

Prepared by and return to:

David J. Duncan Counsel
Scannell Properties
8801 River Crossing Blvd, Suite 300
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Parcel ID # 17-10560-15 [NEED TO CONFIRM PARCEL ID#S AFTER SUBDIVISION]

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this “Easement”), effective as of the _____ day of _____, 2020, is by and **THE CITY OF LA CROSSE, WISCONSIN** (the “Grantor”) having an office address at 400 La Crosse Street, La Crosse, Wisconsin 54601, Attn: City Attorney, and **SCANNELL PROPERTIES #424, LLC**, an Indiana limited liability company (“Grantee”) having an office address of 8801 River Crossing Boulevard, Suite 300, Indianapolis, Indiana 46240, Attn: General Counsel. The following statements are a material part of this Easement:

WHEREAS, Grantor is the owner in fee simple title of that certain real property located in La Crosse County, Wisconsin, adjacent to the Grantee Parcel (as defined below), which real property is legally described on Exhibit A, attached hereto and made a part hereof (the “Grantor Parcel”);

WHEREAS, Grantee is the owner in fee simple title of that certain real property located in La Crosse County, Wisconsin, adjacent to the Grantor Parcel, which real property is legally described on Exhibit B, attached hereto and made a part hereof (the “Grantee Parcel”);

WHEREAS, Grantor desires to create upon the terms and conditions provided herein, a non-exclusive easement for encumbering a portion of the Grantor Parcel as more particularly described and depicted on Exhibit C (the “Easement Area”) attached hereto, for drainage purposes for the benefit of the Grantee Parcel;

NOW, THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made and agreed to by the parties:

1. Recitals. The foregoing recitals are hereby affirmed by the parties as true and correct and each such recital is incorporated herein by this reference.
2. Grant of Drainage Easement. Grantor does hereby create, grant, and convey unto Grantee, its contractors, tenants, invitees, successors, and assigns, a perpetual, non-exclusive easement (the “Drainage Easement”) in common with Grantor and all others to whom Grantor has granted or may hereafter grant rights, under, over, upon, and across the Easement Area for the sole purposes of providing storm and surface water drainage and/or runoff from and for the benefit of the Grantee Parcel, which Grantee shall utilize to direct such drainage and runoff through the Easement Area

to the Grantor Parcel, and for constructing, maintaining, operating, repairing, replacing, using, and inspecting one or more pipes and lines, drainage swales and ditches, retention and detention ponds, and other related drainage facilities (the “Drainage Systems”) necessary for such purposes, and to make such connections and openings in and to the same, and to perform work and inspections thereon, all as may be reasonably necessary or desirable to provide a system of surface and storm water drainage and/or runoff for the Grantee Parcel as such Grantee Parcel may be used, developed and/or redeveloped from time to time (collectively, the “Permitted Uses”). The Drainage Easement and all rights in and to the Drainage Easement are appurtenant to the Grantee Parcel. The foregoing Drainage Easement right shall be subject to the following restrictions, limitations and covenants:

a. The exact location and detailed construction drawings showing the design of any Drainage Systems shall be subject to the prior, written approval of the owner(s) of the Grantor Parcel, which approvals shall not be unreasonably withheld, conditioned or delayed. Grantee shall cause Drainage Systems to be constructed, used, and operated at Grantee’s sole expense and in accordance with all applicable laws, rules, regulations, and shall be solely responsible for obtaining all necessary permits in connection with the installation, use, maintenance, operation, repair, and/or replacement of the Drainage Systems.

b. Grantee shall at all times construct, operate, and maintain or cause to be constructed, operated, and maintained in good order, condition, and repair, at its sole expense, any Drainage Systems servicing the Grantee Parcel and from time to time existing within the Easement Area pursuant to the Drainage Easement described herein. After exercising any rights granted herein (including, without limitation, the installation, construction, repairing, replacing, and/or maintaining of any Drainage Systems), Grantee shall promptly repair and return the Grantor Parcel to the condition that existed immediately prior to exercising any such right pursuant to this Easement.

c. Any uses of the Easement Area by Grantee other than the Permitted Uses are prohibited without the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.

3. Use of Easement Areas. Subject to the limitations set forth above, Grantee will have the right of ingress and egress across the Easement Area and such ingress and egress will be exercised in a reasonable manner. The Easement Area may be used by Grantor for landscaping or other purposes that do not then and will not later interfere with the Permitted Uses.

4. Temporary Construction Easement. Grantor hereby grants to the Grantee, its contractors or designees, a temporary construction easement (the “Temporary Easement”) across the Property in the locations generally described and depicted on Exhibit C (the “Temporary Easement Area”) attached hereto and marked as “Temporary Construction Easements”, for the purpose of completing all work associated with the construction and installation of the Drainage Systems (“Drainage Work”). The Temporary Easement shall terminate and be of no further force or effect upon the earlier to occur of: (i) completion of the construction of the Drainage Work; or (ii) two

(2) years from the date this Easement is recorded in the office of the Register of Deeds for La Crosse County.

