

REAL ESTATE PURCHASE AGREEMENT

Eisenhower Drive, Appleton, WI

THIS REAL ESTATE PURCHASE AGREEMENT (the “**Agreement**”) is executed and shall be effective as of the Effective Date (as defined in Section 25(n) below), by and between the **CITY OF APPLETON, WISCONSIN** (the “**Seller**”) and **SCANNELL PROPERTIES, LLC**, an Indiana limited liability company, or its assigns (the “**Buyer**”) who acknowledge that the following recitals are a material part of this Agreement:

RECITALS:

A. Seller is the owner, in fee simple, of a parcel of real estate containing approximately 30 acres of land and related appurtenances, and any improvements, structures and/or fixtures located thereon, located adjacent to and west of S Eisenhower Drive, in the City of Appleton in Calumet County, Wisconsin and as more particularly depicted in the attached Exhibit A (the “**Land**,” which Land and any improvements and/or fixtures thereon and all appurtenances thereto are hereinafter collectively referred to in this Agreement as the “**Property**”);

B. Buyer desires to purchase the Property and Seller desires to sell the Property.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Buyer and Seller (each a “**Party**”, or collectively, the “**Parties**”) agree as follows:

1. **Purchase and Sale.** Seller agrees to sell, and Buyer agrees to purchase the Property for the price and subject to the terms and conditions hereinafter set forth.

2. **Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) shall be determined by multiplying the number of gross acres for the Property set forth in the Survey (as defined in Section 6 below) by Thirty-Three Thousand and No/100 Dollars (\$33,000.00).

3. **Payment of Purchase Price.** The Purchase Price shall be paid to Seller as follows:

(a) Within three (3) business days after the Effective Date, Buyer shall deposit with First American Title Insurance Company c/o Steven I. Zellinger, 30 North LaSalle Street, Suite 2700, Chicago, Illinois 60602 (the “**Title Company**”) an earnest money deposit in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the “**Deposit**”). In addition, if the Buyer exercises its right to extend the Satisfaction Date (as defined in Section 4, below), the Buyer shall deposit an additional sum of Five Thousand and No/100 Dollars (\$5,000.00) with the Title Company for each Extension (as defined in Section 4, below) (with each such additional deposit being referred to here as an “**Additional Deposit**”). The Deposit, and any and all Additional Deposits, if applicable, shall also be referred to herein as the “**Earnest Money**”. The Earnest Money shall be held, applied, returned or retained in accordance with the terms of this Agreement. The Earnest Money shall be invested by the Title Company in an interest-bearing account, or as directed by Buyer, and all interest on the Earnest Money shall be applied to the Purchase Price, or if the Closing (as defined in Section 10, below) does not occur, credited to the Party that is entitled to receive the Earnest Money pursuant to the terms of this Agreement. The Earnest Money shall be deposited with the Title Company pursuant to the terms of a separate escrow agreement, substantially in the specimen form attached hereto as Exhibit B, which shall be prepared in triplicate and executed by Buyer, and promptly executed by Seller and the Title Company.

(b) The remainder of the Purchase Price, plus or minus any prorations and adjustments made pursuant to this Agreement, shall be deposited by Buyer with the Title Company in cash, certified check, wire transfer or other immediately available funds, for payment to Seller at the Closing.

4. **Conditions.** The Buyer's obligations under this Agreement are subject to the satisfaction (or waiver in writing by Buyer) of the conditions in this Section 4 (the "**Conditions**") on or before the date that is one hundred twenty (120) days after the Effective Date (the "**Satisfaction Date**").

The Buyer shall have a unilateral right to extend the Satisfaction Date for three (3) additional and consecutive periods of thirty (30) days each (each herein an "**Extension**") if Buyer determines that it requires additional time to attempt to satisfy the Conditions. If Buyer elects to exercise its rights to any such Extension, then Buyer shall advise Seller, in writing (each such notice being referred to as an "**Extension Notice**") at any time on or prior to the one hundred twentieth (120th) day following the Effective Date (for the first Extension) or at any time prior to the expiration of the then applicable Extension (for the next Extension). If Buyer timely delivers an Extension Notice, then the Satisfaction Date shall be extended for the applicable thirty (30) day period.

Buyer may terminate this Agreement on or before the Satisfaction Date (as that date may be extended if the Buyer exercises its right to any Extension as provided above) if the Buyer determines that any one or more of the Conditions specified below have not been or will not be satisfied.

