

**TEMPORARY  
CONSTRUCTION  
EASEMENT**

Document Number

Document Title

Name and Return Address:

Joseph Shumow  
Reinhart Boerner Van Deuren s.c.  
22 E. Mifflin St., Suite 700  
Madison, WI 53703

251/0708-233-0804-8

251/0708-233-0809-8

Parcel Identification Numbers

## **TEMPORARY CONSTRUCTION EASEMENT**

THIS TEMPORARY CONSTRUCTION EASEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2019 (the "Effective Date") by and between the CB Tree Lane Senior LLC, a Wisconsin limited liability company ("Grantee") and Dane County, a Wisconsin municipal corporation ("Grantor").

### **RECITALS:**

- A. Grantor is the owner of certain real property in the City of Madison, Dane County, Wisconsin, as more particularly described on Exhibit A, attached hereto and incorporated herein (the "Grantor Parcel").
- B. Tree Lane Apartments, LLC, a Wisconsin limited liability company is the ground tenant of Grantor's Parcel pursuant to that certain Memorandum of Ground Lease dated May 9, 2017 and recorded in the office of the Dane County Register of Deeds on May 12, 2017 as Document No. 5325106.
- C. Grantee is the owner of certain real property in the City of Madison, Dane County, Wisconsin, as more particularly described on Exhibit B, attached hereto and incorporated herein (the "Grantee Parcel").
- D. Grantee is redeveloping the Grantee Parcel into a senior living community (the "Project") which will impact a portion of Grantor's Parcel and has requested that Grantor grant a temporary, nonexclusive construction easement to Grantee.
- E. As part of the Project, Grantor has agreed that it shall grant to Grantee, pursuant to the terms and conditions of this Agreement, a temporary construction easement, as more particularly described below.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Temporary Construction Easement Area. Grantor hereby grants to Grantee, its contractors, agents and assigns (collectively, the "Grantee Parties"), a temporary, non-exclusive construction easement (the "Easement") for use in connection with the Project on, over, through and across those portions of the Grantor Parcel depicted on Exhibit C attached hereto and incorporated herein (collectively, the "Easement Area").
2. Construction Activities. The Grantee Parties shall, pursuant to this Agreement, be permitted to enter upon and have access to the Easement Area for the purpose of developing and constructing the Project; including, but limited to, the right to operate equipment thereon and the right of ingress and egress. The Grantee Parties shall not remove, alter or modify any permanent

improvements within the Easement Area and shall not store construction materials or equipment in the Easement Area.

3. Retained Rights of Grantor. Grantor reserves the right of ownership, use and occupancy of the Easement Area insofar as said ownership, use and occupancy does not unreasonably impair the rights granted to Grantee by this Agreement. The Grantee Parties shall not use, block or occupy any parking space(s) situated on the Grantor Parcel.

4. Term of Easement. This Agreement shall commence on the Effective Date and shall expire on July 15, 2020 (the "Easement Term"). This Agreement shall automatically terminate at the expiration of the Easement Term and be of no further force and effect without the need for any further filings or actions by the parties hereto.

5. Insurance. Prior to the commencement of construction of the Project and utilization of the Easement Area, Grantee or its contractors, as applicable, shall deliver to Grantor certificates of insurance naming Grantor as an additional insured on the insurance policies, the type and amounts of which shall be determined by Grantor in its reasonable discretion.

6. Indemnification. Grantee shall indemnify and hold harmless Grantor from and against any and all claims, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees), arising from or in connection with the loss of life and injury to persons and/or property arising from or in connection with activities of the Grantee Parties within the Easement Area, except to the extent any such claim, liability, cost, or expense arises from or in connection with any willful misconduct or negligent act or omission of Grantor. Grantee shall, at Grantee's sole cost and expense, repair any damage to the Grantor's Parcel occurring as a result of the Grantee Parties' activities, except to the extent any such damage occurs as a result of any willful misconduct or negligent act or omission of Grantor.

7. Use. The Project shall be performed in such a manner so as not to cause unreasonable levels of noise, dust, or other events that unreasonably disturb Grantor's tenants, customers, employees, and invitees. At all times during the Easement Term, Grantee shall provide Grantor, its tenants, customers, employees, and invitees with reasonable and unrestricted vehicular ingress and egress to and from the Grantor Parcel.

8. Liens. Grantee shall ensure that no liens are placed on any portion of the Grantor's Parcel, by any party performing work on behalf of the Grantee. If any party performing work on behalf of the Grantee files a lien on the Grantor Parcel, Grantee shall, within thirty (30) days of such filing, have such claim of lien released, bonded or a contest of claim of lien shall be filed so that such claim of lien shall be completely removed from the Grantor Parcel.

9. Restoration. Upon completion of the Project, Grantee, at its sole cost and expense, shall restore the Easement Area to the condition existing as of the Effective Date.

10. 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 terms or conditions to persons or

circumstances other than those to which it has been held invalid or unenforceable, shall not be affected hereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

11. No Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purposes whatsoever.

12. Counterparts. This Agreement may be executed in multiple counterparts, but each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same agreement, binding all parties hereto, whether or not each counterpart is executed by all parties hereto, so long as each party hereto has executed one or more counterparts hereof.

