

**DECLARATION OF EASEMENTS FOR
HIGHLAND MANOR**

Highland Manor Associates, Limited Partnership, a Michigan limited partnership (“HMA”), being the owner of the parcel of land hereinafter described and known as the Highland Manor Manufactured Home Community (“Highland Manor”), and the **City of Madison**, a Wisconsin municipal corporation (the “City”), being the owner of the parcel of land hereinafter described (the “Dedicated Area”) and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency and receipt whereof is hereby acknowledged, do hereby grant and convey to each other the easements set forth in this Declaration of Easements for Highland Manor (“Declaration”).

Highland Manor is the parcel with the tax parcel identification numbers 251-0710-312-0097-7 and 251-0710-312-0096-9 located at 1501 and 1515 Moorland Road in the City of Madison, depicted on attached Exhibit A, and described as follows:

Lots 1 and 2 of Certified Survey Map No. 668, recorded with the Dane County Register of Deeds on September 27, 1971, in Vol. 3 of Certified Survey Maps, Pages 186-188, as document number 1304920.

The Dedicated Area is the parcel with the tax parcel identification number 251-0710-XXX-XXXX-X located at XXXX Moorland Road in the City of Madison, depicted on attached Exhibit B, and described as follows:

Lot 1 of Certified Survey Map No. XXXX, recorded with the Dane County Register of Deeds on XXXX, 2013, in Vol. XX of Certified Survey Maps, Pages XXX-XXX, as document number XXXXXXXX.

WITNESSETH:

WHEREAS, HMA and the City (the “Parties”) have entered into a Right-of-Way Vacation and Park Dedication Agreement on _____, 2013 (the “Agreement”), which Agreement involves the City’s vacation of the currently platted and unopened Raywood Road right-of-way through Highland Manor and the immediate dedication back of this area to the City as parkland to allow for the City’s development of the Dedicated Area as parkland and the construction and operation of a Federal Emergency Management Agency approved community safe room (the “Safe Room”); and,

WHEREAS, as a condition of the Agreement, the Parties agreed to grant each other a series of easements to facilitate the improvement, development and use of the Dedicated Area as parkland and the construction and operation of the Safe Room; and,

RETURN TO: Heidi Fischer
City of Madison
Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel Nos.: 251-0710-312-0097-7
251-0710-312-0096-9
251-0710-XXX-XXXX-X

WHEREAS, in preparing the Agreement, the Parties agreed that additional easements were necessary to protect and clarify the Parties' existing rights at Highland Manor; and,

WHEREAS, Highland Manor has one public access point on Moorland Road and a network of private roads (Manor Drive, LaSalle Street, Fairlane Court, Bel-Aire Drive, Sierra Court, Hollywood Drive, Malibu Drive, Harvest Circle and Rustic Parkway) through the property, as depicted on the June 30, 1993 Land Title Survey attached hereto as Exhibit C.

NOW, THEREFORE, as noted herein, each party hereby grants to and for the benefit of the other party, their successors and assigns, the following easements, subject to the terms and conditions set forth herein:

1. Easement Granted by City. The City, as the owner of the Dedicated Area, hereby grants to HMA, the owner of Highland Manor, a thirty-six (36) foot wide permanent driveway easement over the Dedicated Area for the purpose of a private access road, private walkways, and curb stops (including, without limitation, continued use, maintenance, repair and replacement of the existing private access road, private walkways, and curb stops and other improvements), connecting Lots 1 and 2 of CSM 668 and allowing for an access point to the Highland Manor, the private roads within the Highland Manor, and the City's Safe Room parking lot. The location of the easement is depicted on CSM XXXX and currently makes up a segment of Manor Drive, connecting Lots 1 and 2 of CSM 668. This driveway easement shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by HMA, and its respective successors and assigns. HMA and any successor or assign to HMA as fee simple owner of Highland Manor shall cease to have any liability under this easement with respect to facts or circumstances arising after the party has transferred its fee simple interest in Highland Manor.
2. Easements granted by HMA.
 - a. Permanent Easements. HMA hereby grants the following permanent easements over Highland Manor:
 - (1) Public Access Easement. HMA grants to the public a permanent easement over that portion of Manor Drive running through Lot 1 of CSM 668 to access the Dedicated Area and Safe Room. If, for any reason, HMA needs to temporarily restrict access to this easement area, HMA will allow the public to use Fairlane Court and LaSalle Street to access the Dedicated Area and Safe Room to the same extent such use shall be needed by the residents of Highland Manor (the "Residents") south of the Dedicated Area to access their homes.
 - (2) Emergency Parking Easement. HMA grants to the public a permanent limited parking easement over Manor Drive (from LaSalle Street to Bel-Aire Drive), Fairlane Court (from Lots 17 to 44) and Bel-Aire Drive (from Lots 1 to 40) for the sole purpose of short-term parking in the event of an emergency weather event that necessitates the use of the Safe Room for its designed emergency purposes.