If the Buyer determines, on or prior to the Satisfaction Date (as that date may be extended if the Buyer exercises its right to an Extension as provided above), that the Conditions are satisfied, in its sole discretion then the Buyer may, in its sole discretion, agree to proceed with Closing under this Agreement by delivery of a written notice to Seller, with a copy to the Title Company (herein an "**Approval Notice**"). To be effective, any such Approval Notice must be given on or before the Satisfaction Date (as that date may be extended if the Buyer exercises its right to an Extension as provided above). If the Buyer does not deliver such an Approval Notice to the Seller within the time period provided herein, then this Agreement will automatically terminate without the need for any further notice, and any refundable portion of the Earnest Money will be returned to Buyer, any non-refundable portion of the Earnest Money will be delivered to Seller, and neither party shall have any further rights or liability to the other hereunder, except as hereinafter specifically provided in this Agreement. Notwithstanding any of the foregoing to the contrary, if Buyer determines at any time prior to the Satisfaction Date that the Conditions are not satisfied, in its sole discretion, then the Buyer may deliver a written notice to Seller, with a copy to the Title Company (herein a "**Termination Notice**"). If the Buyer delivers such a Termination Notice to the Seller within the time period provided herein, then this Agreement will terminate, and any refundable portion of the Earnest Money will be returned to Buyer, any non-refundable portion of the Earnest Money will be delivered to Seller, and neither party shall have any further rights or liability to the other hereunder, except as hereinafter specifically provided in this Agreement.

The amount of the Earnest Money and the portions thereof that are refundable and non-refundable for specified periods is set forth below:

Period of days following the Effective Date	Earnest Money Amount on Deposit	Refundable Portion of the Earnest Money	Non-Refundable Portion of the Earnest Money
0-120	\$25,000.00	\$25,000.00	\$0.00
121-150	\$30,000.00	\$25,000.00	\$5,000.00
151-180	\$35,000.00	\$25,000.00	\$10,000.00
181-210	\$40,000.00	\$25,000.00	\$15,000.00

If the Buyer does timely issue an Approval Notice, then the full amount of the Earnest Money will become non-refundable (subject to the provisions of Section 17(b), below) and all interest or other income earned in relation to the Earnest Money will be applied as a credit against the Purchase Price that is otherwise due under this Agreement.

The Conditions to be satisfied by Buyer, in its sole discretion, include and are limited to the following:

(a) Buyer shall have received the Title Commitment and Survey, as each is hereinafter defined, in the condition and as required under Section 5 and Section 6 of this Agreement.

(b) Buyer shall have determined that the Property is suitably zoned to a zoning classification compatible with Buyer's intended use of the Property as a warehousing and distribution center, with all necessary classifications, variances, permissions, exceptions, conditional uses, and other approvals having been obtained from all applicable governmental agencies, on terms acceptable to Buyer, and such approvals being final, non-appealable and in full force and effect. In the event Buyer determines that it requires any approvals, consents or other documentation with respect to the zoning of the Property (including but not limited to rezoning, exception or a special use permit) to permit Buyer's proposed use of the Property, Buyer shall have the right, at Buyer's expense, to file such petitions for such approvals as Buyer deems necessary or appropriate. In such a case, the Seller agrees that it shall execute all necessary consents and other documents necessary for the filing of such petitions and obtaining the appropriate governmental approvals.

(c) Buyer shall have determined that the Property is suitably subdivided and is a separate tax parcel, with all subdivision approvals having been obtained from all applicable governmental agencies, on terms acceptable to Buyer, and such approvals being final, non-appealable and in full force and effect. In the event that the Property is not subdivided or is not a separate tax parcel, and governmental approvals, consents or other documentation with respect to the subdivision of the Property are required in order to permit the conveyance of the Property by Seller and/or in order to permit the development of the Property as contemplated by the Buyer, the Buyer shall, at Buyer's expense, file such plats and petitions for subdivision approvals as are necessary or appropriate; provided that no subdivision plat shall be filed by Buyer prior to the closing date for the Property without Seller's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. In such a case, the Seller agrees that it shall execute all necessary consents and other documents necessary for the filing of subdivision plats and/or petitions and obtaining the appropriate governmental approvals. For purposes of this

Agreement, the term "subdivision" shall include such lot splits or consolidations as determined necessary by Buyer.

(d) Buyer shall have determined that all site plan approvals, permits, consents, approvals and other things required or desired by Buyer to be obtained from all federal, state and local governmental, municipal, public and other authorities, bodies and agencies, including but not limited to environmental approvals, as well as under any covenants, conditions or restrictions applicable to the Property and Buyer's proposed use thereof (collectively the "**Approvals**"), either have been obtained and remain in full force and effect or will be obtainable by Buyer, in either case on terms acceptable to Buyer.

(e) Buyer shall have determined that utilities, including, but not limited to, gas, electricity, water, sanitary sewer, storm sewer, telephone and other telecommunication utilities, are available at the Property line, in such capacities and in such locations as are satisfactory to Buyer. If such utilities are not available at the Property line in such capacities as will permit the Buyer to use the Property for its proposed use as a warehousing and distribution center, the Buyer shall have determined that such utility infrastructures are available, in sufficient capacities, to be extended by Buyer through perpetual easements that benefit the Property or through public rights-of-way, that will permit the Buyer to extend such utilities to the Property, at Buyer's expense.

(f) Buyer shall have determined that the Property has free, unrestricted and direct legal rights of access and ingress and egress to one or more public roads or highways, with access drives and curb cuts to such specifications and in such number and at such locations as deemed necessary or desirable by Buyer.