13. Binding Effect. This Agreement shall run with the land and be binding upon the parties and their respective successors and assigns.

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

15. Amendment. This Agreement may only be amended, modified or terminated at any time by a declaration in writing, executed and acknowledged by all the parties to the Agreement or their successors or assigns.

**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the Effective Date.

**GRANTEE:**

CB TREE LANE SENIOR LLC

By: CB TREE LANE SENIOR MANAGING  
MEMBER LLC, its Managing Member

By: COMMONBOND COMMUNITIES, its  
Manager

By: \_\_\_\_\_  
Cecile Bedor, Executive Vice  
President of Real Estate

STATE OF WISCONSIN     )  
                                      : SS  
COUNTY OF DANE         )

This instrument was personally acknowledged before on \_\_\_\_\_, 2019, by Cecile Bedor, Executive Vice President of Real Estate of CommonBond Communities, a Manager of CB Tree Lane Senior Managing Member LLC, which is the Managing Member of CB Tree Lane Senior LLC, a Wisconsin limited liability company.

[Seal]

\_\_\_\_\_  
Name:  
Notary Public, State of Wisconsin  
My Commission:

**GRANTOR:**

Dane County,  
A Wisconsin municipal corporation

By: \_\_\_\_\_  
Scott McDonell, Dane County Clerk

STATE OF                                 )  
  )ss  
COUNTY OF                             )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2019, the above named Scott McDonell, Dane County Clerk, acting in said capacity and known by me the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
(print of type name)

Commission Expires:\_\_\_\_\_

**CONSENTED AND AGREED TO BY GROUND LESSEE:**

By: Tree Lane Apartments MM, LLC, a Wisconsin  
limited liability company, its Managing Member

By: Heartland Housing, Inc., an Illinois non-  
profit corporation, its Manager

By: \_\_\_\_\_  
Michael Goldberg, Executive Director

STATE OF                                 )  
  : SS  
COUNTY OF                         )

This instrument was personally acknowledged before on \_\_\_\_\_, 2019, by  
Michael Goldberg, as Executive Director of Heartland Housing, Inc., Manager of Tree Lane  
Apartments MM, LLC, which is the Managing Member of Tree Lane Apartments, LLC.

[Seal]

\_\_\_\_\_  
Name:  
Notary Public, State of  
My Commission:

This document was drafted by:

Joseph Shumow  
Reinhart Boerner Van Deuren, s.c.  
22 East Mifflin Street, Suite 700  
Madison, Wisconsin 53703

**CONSENTED AND AGREED TO BY GRANTOR'S MORTGAGEE:**

BMO HARRIS BANK N.A., a national banking  
association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF                                 )  
  : SS  
COUNTY OF                            )

          This instrument was personally acknowledged before on \_\_\_\_\_, 2019, by  
\_\_\_\_\_, as \_\_\_\_\_ of BMO Harris N.A.

[Seal]

\_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My Commission: \_\_\_\_\_



## **EXHIBIT A**

### **GRANTOR PARCEL**

Lot Two (2), Certified Survey Map No. 8493, recorded with the Register of Deeds for Dane County, Wisconsin, on February 25, 1997, in Volume 46 of Certified Surveys, Page 193, as Document No. 2834147, in the City of Madison, Dane County, Wisconsin.