This limited easement shall only allow parking during the emergency weather event necessitating the use of the Safe Room, and up to eight (8) hours after the end of the event, at which point all such vehicles shall be removed from these private roads, unless otherwise permitted by HMA. As a condition of this easement, HMA authorizes the City, and its authorized contractors, to enter into Highland Manor to remove any vehicles in violation of these easement terms, which vehicles may be cited and towed off site or to the Safe Room parking area. However, HMA agrees to work with the City to identify vehicles parked in violation of this limited easement.

- (3) Signage Easement. HMA grants to the City a permanent easement for the placement of signs within Highland Manor as required by the terms and conditions of the federal grant supporting the construction of the Safe Room, and to ensure overall community awareness of the presence and location of the Safe Room. The terms and conditions of this signage easement are as follows:
 - (a) The installation, care and maintenance of signs installed under this easement shall be the sole responsibility and expense of the City.
 - (b) HMA shall work with the City in determining the sign locations within Highland Manor, which will, at a minimum, meet the federal standards required of the Safe Room project both in quantity and location.
 - (c) City staff, officers, agents, contractors, and subcontractors shall have the permission to access the sign locations agreed to pursuant to the terms of this easement for the purposes of installing, maintaining, repairing, replacing, or removing the signs.
 - (d) The City agrees that it will be responsible for any damages to the property of HMA or the Residents that are attributable to the actions of the City, or its contractors or agents, exercising their rights under this easement.
 - (e) Upon the removal or relocation of a sign, the City shall restore the sign location to the condition it was in prior to the installation of the sign at the City's expense.
- (4) Nine Springs Creek Park and Greenway Area Access Easement. HMA grants to City officials, contractors and agents an easement over Manor Drive, Bel-Aire Drive, and Rustic Parkway for the purposes of accessing and maintaining the Nine Springs Creek Park and Greenway Area south of Lot 2 of CSM 668 (the area shown on Exhibit A that is approximately 300 feet deep (North to South) and 1285 feet wide (East to West) lying immediately to the south of Lot 2 and is dedicated to the public for park and greenway purposes)(the "Nine Springs Creek Park and Greenway Area").

This access easement does not extend to the use of these private roads to drive or operate heavy construction equipment or other heavy equipment to the Nine Springs Creek Park and Greenway Area, nor to general public access to the Nine Springs Creek Park and Greenway Area, without the express written approval of HMA. The City agrees that it will be responsible for any damages to the property of HMA or the Residents that are attributable to the actions of the City, or its contractors or agents, exercising their rights under this easement.

- (5) Sanitary Sewer Access Easement. HMA grants to the City a perpetual sanitary sewer access easement over LaSalle Street, Fairlane Court, Manor Drive, Bel-Aire Drive and the parking lot areas along the West side of Bel-Aire Drive to allow the City to access the sanitary sewer structures contained within the public sanitary sewer easement set forth in Doc. 1759625. This easement gives the City, and its contractors, the right to operate the necessary equipment on the easement area to enable the City to effectively service the public sewer main that runs through and serves Highland Manor. This easement area is marked on the attached Exhibit D.