(g) Buyer shall have received such environmental site assessments, archaeological studies and geotechnical reports, which may include a delineation of any wetlands on the property, and any other information that the Buyer deems relevant to its proposed use of the Property, all of which shall be acceptable to Buyer.

(h) Buyer shall have determined that any and all improvements, structures, facilities and fixtures on the Property (which, if any, are collectively referred to herein as the "**Improvements**") are located entirely within the bounds of the Property and that there are no encroachments upon the Property by improvements or appurtenances on any property adjoining the Property.

(i) Buyer shall have determined that the Property is not protected habitat for any endangered or protected species of plant, animal or other living organism.

(j) Buyer shall have determined that the Property is not located within any area of special flood hazard and that flood insurance will not be required for any improvements that may be developed by the Buyer on the Property. Buyer shall have determined that: (i) it can develop a feasible site plan for its proposed development; and (ii) the acquisition and development of the Property presents a viable economic opportunity.

(k) Buyer shall have obtained financing acceptable to Buyer for its acquisition of the Property.

(l) Buyer shall have procured an executed lease for the Property from a commercial tenant, on terms acceptable to Buyer.

(m) Buyer shall have determined that Seller shall have taken any necessary actions to cause any existing leases pertaining to the use and occupancy and/or farming activities in and/or upon the Property to be terminated prior to the Closing Date.

Seller agrees to reasonably cooperate with Buyer, including furnishing Buyer with all necessary information, and executing such applications and other documents as may be required, in connection with Buyer's satisfaction of the above Conditions, all at no cost to Seller.

At any time after the Effective Date, Buyer and its agents shall have the right to enter upon the Property and make and conduct any and all tests and inspections that Buyer deems necessary and/or appropriate to satisfy Buyer as to the condition of the Property; provided, however, that Buyer shall promptly restore any damage to the Property resulting from the entry of Buyer or its agents. All such tests shall be at Buyer's cost and expense.

5. **Title.**

(a) Buyer shall procure a commitment for an owner's policy of title insurance (the "**Title Commitment**") issued by the Title Company on the ALTA 2006 Owner's Policy form (or other form acceptable to Buyer), in which the Title Company shall agree to insure, for the full amount of the Purchase Price, merchantable fee simple title to the Property in the name of Buyer, free from the Schedule B standard printed exceptions and all other exceptions except those exceptions which are acceptable to the Buyer, in its sole discretion (the "**Permitted Exceptions**") after delivery of the Deed (as defined in Section 11) to Buyer from Seller. The Title Commitment shall cover and include any easements and other rights appurtenant to the Property. Such Title Commitment shall have attached thereto complete, legible copies of all instruments noted as exceptions thereto. The Title Commitment shall be updated prior to the Closing to reflect the state of the title not more than ten (10) days prior to the Closing. Buyer shall pay any and all costs and expenses related to the title insurance, including all search fees, closing fees and the premium for the owner's title insurance policy and all endorsements (the "**Title Policy**") issued pursuant to the Title Commitment.

(b) If: (i) the Title Commitment reflects any exceptions to title which are not acceptable to Buyer, in Buyer's sole discretion; or (ii) the Survey delivered to Buyer pursuant to Section 6, below, discloses any state of fact not acceptable to Buyer, in Buyer's sole discretion; or (iii) at any time prior to the Closing, title to the Property is encumbered by any exception to title not acceptable to Buyer, in Buyer's sole discretion (with any such exception or unacceptable state of fact being referred to herein as a "**Title Defect**"); then Buyer shall, on or before the Satisfaction Date (or, in the case of a Title Defect not disclosed by the Title Commitment prior to the Satisfaction Date, within fifteen (15) days after Buyer receives notice of such Title Defect, along with a copy of such exception), give Seller written notice of such Title Defect. Seller shall have the right, but not the obligation (except as specifically set forth below), during the thirty (30) day period after receipt of such notice, but not later than Closing, to remove such Title Defect or obtain affirmative title insurance coverage acceptable to Buyer, insuring and defending Buyer against any loss, cost or expense arising out of or related to such Title Defect ("**Affirmative Coverage**"). If Seller elects to do so, then on or before the Closing Date, Seller shall provide Buyer with reasonable evidence of such removal or provide reasonable evidence that such Title Defect will be removed or that such Affirmative Coverage shall be obtained. Notwithstanding anything contained herein to the contrary, Seller shall be obligated to expend whatever sums are required to cure or obtain Affirmative Coverage for the following Title Defects prior to, or at, the Closing:

(1) All mortgages, security deeds or other security instruments encumbering the Property (which do not result from acts or omissions on the part of Buyer);

(2) Judgments against the Seller (which do not result from acts or omissions on the part of Buyer) which have attached to and become a lien against the Property; and

(3) All past due *ad valorem* taxes and assessments of any kind, which constitute, a lien against the Property and any "roll back" or similar taxes that will become due and payable as a result of any change in the use of the Property following the Closing.

