

Amended and Restated Trail Easement

Document Number

Recording Area

Name and Return Address

Foley & Lardner LLP
Attn: Candace D. Flatley
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306

WAKC1305480; WAKC1305481; WAKC1305482

Parcel Identification Number (PIN)

Document Drafted By: Candace Flatley of Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, WI 53202-5306.

AMENDED AND RESTATED TRAIL EASEMENT

This Amended and Restated Trail Easement Agreement (this “**Agreement**”) is entered into by BridgeWalk Apartments LLC, a Wisconsin limited liability company (the “**Owner**”), and the City of Waukesha, a municipal corporation (the “**City**”).

RECITALS:

WHEREAS, the Owner is the fee owner of certain lands described in the attached Exhibit A (“**Owner’s Property**”);

WHEREAS, Waukesha State Bank, as the prior owner of the Owner’s Property, granted an easement and right-of-way over and across the Owner’s Property pursuant to that certain Easement, dated March 2, 2000 and recorded in the official records of Waukesha County, WI on March 8, 2000 as Document No. 2544779 (the “**Original Easement**”); and

WHEREAS, the Owner is developing the Owner’s Property and, to accommodate such development, the Owner and City have agreed to amend and restate the Original Easement to relocate the trail on the Owner’s Property and set forth the terms and conditions relating to limited use thereof as more fully set forth herein.

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Grant of Easement.** Upon the Owner’s completion of the initial construction of the trail and associated improvements contemplated by this Agreement, the Owner hereby grants to the City a perpetual, non-exclusive, rent-free, recreational use easement and right-of-way over, across and through the portion of Owner’s Property described and depicted on Exhibit B attached hereto and made a part hereof (the “**Trail Easement Area**”) solely for the purposes to construct, reconstruct, install, maintain, operate, repair and replace a trail for bicycle, pedestrian and other recreational uses, together with appropriate signage and lighting, over and across the Trail Easement Area; provided, however, the City shall obtain the written consent of the Owner prior to commencing any construction, reconstruction or replacement activities on the Trail Easement Area. The initial construction and installation of the trail, and related signage and lighting, within the Trail Easement Area shall be made by the Owner, at its sole cost and expense, provided such trail, signage and lighting shall be constructed and installed by Owner in a substantially similar manner and condition as the existing trail, signage and lighting located pursuant to the Original Easement.
2. **Use of Easement.** The use of the Trail Easement Area by the general public shall at all times be subject to the commercially reasonable control and regulation of the City and shall at all times be in accordance with all applicable law. Subject to the restrictions in this Agreement, the City may pave the Trail Easement Area with asphalt and the Trail Easement Area may be used for year-round bicycle, pedestrian, and non-motorized recreational access by the public. The Trail Easement Area may also be used for limited

vehicular access by the City, its agents, employees, contractors and personnel, for maintenance and emergency purposes in accordance with the terms and conditions of this Agreement as set forth below.