5. Future Modificatins to Drainage Systems. In the event Grantor, or a future owner of the Grantor Parcel, desires to develop the Grantor Parcel and such development requires the modification of the Drainage Systems, Grantor shall cooperate with Grantor, or a future owner of the Grantor Parcel, in good faith to reengineer and redesign the Drainage Systems to serve as an efficient and reasonable storm water management system for both the Grantee Parcel and the Grantor Parcel, provided such modified Drainage Systems comply with all applicable legal requirements and provide drainage of the Grantee Parcel at least as good as the existing Drainage Systems prior to such modification. Any such modification of the Drainage Systems shall be memorialized in a written amendment to this Easement to be executed and delivered by Grantor and Grantee and thereafter recorded in the office of the Register of Deeds for La Crosse County. Such amendment shall provide that the owner of the Grantor Parcel shall reimburse Grantee for fifty percent (50%) of all costs and expenses incurred by Grantee in the operation and maintenance of the modified Drainage Systems.

6. Warranties of Title, Further Assurances. Grantor warrants that Grantor has good and indefeasible fee simple title to the Easement Area and that Grantor has the full right and lawful authority to grant this Easement.

7. Running of Benefits. All provisions of this Easement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants, employees and personal representatives of Grantor and Grantee.

8. Default. If there is a failure by either party to perform, fulfill or observe any agreement contained within this Easement, to be performed, fulfilled or observed by it, continuing for thirty (30) days, or in situations involving potential danger to the health or safety of persons in, on or about or substantial deterioration of the Easement Area, in each case after written notice, the other party may, at its election (and in addition to any other remedies at law or in equity), cure such failure or breach on behalf of the defaulting party. Any amount which the party so electing shall expend for such purpose, or which shall otherwise be due by either party to the other, shall be paid to the party to whom due on demand, without contest, upon delivery of its invoice. The provisions of this paragraph shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on the land of the defaulting party and the rights of the holder or holders of any mortgages or deeds of trust.

9. Construction. The rule of strict construction does not apply to this Easement. This Easement shall be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Grantee is carried out.

10. Notice. All notices shall be in writing and sent by certified mail, return receipt requested, or by nationally-recognized overnight courier service, with all charges prepaid, to the addresses provided for in the first paragraph of this Easement and shall be deemed given when received by

the addressee. Either parties notice address may be changed at any time by giving notice to the other party.

11. Governing Law. This Easement shall be construed in accordance with the laws of the State of Wisconsin.

[Signature pages follow.]

**SIGNATURE PAGE OF GRANTEE
TO
DRAINAGE EASEMENT AGREEMENT**

SCANNELL PROPERTIES #424, LLC,
an Indiana limited liability company

By: _____
Marc Pflaging, Manager

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Marc Pflaging, the Manager of Scannell Properties #424, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Easement for and on behalf of said company.

Witness my hand and Notarial Seal this ____ day of _____, 2020.

(SEAL)

Printed Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR PARCEL

Lot ____, Certified Survey Map No. ____, filed in the Office of the Register of Deeds for La Crosse County, Wisconsin on ____, 2020, in Volume ____ on Page ____, as Document No. ____, being Part of the SW 1/4 of the SW 1/4, Part of the SE 1/4 of the SW 1/4, Part of the SW 1/4 of the SE 1/4, All in Section One (1), Township Sixteen (16) North, Range Seven (7) West, City of La Crosse, La Crosse County, Wisconsin.

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE PARCEL

Lot ____, Certified Survey Map No. ____, filed in the Office of the Register of Deeds for La Crosse County, Wisconsin on ____, 2020, in Volume ____ on Page ____, as Document No. ____, being Part of the SW 1/4 of the SW 1/4, Part of the SE 1/4 of the SW 1/4, Part of the SW 1/4 of the SE 1/4, All in Section One (1), Township Sixteen (16) North, Range Seven (7) West, City of La Crosse, La Crosse County, Wisconsin.

EXHIBIT C

EASEMENT AREA LEGAL DESCRIPTION & DEPICTION

Being a part of Lot 1, Certified Survey Map, Volume 17, Page 33, Document No. 1690333, located in the Southeast ¼ of the Southwest ¼ of Section 1, Township 16 North, Range 7 West, City of La Crosse, La Crosse County, Wisconsin, more particularly described as follows:
Being a strip of land 12.5 feet in width lying westerly of and adjacent to the following described line.

Commencing at the South ¼ Corner of said Section 1; Thence N01°21'26"W along the North – South ¼ line of said Section 1 a distance of 489.22 feet to the southerly boundary of said Lot 1; Thence S87°28'25"W 0.32 feet along the southerly line of said Lot 1 to the point of beginning of the line to be described; Thence N02°31'35"W 697.73 feet to the north line of said Lot 1 and said line there terminating.

The sidelines of said strip of land are to be prolonged or shortened to terminate on the north and south lines of said Lot 1.