(c) The Title Policy to be issued at Closing shall include: (i) a zoning endorsement (if permitted by applicable law) in a form acceptable to the Buyer; (ii) an access endorsement to affirmatively insure access to and from the Property; (iii) a utilities endorsement to affirmatively insure that the Property has access to and is serviced by applicable, specified utility services; (iv) affirmative coverage of and for any appurtenant easements; (v) a contiguity endorsement, if the Property is comprised of two or more parcels; and (vi) any other title endorsements requested by Buyer.

(d) Seller shall have the right, if reasonably necessary, to extend the Closing Date (as defined in Section 10, below), for a period not to exceed twenty (20) days in order to cure or obtain Affirmative Coverage for any Title Defect.

(e) In the event Seller is unable or unwilling to cure or obtain Affirmative Coverage for any Title Defect within the time periods set forth above, Buyer shall have the option to either: (i) waive any such Title Defect and proceed to Closing; or (ii) terminate this Agreement and receive a full refund of the Earnest Money, in which case neither Party shall have any further obligations hereunder, except as specifically set forth in this Agreement.

(f) If this transaction is to be closed through a local agent of the Title Company, then as a condition to Closing the Buyer shall be entitled to receive a closing protection letter issued by the Title Company, covering its local agent, in a form reasonably acceptable to Buyer.

6. **Survey.** Buyer, at its expense, shall procure a survey of the Property (the "Survey") prepared by a registered land surveyor satisfactory to Buyer. In addition to any other requirements of Buyer, the Survey shall disclose on the face thereof the number of gross acres included in the Property and be certified to Seller, Buyer, Title Company and Buyer's lender.

7. **Cooperation of Seller and Property Information.** Seller shall assist Buyer and its representatives, whenever reasonably requested by Buyer, in obtaining information about the Property.

(a) Seller agrees that it shall, within ten (10) days following the Effective Date and at Seller's expense, deliver to Buyer true, correct and complete copies of the following documents and/or information, to the extent that such documents and/or information are within the Seller's custody or control: (i) copies of all current or most recent available real estate tax bills applicable to each parcel of the Property; (ii) any utility bills pertaining to the Property; (iii) any plans or specifications pertaining to any Improvements on the Property; (iv) any warranties and/or service contracts pertaining to any Improvements on the Property; (v) any existing surveys, geotechnical reports, maps, or other reports pertaining to the physical condition of the Property, including, without limitation, structural reports, maintenance reports, environmental reports (the "Environmental Reports"), soils reports and similar test or inspection reports; (vi) any permits

or approvals pertaining to the Property; (vii) any environmental impact reports, zoning commitments, declarations or similar development restrictions and/or approvals; (viii) any existing title insurance commitments or policy(ies); (ix) any management, service and maintenance contracts, or any leases, relating to the Property, including any amendments thereto; (x) any covenant, condition and/or restriction that encumbers the Property; and (xi) any legal notice received by Seller which affects the Property.

(b) Seller agrees that it shall, within ten (10) days following the Effective Date and at no cost to Buyer, complete to its actual knowledge and deliver to Buyer the Environmental Site Assessment Owner's Disclosure (the "ESA") in the form attached as Exhibit C. The ESA is a statement of conditions and information concerning the Property made to the best knowledge of the Seller on the date it is completed, and is not a guaranty or warranty of any kind by the Seller. The ESA is not a substitute for any inspections or tests, and the Buyer is solely responsible for obtaining its own independent professional investigations to determine the condition of the Property.

8. **Taxes and Assessments.**

(a) The records of the Calumet County Auditor and/or Treasurer reflect that the Property currently consists of all of (i) Parcel No. 31-9-5712-26 (1.74 acres), (ii) Parcel No. 31-9-5712-27 (1.69 acres), (iii) Parcel No. 31-9-5712-28 (1.69 acres), (iv) Parcel No. 31-9-5712-29 (1.74 acres), and Parcel No. 31-9-5712-00 (23.58 acres). Copies of the Calumet County Auditor's and/or Treasurer's records for the above parcels will be provided by the Seller to the Buyer pursuant to Section 7(a) above.

At the Closing, Seller will pay all real estate taxes and assessments that are due and payable. Taxes and assessments for the year of the Closing shall be prorated between the Seller and Buyer on a calendar year per diem basis, using the most recent tax and assessment records available.

At the Closing, Buyer shall receive a credit against the cash payment required for the taxes and assessments allocated to the Seller for the period from January 1 through the date of the Closing and the Seller shall not be further liable for such taxes and assessments.

(b) Notwithstanding any other provision of this Agreement to the contrary, Seller shall be responsible for the amount of any agricultural rollback taxes, or similar taxes imposed as the result of any change from the existing use of the Property, and shall indemnify Buyer against liability for any such taxes.