The City agrees that it will be responsible for any damages to the property of HMA or the Residents that are attributable to the actions of the City, or its contractors or agents, exercising their rights under this sanitary sewer access easement. The City's rights under this sanitary sewer access easement shall be subject to: (i) those having rights under recorded easements within Highland Manor; and (ii) the rights of HMA, the Residents, and each of their successors and assigns relating to the use and enjoyment of temporary and permanent structures and improvements within the Highland Manor including, without limitation, mobile homes. To the extent that recorded easements and/or temporary or permanent structures and improvements interfere with this easement, the easement granted herein shall be restricted to a width that does not impair or impact any temporary and permanent structures, improvements and easement rights.

- b. Temporary Limited Easement. HMA hereby grants to the City, its officers, contractors and agents, a temporary limited easement ("TLE") over Manor Drive for the purposes of accessing the Dedicated Area for the improvement of the parkland and construction of the Safe Room (the "Project"), and over the portions of Highland Manor ten (10) feet on either side of the Dedicated Area to perform sloping and grading on lands located adjacent to the Dedicated Area and to make necessary storm sewer connections from Highland Manor's private storm sewer system to the public storm sewer system that will be constructed as part of the Project. The City agrees that it will be responsible for any damages to Manor Drive, other property belonging to HMA, or property owned by Residents that are attributable to the actions of the City, or its contractors or agents, exercising their rights under this TLE during the Project.

This TLE is subject to the following conditions:

- (1) The City's use of the TLE areas shall be for construction, sloping and grading purposes including, but not limited to, the right of ingress and egress, the right to operate necessary equipment thereon, the right to extend and connect private storm sewer pipes to public storm sewer pipes, and the right to preserve, protect, remove or plant thereon any vegetation that the City may deem desirable to prevent erosion of the soil.
 - (2) Construction shall be performed and completed in a good and workmanlike manner and shall not interfere with or endanger the use of the abutting land owned by HMA or used by the Residents.
 - (3) The City will promptly restore the TLE areas after completion of the Project (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to HMA.
 - (4) HMA reserves the right to use and occupy the TLE areas in a manner consistent with the rights conveyed herein, provided that such use and occupancy shall not interfere with or disturb the construction and/or grading of the TLE areas.
 - (5) The City shall require the general contractor to meet Section 107.4 of the City of Madison Standard Specifications for Public Works Construction, 2013 Edition (adopted by the City of Madison Common Council on December 11, 2012 as RES-12-00930, Legislative File ID # 28223) (the "Standard Specifications") and include HMA as an additional insured on their general liability and automobile liability policies. In addition, the worker's compensation policies required under Section 107.4 of the Standard Specifications will include a waiver of subrogation endorsement in favor of HMA. The policies required pursuant to this paragraph shall provide that such insurance may not be cancelled or amended with respect to HMA, except upon thirty (30) days' prior written notice to HMA. Pursuant to 107.4(h) of the Standard Specifications, and prior to entering or using the TLE areas, the City shall secure copies of additional insured endorsements reflecting coverage of HMA as provided herein, and shall provide copies of same to HMA.
 - (6) This TLE shall terminate upon completion of the Project.
3. Compliance. In exercising their respective rights under this Declaration, HMA and the City shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
 4. Severability. If any of the easements granted herein shall be held unenforceable for any reason, the remaining easements shall continue in full force and effect. If any provision of this Declaration is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