3. **Maintenance.** The City shall be solely responsible for any maintenance, snow removal, capital improvements or replacements of the Trail Easement Area, including any improvements made pursuant to paragraph one above and any maintenance or improvements necessary to keep the Trail Easement Area in good condition and repair suitable for its intended purposes. The Owner shall grant such reasonable temporary access as necessary for maintenance purposes. The City shall notify the Owner a minimum of forty-eight (48) hours prior to entering the Owner's Property to perform maintenance or repairs to the Trail Easement Area, except for emergency situations, in which case the City shall notify Owner as soon as reasonably possible. The City shall keep the Trail Easement Area clear of obstructions, including trees and bushes. In the event the Trail Easement Area shall at any time be unreasonably obstructed by the Owner, the City shall have the right to remove any obstructions in such manner as the City shall reasonably deem necessary. The City shall restore the surface of any portion of the Owner's Property, including without limitation the Trail Easement Area, disturbed by any construction, reconstruction, maintenance, access, operation, repair, replacement or removal activities by the City, its agents, employees, or contractors, to the condition such surface was in before such disturbance.
4. **Consistent Uses Allowed.** Notwithstanding anything to the contrary set forth herein, nothing in this Agreement is intended to prohibit use of the Trail Easement Area by the Owner, its agents, employees, invitees, tenants, contractors, successors and assigns, provided such use does not unreasonably interfere with the use of the Trail Easement Area by the City for the purposes permitted hereunder. The City hereby agrees to cooperate with the Owner, in good faith, in connection with the exercise of its rights under this Agreement and with the Owner's development, construction and use of the Owner's Property.
5. **Indemnification; Liens.** The City, and any users of the Trail Easement Area as permitted hereunder, shall exercise its privileges under and pursuant to this Agreement at the City's sole risk and expense. To the fullest extent permitted under applicable law, the City shall indemnify, release and hold harmless the Owner from and against any and all liability for loss, costs, injury, claims, expenses death or damages resulting from, arising out of, or in any way connected with, the use of the Trail Easement Area by the general public, or the acts or omissions of the City or the City's agents, employees, contractors, successors and permitted assigns, in exercise of the rights granted hereunder or a breach of this Agreement by the same. The City shall not allow any construction lien to be filed against the Owner's Property arising out of any exercise of the rights granted to or obligations conferred upon the City under this Agreement. In the event such a lien is filed against the Owner's Property, the City shall have thirty (30) days after written demand from the Owner to satisfy the lien or bond over the lien in an amount sufficient to clear title to the Owner's Property as reasonably requested by Owner.
6. **Insurance.** At all times during the term in this Agreement, the City shall maintain, and shall cause its contractors to maintain, a standard commercial general liability insurance

If to Owner: BridgeWalk Apartments LLC
330 East Kilbourn Avenue
Suite 600 South
Milwaukee, WI 53202
Attn: Phil Aiello

With a copy to: Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Attn: Candace Flatley

11. **Invalidity.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstances, 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.
12. **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.
13. **Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.
14. **No Public Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Owner's Property to the general public.
15. **Termination of Original Easement.** This Agreement shall amend, restate and supersede the Original Easement in its entirety. The Original Easement shall be hereby terminated and of no further force and effect.

(Signature pages follow)

OWNER:

BridgeWalk Apartments LLC,
a Wisconsin limited liability company

By: Mandel/BridgeWalk Apartments LLC, its Manager

By: _____
Name: Barry R. Mandel
Title: Manager

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 2021, the above-named Barry R. Mandel, to me known to be the Manager of Mandel/BridgeWalk Apartments LLC, the manager of _____, a Wisconsin limited liability company, who executed the foregoing instrument by its authority and on its behalf and acknowledged the same.

Printed Name: _____

Notary Public, State of Wisconsin
My Commission Expires: _____

[Notary Seal]

CITY OF WAUKESHA (Municipality)

By: _____

Name: _____

Title: Mayor

By:

Name:

Title: City Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN
COUNTY OF Waukesha

This instrument was acknowledged before me on _____, 2021 by _____ and _____
_____, the Mayor and City Clerk of the City of Waukesha.

Notary Public, State of Wisconsin
My commission expires: _____

EXHIBIT A

OWNER'S PROPERTY

Lots 2 and 3 and Outlot 1 of Certified Survey Map No. 10422, recorded July 26, 2007, in Volume 99 of Certified Survey Maps on Pages 119 to 129 as Document No. 3500216, being part of the Southwest 1/4 of the Northeast 1/4 and the Northeast 1/4 of the Southwest 1/4 and the Southeast 1/4 of the Northwest 1/4 of Section 3, Township 6 North, Range 19 East, and being a Redivision of Block K and Mill Reservation of Northwest Addition to Prairieville, in the City of Waukesha, County of Waukesha, State of Wisconsin. Excepting therefrom that part of Outlot 1 described in Quit Claim Deed recorded as Document No. 2832279.

EXHIBIT B

DESCRIPTION AND DEPICTION OF TRAIL EASEMENT AREA

[See Attached]