9. **Insurance, Condemnation and Risk of Loss.** The Seller's insurance on the Property shall be cancelled as of the Closing Date. In the event that, prior to Closing, all or any portions of the Property, any interests therein, or any rights appurtenant thereto are (i) damaged or destroyed by any fire or other casualty, or (ii) taken or appropriated (either permanently or for temporary periods) under the power of eminent domain or condemnation by any authority having such power, or by virtue of any actions or proceedings in lieu thereof, or if any notice or threat of such taking or appropriation has been given or is pending at the Closing, then Buyer, at its option, may either (a) cancel this Agreement by written notice to Seller, in which event Title Company shall immediately refund the Earnest Money to Buyer and neither Party shall have any further obligation hereunder, except as specifically set forth in this Agreement, or (b) elect to proceed with Closing, in which event the Purchase Price shall be reduced by an amount equal to any sums previously paid or then payable to Seller by the insurance carrier (plus an amount equal to the amount of the deductible feature of the Seller's insurance policy) or by the

condemning authority, by reason of any such casualty or by reason of any such taking, appropriation or action or proceeding in lieu thereof, and Seller shall transfer and assign to Buyer at Closing any and all further insurance or condemnation proceeds, claims, demands, actions and choses in action which may exist by virtue of such casualty, taking, appropriation or action or proceeding in lieu thereof; provided, however, that until the earlier of: (y) the Closing Date, or (z) termination of this Agreement, Seller shall not make any voluntary settlement or agreement regarding any casualty loss, taking, appropriation or action or proceeding in lieu thereof with any insurance carrier or any condemning authority, without first obtaining Buyer's written consent to such settlement or agreement.

10. **Closing.** The closing of the purchase and sale of the Property (the "**Closing**") shall occur at the offices of the Title Company or another location selected by both Seller and Buyer, upon the date (the "**Closing Date**") that is thirty (30) days after the Satisfaction Date (as that date may be extended if the Buyer exercises its right to any Extension as provided above), unless the Buyer and Seller mutually agree upon a different Closing Date.

Any and all documentary stamps, transfer taxes or conveyance fees due and payable upon the transfer of title contemplated herein shall be the responsibility of and shall be paid by the Seller. Seller will pay for preparation of the Deed, and Buyer will pay for the per page charge for recording the Deed. All closing costs and prorations shall be as provided in this Agreement, or in the absence of such provision, allocated according to the local custom in Calumet County, Wisconsin. All prorations shall be final.

11. **Closing Documents.** At the Closing, Seller shall execute and deliver to Buyer: (i) a general warranty deed in recordable form conveying fee simple title to the Property to Buyer, using the Survey legal description and subject only to the Permitted Exceptions and otherwise free and clear of all liens and encumbrances except such as have been approved in writing by Buyer (the "**Deed**"); (ii) any and all applicable transfer tax declarations or other transfer or sale disclosure statements required by applicable law; (iii) a title affidavit in a form satisfactory to the Buyer and the Title Company, suitable to permit the Title Company to delete the standard, pre-printed exceptions (identified in the Title Commitment) from the Title Policy; (iv) a certification of non-foreign status pursuant to Section 1445(b)(2) of the Internal Revenue Code, as amended (the "**Code**"); (v) an IRS Form 1099-S Disclosure Statement (if required under the Code); (vi) an assignment, in a form satisfactory to the Buyer, of any and all leases, contracts and/or service agreements, if any, pertaining to the Property that Buyer requests be assigned to Buyer; (vii) a closing or settlement statement prepared by the Title Company; (viii) an assignment of any warranties pertaining to any Improvements located on the Property; and (ix) such other instruments, certificates or affidavits as may be provided herein or as Buyer or Title Company may reasonably request to effect the intention of the Parties hereunder.

12. **Possession.** Sole and actual possession of the Property shall be delivered to Buyer on the Closing Date in the same condition as it is on the Effective Date, ordinary wear and tear excepted and subject to Section 9, above, free and clear of any rights or claims of any other party.

13. **Rights and Obligations.** The rights and obligations of Seller and Buyer herein contained shall inure to the benefit of and be binding upon the Parties and their respective permitted assigns.

14. **Notices.** All notices required or permitted to be given hereunder shall be in writing and delivered: (i) in person; or (ii) by certified or registered first class prepaid U.S. Mail, return receipt requested; or (iii) prepaid by nationally-recognized overnight courier service such as FedEx, to Seller or Buyer at their respective addresses set forth below, or at such other addresses, notice of which shall previously have been given to the other Party in accordance with this Section 14. Such notices shall be deemed given when personally delivered or when deposited in the mail or with such courier service. The

Parties shall provide courtesy copies of notices by facsimile, e-mail or other means, but such copies shall not constitute notice under this Agreement.

Seller: City of Appleton, Wisconsin
100 N. Appleton Street
Appleton, WI 54911
Attn: Matt Rehbein
E-Mail: matthew.rehbein@appleton.org
Facsimile: (920) 832-5994

Buyer: Scannell Properties, LLC
8801 River Crossing Blvd., Suite 300
Indianapolis, IN 46240
Attn: James C. Carlino, General Counsel
E-mail: jimc@scannellproperties.com
Facsimile: (317) 843-5957

with a courtesy copy to: Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Attn: Tony Setzer
E-Mail: tsetzer@boselaw.com
Facsimile: (317) 223-0361

15. **Representations and Warranties.** Seller hereby warrants and represents to Buyer, as of the Effective Date and as of the Closing Date, as follows:

(a) The execution, delivery and performance by Seller of its obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under, any of the provisions of any law, governmental rule, regulations, judgment, decree or order by which the Seller is bound, or by any of the provisions of any contract to which the Seller is bound, or by the organic agreements establishing and regulating the Seller's business affairs, and the Seller has full power and authority to enter into and consummate the transactions contemplated by this Agreement, and all consents and approvals necessary therefor have been obtained.