## **EXHIBIT B**

### **GRANTEE PARCEL**

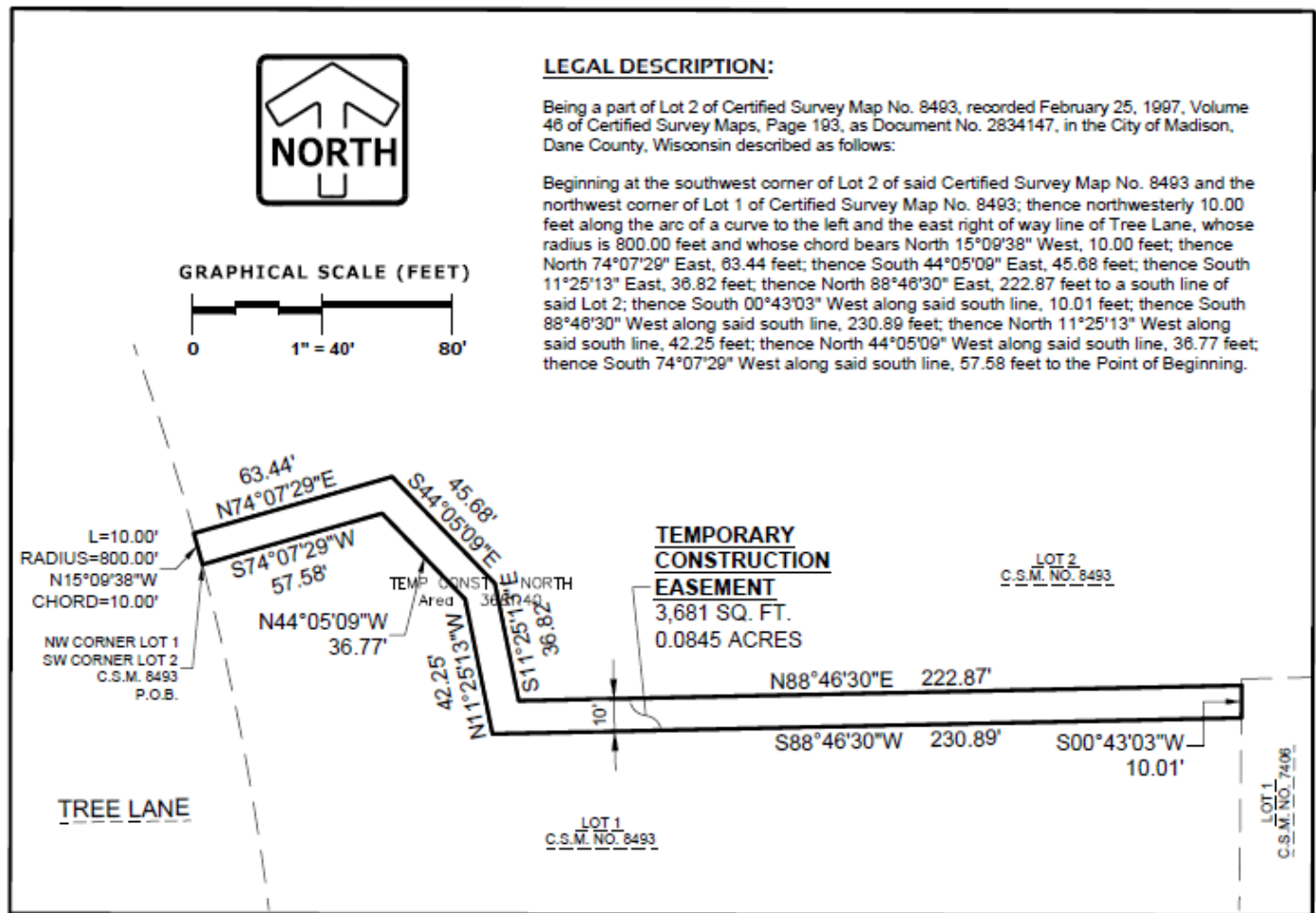
Unit 1, together with said Unit's undivided interest in the common elements, all in Tree Lane Condominium, created by a Declaration of Condominium recorded on April 26, 2019, in the Office of the Register of Deeds for Dane County, Wisconsin, as Document No. 5483351, and by its Condominium Plat recorded on April 26, 2019, as Document No. 5483352, being located in the City of Madison, Dane County, Wisconsin.

Formerly known as a portion of:

Lot One (1), Certified Survey Map No. 8493, recorded with the Register of Deeds for Dane County, Wisconsin, on February 25, 1997, in Volume 46 of Certified Surveys, Page 193, as Document No. 2834147, in the City of Madison, Dane County, Wisconsin.

## EXHIBIT C

### THE EASEMENT AREA



[DEPICTION CONTINUES ON NEXT PAGE]

## LEGAL DESCRIPTION:

Being a part of Lot 2 of Certified Survey Map No. 8493, recorded February 25, 1997, Volume 46 of Certified Survey Maps, Page 193, as Document No. 2834147, in the City of Madison, Dane County, Wisconsin described as follows:

Commencing at the southwest corner of Lot 2 of Certified Survey Map No. 8493 and a point on a curve; thence northwesterly 6.81 feet along the arc of said curve to the left and the west line of said Lot 2, whose radius is 800.00 feet and whose chord bears North 15°02'46" West, 6.81 feet to the Point of Beginning;

Thence continuing northwesterly 21.02 feet along the arc of said curve to the left and said west line, whose radius is 800.00 feet and whose chord bears North 16°02'34" West, 21.02 feet; thence North 76°31'13" East, 27.16 feet to a point of curvature; thence easterly 25.92 feet along the arc of said curve to the right, whose radius is 54.00 feet and whose chord bears South 89°43'51" East, 25.67 feet; thence South 75°58'54" East, 218.24 feet; thence South 14°01'06" West, 5.46 feet to a point on a curve; thence southeasterly 32.88 feet along the arc of said curve to the right, whose radius is 41.00 feet and whose chord bears South 44°22'33" East, 32.00 feet to a south line of said Lot 2; thence South 88°46'30" West along said south line, 19.09 feet to a point on a curve; thence northwesterly 16.19 feet along the arc of said curve to the left, whose radius is 24.00 feet and whose chord bears North 56°39'20" West, 15.89 feet; thence North 75°58'54" West, 184.63 feet to a south line of said Lot 2; thence North 44°05'09" West along said south line, 14.98 feet; thence South 74°07'29" West along said south line, 15.88 feet; thence North 75°58'54" West, 10.96 feet; thence South 76°31'13" West, 32.13 feet to the Point of Beginning.

