

	<b>TEMPORARY AIR RIGHTS EASEMENT</b>	
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 <u>251/0708-233-0809-8</u> Parcel Identification Numbers

## **TEMPORARY AIR RIGHTS EASEMENT**

THIS TEMPORARY AIR RIGHTS EASEMENT (this "Agreement") is entered into as of June \_\_\_, 2019 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 the 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 Grantee's 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, air rights easement to Grantee for use of certain air rights over Grantor's property to operate a Crane (as defined below) for the construction of the Project.
- 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 air rights 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. Grant of Easement. Grantor hereby grants to Grantee, its contractors, agents and assigns, a temporary, nonexclusive air rights easement (the "Easement") over and across Grantor's Parcel, including any improvements now or in the future constructed thereon, to allow for the passage of a construction crane, manned extension lift or other lifting equipment (collectively, the "Crane") at an elevation of not less than twenty (20) feet above the Grantor's Parcel.

2. Permits. Grantee shall obtain any governmental permits required for Grantee's Project, including such permits, if any, as required for the use of the Crane.

3. No Interference. Grantee's use of the Easement as contemplated under this Agreement shall be performed in a way to reasonably minimize interference with Grantor's use of the Grantor's Parcel.

4. Term of Easement. This Easement shall commence on July 1, 2019 and shall expire upon the earlier of (i) the completion of construction of the Project requiring the use of the Crane over and across the Grantor's Parcel, or (ii) May 30, 2020 (the "Easement Term"). This Easement 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 Grantee 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 caused by Grantee pursuant to this Agreement, 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 Grantee's 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.

8. 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.

9. 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.

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

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

12. 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.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the date first written above.

**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, County Clerk

STATE OF                    )  
                                  ) SS  
COUNTY OF                )

This instrument was personally acknowledged before on \_\_\_\_\_, 2019, by  
Scott McDonell, Dane County Clerk, acting in said capacity and known by me the person who  
executed the foregoing instrument and acknowledged the same.

[Seal]

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

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

TREE LANE APARTMENTS, LLC, a Wisconsin limited liability company

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:

**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: \_\_\_\_\_

This document was drafted by:

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

## **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.