(b) The Seller has full power and authority to enter into this Agreement and to assume and perform all of its obligations under this Agreement; and the person executing this Agreement on its behalf has been duly authorized and is empowered to bind it to this Agreement.

(c) Seller is the legal and equitable owner of fee simple title to the Property and has the right to convey such fee simple title by Deed to Buyer on the Closing Date free and clear of all options, rights, covenants, easements, liens and other rights in favor of third parties, other than the Permitted Exceptions. The Property is not subject to any: (i) outstanding agreements of sale, options, liens, or other rights of third parties to acquire any interest(s) therein; (ii) ground leases or other leases or tenancies, including but not limited to equipment or signage leases, or other agreements relating to the ownership of the Property; (iii) real estate, management, supply, promotional, operating, maintenance, security or other service contracts; (iv) any declarations of covenants, conditions and restrictions, or similar encumbrances, affecting the Property; or (v) other encumbrance(s) other than the Permitted Exceptions. Seller shall not encumber or allow the

Property to be encumbered by any of the foregoing without Buyer's consent, which may be granted or withheld in Buyer's sole discretion.

(d) Seller does not hold any approvals, licenses, certificates, or permits to own, operate, use and/or maintain the Property, nor is Seller aware that any such approvals, etc., are necessary for Seller's current use of the Property.

(e) No work has been done on the Property, or materials or utilities furnished, that have not been fully paid for, and there is no claim against any portion of the Property or Seller for or on account of work done, materials furnished or utilities supplied to the Property. There are no payback agreements, revenue bonds, utility debt service expenses or other charges or expenses applicable to the Property.

(f) To the best of Seller's knowledge: (i) there are no violations, or threatened or pending violations, of any laws, statutes, ordinances, rules or regulations with respect to the Property open, noticed or existing; and (ii) no litigation, condemnation proceedings, eminent domain proceedings or similar actions or proceedings are now pending or threatened against the Property, or which could result in any judgment lien against the Property; nor does Seller know of or have reasonable grounds to know of any basis for any such violation, action or claim.

(g) There are no unpaid: (i) *ad valorem* real estate taxes or assessments; or (ii) assessments for public improvements pertaining to the Property. To the best of Seller's knowledge: (i) there are no public plans or proposals for changes in road grade, access or other municipal improvements which would affect the Property or result in any assessment; (ii) no ordinance authorizing improvements, the cost of which might be assessed against Buyer or the Property, is pending; and (iii) there is no appellate tax proceeding pending for the reduction or increase of the assessed real estate tax valuation to the Property or any portion thereof.

(h) The Property has direct legal and perpetual rights of access to and from the Property to one or more public roads.

(i) Utility services for water, sanitary and storm sewers, natural gas, electricity, and telephone and telecommunications services are available either at the Property or in the vicinity of the Property in locations wherein the Buyer can connect to such existing utility infrastructures and extend the same to the Property at its own expense through perpetual private easements that benefit the Property or through public rights-of-way.

(j) To the best of Seller's knowledge, without independent investigation or inquiry, except as otherwise disclosed in the Environmental Reports: (i) there are no underground storage tanks on the Property, (ii) the Property has never been used as a landfill or garbage dump, and (iii) there are no hazardous, toxic or infectious wastes, substances or materials present on the Property in quantities or concentrations or otherwise stored or used in violation of any applicable Environmental Laws (as herein defined). For these purposes, the term "**Environmental Laws**" shall mean and refer to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Super Fund Amendments and Reauthorization Act (42 U.S.C. § 9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the Clean Air Act (42 U.S.C. § 7401 *et seq.*); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*); the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*); the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*); and the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*);

each as heretofore and hereafter amended or supplemented, and any future or present local, state or federal statute, rule or regulation pertaining to the regulation and protection of the environment, industrial hygiene, pollution, or environmental effects on health and safety.

(k) Seller is currently in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of the Office of Foreign Assets Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

The representations and warranties in this Section 15 shall survive the Closing Date for a period of two (2) years. Seller shall indemnify, defend and hold Buyer harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, loss, costs and expense (including, but not limited to, reasonable attorneys’ fees) arising or resulting from, or suffered, sustained or incurred by Buyer as a result (direct or indirect) of the untruth or inaccuracy of any of the foregoing representations and warranties by Seller to Buyer or the breach of any of the foregoing representations and warranties of Seller, which indemnity shall survive the Closing Date for such period, and, regarding any such representations and warranties as to which any litigation that was filed within such period is pending, also during the pendency of any such litigation, including appeals, if any.

