction drawings of the infiltration basin and dry ponds #1, #2 and #3, showing actual dimensions, elevations, outlet structures, etc. will be recorded as an addendum(s) to this agreement within 60 days after the Village accepts verification of construction from the project engineer.

Minimum Maintenance Requirements:

To ensure the proper long-term function of the storm water management practices described above, the following activities must be completed:

1. All outlet pipes must be checked monthly to ensure there is no blockage from floating debris or ice. Any blockage must be removed immediately.
2. Snow shall not be dumped directly onto the infiltration basin and dry ponds #1, #2 and #3 areas.
3. Inspect soil and repair eroded areas monthly and after heavy rains (greater than or equal to 1-inch of rainfall).
4. Remove litter and debris monthly.

EXHIBIT I

5. No trees are to be planted or allowed to grow on the earthen berms. Tree root systems can reduce soil compaction and cause berm failure. The berms must be inspected annually and any woody vegetation removed.
6. If algae or weed growth becomes a nuisance (decay odors, etc.), it must be removed from the infiltration basin and dry ponds #1, #2 and #3 and deposited where it cannot drain back into the infiltration basin and dry ponds #1, #2 and #3.
7. When sediment exceeds 3-inches from the bottom of the infiltration basin and dry ponds #1, #2 and #3 and/or once a year the sediment shall be removed. During the first year of operation the sediment shall be cleared at a minimum of twice for the year. All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the basin.
8. Following removal of sedimentation, soil, mulch and plantings shall be replaced as necessary to restore infiltration basin and dry ponds #1, #2 and #3 to original design.
9. When sediment exceeds 3-inches from the bottom of the catch basin and/or twice a year the sediment shall be removed. All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the catch basin.
10. Visually inspect StormTrap system following major storm events or annually. Utilizing a sediment pole, measure and document the amount of silt at each manhole location. Inspect pipe openings for blockages at this time.
11. Any blockages should be removed as soon as practical. The StormTrap system should be completely cleaned whenever the sediment occupies more than 10-15% of the originally designed system's volume.
12. Stormwater check valve should be inspected at minimum monthly for damage, wear, and buildup of debris.
13. Any other repair or maintenance needed to ensure the continued function of the storm water practices or as ordered by the Village under the provisions listed on page 1 of this Agreement.
14. Up-Flo Filters used to capture total suspended solids (TSS) shall be inspected semi-annually in early spring and early fall. Inspections and cleanings of TSS and other debris shall be performed in accordance with the manufacturer Operation and Maintenance Manual.
15. If any part of any bioswale components has settled 4-inches lower than the design elevation, or inspector determines bioswale unsound, bioswale should be built back to the design elevation and repaired to specifications.