5. Binding Effect. The covenants and conditions contained in this Declaration shall apply to and bind the Parties and their heirs, legal representatives, successors and assigns. Nothing herein shall prevent HMA from transferring its interests in Highland Manor, and upon such transfer the rights and obligations of HMA under this Declaration shall become the rights and obligations of the transferee.
6. Entire Agreement. Except for the Agreement, this Declaration constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior understanding or representation of any kind preceding the date of this Declaration and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Declaration.
7. Waiver. The failure of any party to enforce any provisions of this Declaration shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Declaration.
8. Runs with the Land. All the terms, conditions, covenants and other provisions contained in this Declaration, including the benefits and burdens, shall run with the properties described above and shall be binding upon and inure to the benefit of and be enforceable by the City and the HMA and their respective successors and assigns.
9. Liability. In exercising their respective rights under this Declaration, and except as provided otherwise in this Declaration or the Agreement, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions, including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies, and representatives. It is not the intent of the Parties to waive any statutory protections or impose liability beyond that imposed by state statutes.
10. Default; Remedy. It shall be a default under this Declaration if either party fails to perform or abide by the terms of this Declaration, and upon such a default the Parties may exercise any remedy available at law or in equity, including specific performance.
11. Counterparts. This Declaration may be executed in counterparts. Each such counterpart shall be considered an original, and all of such counterparts shall constitute a single agreement binding the Parties as if they had signed a single document.
12. Governing Law and Venue. Interpretation of this Declaration and performance thereof will be determined by the laws of the State of Wisconsin. Any dispute arising under the terms of this Agreement will be filed exclusively in Dane County Circuit Court.

13. Notices. All notices required to be given under the terms of this Declaration shall be personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City of Madison Office of Real Estate Services
Economic Development Division
City of Madison
215 Martin Luther King Jr. Blvd.
P.O. Box 2983
Madison, WI 53701-2983

HMA 1117 Summit Court
Windsor, CO 80550
Attention: Glenn Couch

And

280 Daines Street, #300
Birmingham, MI 48009
Roger Zlotoff, President

With a copy to:

Haus, Roman and Banks, LLP
148 E. Wilson St., Ste. 200
Madison, WI 53703
Attention: Michael E. Banks

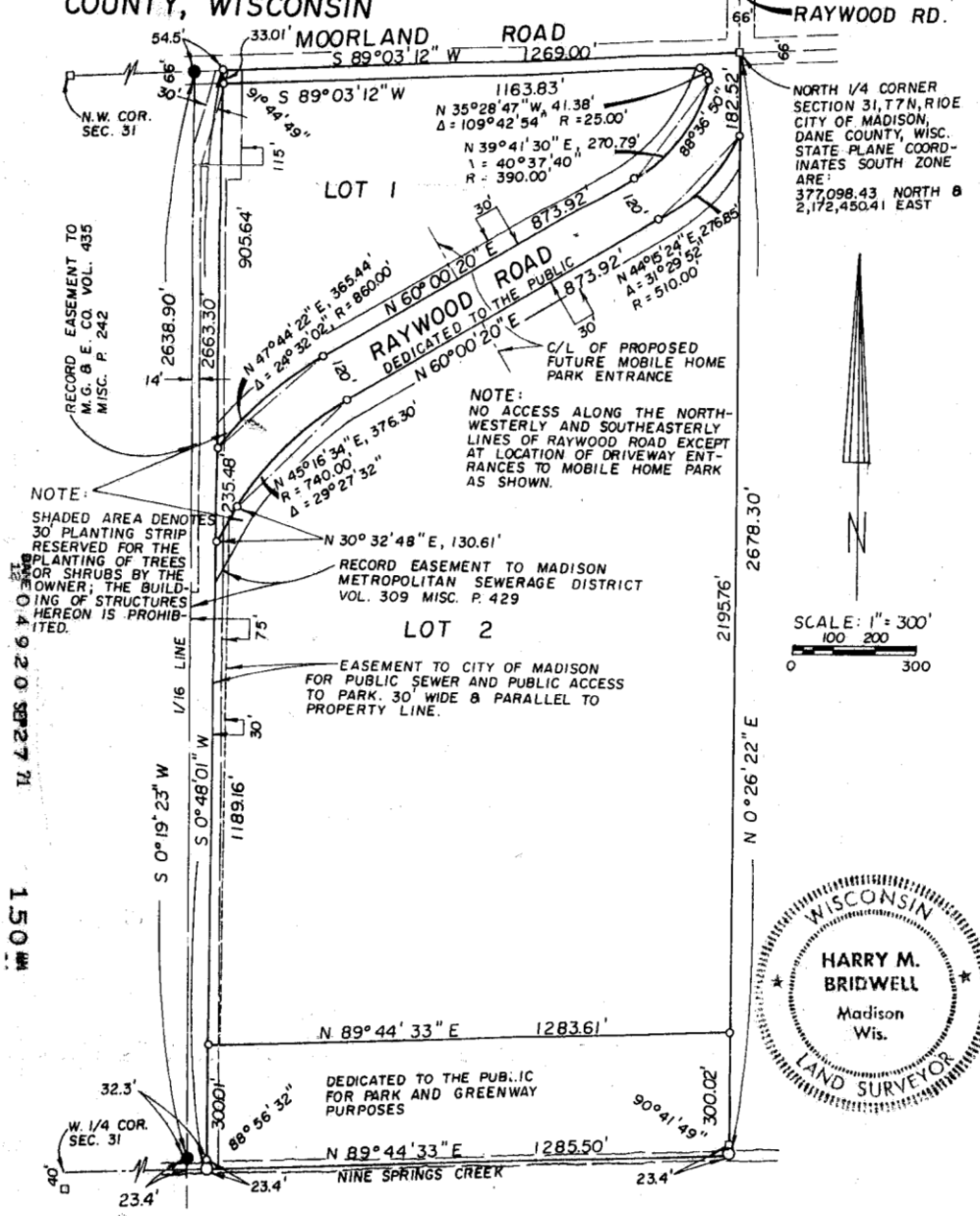
The address to which notices or other communications shall be mailed may be changed from time-to-time by giving written notice to the other party as provided above.

14. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Declaration and acknowledge that the preparation of this Declaration has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Declaration shall be interpreted as to its fair meaning and not strictly for or against any party.
15. Authority. The Parties each represent that they have the authority to enter into this Declaration, and the person(s) signing on behalf of the City and HMA represent and warrant that he or she have been duly authorized to bind the City and HMA and sign this Declaration on their behalf.

EXHIBIT A
CSM 668

1304920

CERTIFIED SURVEY MAP NUMBER 668
BEING A SURVEY IN THE EAST 1/2 OF THE NORTHWEST
1/4 OF SECTION 31, T7N, R10E, CITY OF MADISON, DANE
COUNTY, WISCONSIN

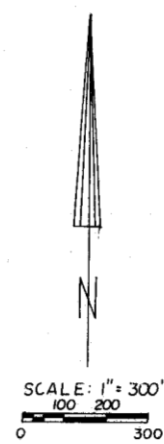


RECORD EASEMENT TO
M.G. & E. CO. VOL. 435
MISC. P. 242

 NOTE:
SHADED AREA DENOTES
30' PLANTING STRIP
RESERVED FOR THE
PLANTING OF TREES
OR SHRUBS BY THE
OWNER; THE BUILD-
ING OF STRUCTURES
HEREON IS PROHIB-
ITED.

 150 W
 1304920 SEP 27 71

NORTH 1/4 CORNER
SECTION 31, T7N, R10E
CITY OF MADISON,
DANE COUNTY, WISC.
STATE PLANE COORD-
INATES SOUTH ZONE
ARE
377,098.43 NORTH &
2,172,450.41 EAST



- LEGEND**
- CITY OF MADISON BRASS CAP MONUMENT IN PLACE
 - 3/4" SOLID IRON ROD SET - 1.50 LBS./FT.
 - PROPERTY CORNER
 - EXISTING 7/8" SOLID IRON ROD

NOTES

BEARINGS FOR THIS SURVEY REFER TO GRID NORTH OF THE WIS. STATE PLANE SYSTEM SOUTH ZONE

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Sheet: 1 of 3

EXHIBIT B
CSM **XXXX**

EXHIBIT D Sanitary Sewer Access Easement



Green: Center line of existing sanitary sewer easement (Doc. 1759625)
Yellow: Location of new sanitary sewer access easement