16. **Prorations.** Subject to the provisions of Section 8, above, Seller shall be entitled to all income and shall be responsible for all expenses produced from the operation of the Property which are allocable through and including the Closing Date. Buyer shall be entitled to income and shall be responsible for all expenses which are allocable to the period after the Closing Date. Unless otherwise specifically set forth in this Agreement, at the Closing, all items of income and expense shall be prorated in accordance with the foregoing principle.

17. **Default and Remedies.**

(a) In the event of a default by Buyer under the terms of this Agreement, Seller shall be entitled, as its sole and exclusive remedy hereunder, to terminate this Agreement and receive the Earnest Money as full liquidated damages for such default of Buyer, whereupon the Parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination. In the event of any such default, the Seller shall give the Buyer written notice of the occurrence of such default (a “**Buyer Default Notice**”) and the Buyer shall have twenty (20) days following its receipt of such Buyer Default Notice in which to cure such default hereunder. It is hereby agreed that Seller’s damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Earnest Money constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as full liquidated damages.

(b) In the event of a default by Seller under the terms of this Agreement, Buyer shall be entitled to pursue all remedies available at law or in equity, including, without limitation, the right to terminate this Agreement and receive a full refund of the Earnest Money, or to seek specific performance of Seller’s obligations under this Agreement. In the event of any such default, the Buyer shall give the Seller written notice of the occurrence of such default (a “**Seller Default Notice**”) and the Seller shall have twenty (20) days following its receipt of such Seller Default Notice in which to cure such default hereunder.

18. **Use of Brokers.** Seller and Buyer hereby warrant that neither Party has an obligation to pay an outside brokerage commission for the sale of the Property. Buyer and Seller hereby agree to indemnify, defend and hold harmless the other Party from and against any liability, cost or expense, plus all costs of collection, including litigation expenses and attorneys' fees, as a result of a claim for a commission, fee or other compensation made by any real estate broker, finder or other person and asserted against the other Party by reason of an arrangement made or alleged to have been made by the indemnifying Party.

19. **Attorneys' Fees.** In the event that either Party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either Party, the prevailing Party shall be entitled to recover from the non-prevailing Party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs as may be fixed by the court or jury.

20. **Binding Effect.** This Agreement is executed by Buyer and submitted to Seller as an offer to purchase the Property. If: (i) Seller does not execute and deliver this Agreement, without revision, to Buyer within five (5) business days after the date of Buyer's execution of this Agreement, Buyer's offer shall terminate and expire; or (ii) in the event Buyer delivers written notice to Seller within such period, revoking its offer to purchase; in either event, Buyer shall have no further liability or obligation hereunder.

21. **Confidentiality.** Buyer and Seller acknowledge that only to the extent permitted by Wisconsin's Open Records and Open Meeting Laws, the terms of this Agreement, Buyer's interest in purchasing the Property, the results of any tests and inspections performed by or on behalf of Buyer, and any information provided by Seller pursuant to Section 7, above, shall be kept and maintained confidential and shall not be disclosed by either Party to any third party without the prior written consent of the other Party. This provision shall not prohibit disclosures on a "need to know" basis to employees, agents, attorneys, brokers, surveyors, title companies, engineers, contractors, lenders, etc., as necessary to obtain financing or governmental permits and approvals, to potential tenants, or as compelled by legal process or required by law, including without limitation Wisconsin's Open Records and Open Meeting Laws. This provision shall survive any termination of this Agreement.

22. **Section 1031 Exchange.** In the event that either Party elects to structure this transaction as a like-kind exchange pursuant to Section 1031 of the Code, the other Party shall reasonably cooperate upon the request of the electing Party, including prompt execution of such documents as may reasonably be required to effectuate such exchange, provided that: (a) the electing Party shall bear all costs in connection with such exchange and shall indemnify and hold the other Party harmless from and against any cost, claims, expenses or liabilities (including attorney's fees) incurred by the other Party solely as a result of structuring the transaction as a like-kind exchange; and (b) the exchange shall have no material effect on the terms of either Party's rights or obligations under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, Seller agrees that Buyer may assign its rights in this Agreement to a third party as part of any such exchange. Nothing contained herein shall prevent both Parties from electing a like-kind exchange.

23. **Force Majeure.** Except with regard to the payment of money due, if either Party hereto shall be delayed, hindered in, or prevented from the performance of its obligations hereunder by reason of any occurrence which is not within the reasonable anticipation or control of such Party, including but not limited to strikes, lockouts, labor troubles, governmental action or inaction, failure of power, riots, insurrection, war, acts of God, or other similar reason, and which occurrence, in any event, is not a result

of the intentional act, negligence or willful misconduct of such Party (a “**Force Majeure Event**”), such Party’s performance shall be excused for the period of time equivalent to the delay caused by such Force Majeure Event, provided such Party gives prompt notice to the other Party of such delay.

24. **Independent Contract Consideration.** In consideration of the Seller’s execution of this Agreement and the permission afforded to the Buyer to have access to and rights of entry upon the Property, the Buyer agrees to pay to the Seller the sum of Twenty Five Dollars (\$25.00), which amount shall be non-refundable and non-applicable to the Purchase Price, and will constitute independent contract consideration for the Seller’s agreement to enter into this Agreement. Such amount shall be due and payable upon demand by Seller to Buyer.

25. **Miscellaneous Provisions.**

(a) This Agreement shall be interpreted and enforced according to the laws of the State of Wisconsin, without reference to its conflict of laws rules. The venue of any litigation arising out of this Agreement shall lie exclusively with the state or federal court in whose district the Property is located.

(b) All headings and section designations of this Agreement are inserted for convenience only and do not form a part of this Agreement or limit, expand or otherwise alter the meaning of any provisions hereof.

(c) This Agreement, and any amendments hereto, may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. The Parties agree that, except for notices (which are governed by Section 14, above), signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. At the request of either Party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment.

(d) The provisions of this Agreement are intended to be for the sole benefit of the Parties and their respective successors and assigns, and none of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party.

(e) If, under any provision of this Agreement: (i) the date any act to be done or action to be taken; or (ii) the last day of any time period, including any notice period; falls on a Saturday, Sunday or legal holiday in the state whose law governs this Agreement, then such act or action shall be deemed to have been validly done or taken on, or such time period shall be deemed extended to, the next succeeding day which is not a Saturday, Sunday or legal holiday, and all succeeding time periods shall be deemed extended accordingly. Unless otherwise specified in this Agreement, all references herein to a “day” or “days” shall refer to calendar days.

(f) Buyer may assign this Agreement and all of its interests herein to an entity related to or affiliated with Buyer or the potential landlord of the lease referred to in Section 4(l) above without obtaining the Seller’s consent. Upon any assignment, the assignee shall have and be subject to all the rights, benefits, duties and obligations of Buyer hereunder and the Buyer named in this Agreement will be relieved of any rights or obligations hereunder.

(g) This Agreement represents the entire agreement between Seller and Buyer covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or

inducements to the execution hereof or in effect between the Parties. No change or addition shall be made to this Agreement except by a written agreement duly executed by Seller and Buyer.

(h) The Parties acknowledge that each has been represented by, or has had the opportunity to consult with, legal counsel of its own choosing in this matter, and this Agreement has been arrived at through arms' length negotiation. For purposes of the rule of contract interpretation that construes a document against its drafter, the Parties agree that neither Party nor its counsel shall be considered the drafter hereof.

(i) If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed in accordance with its intent as if such invalid or unenforceable provision had never been contained herein.

(j) No failure by either Party, at any time, to require the performance by the other of any term of this Agreement, shall in any way affect the right of either Party to enforce such terms, nor shall any waiver by either Party of any term hereof be taken or held to be a waiver of any other provision of this Agreement. No waiver of any term or provision of this Agreement shall be effective unless the same is in writing and signed by the Party granting such waiver.

(k) Buyer represents and warrants to Seller that: it has full power and authority to enter into this Agreement and to assume and perform all of its obligations under this Agreement; and the person executing this Agreement on its behalf has been duly authorized and is empowered to bind it to this Agreement.

(l) With regard to all matters in this Agreement requiring the consent or approval of either Party, the Parties agree that any such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless otherwise specifically provided in this Agreement.

(m) All Exhibits to this Agreement are incorporated herein as though fully set forth.

(n) For purposes of this Agreement, the term "**Effective Date**" will mean and refer to the date upon which the latter of the parties executes this Agreement, as indicated by the respective dates set forth adjacent to each of the parties' respective signatures to this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY BLANK]

SIGNATURE PAGE TO REAL ESTATE PURCHASE AGREEMENT

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the date(s) specified by their respective signatures.

SELLER:

BUYER:

City of Appleton, Wisconsin

Scannell Properties, LLC, an Indiana limited liability company

By: _____

By: 

Printed: _____

Printed: Marc Pfleger

Title: _____

Title: Manager

Date: _____

Date: 6/7/19

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Index to Exhibits

Exhibit A – Legal Description of the Property

Exhibit B – Form of Escrow Agreement

Exhibit C – Form of Environmental Site Assessment Owner’s Disclosure

EXHIBIT A
DEPICTION OF THE LAND



EXHIBIT B

FORM OF ESCROW AGREEMENT

ESCROW AGREEMENT

Escrow Number: _____ **Date:** _____, 201__

Property Address: _____

Deposit Amount: \$ _____ .00

SCANNELL PROPERTIES, LLC, an Indiana limited liability company (the “**Buyer**”), and _____ (the “**Seller**”), are parties to that certain Real Estate Purchase Agreement (the “**Agreement**”) dated as of _____, 201__, with respect to the above referenced property (the “**Property**”), which is more particularly described in the Agreement. The Buyer has deposited the sum of _____ and No/100 Dollars (\$ _____ .00) (the “**Deposit**”) with First American Title Insurance Company (the “**Title Company**”) to be held under the terms of the Agreement and the terms of this Escrow Agreement (the “**Escrow Agreement**”). On or before the Satisfaction Date (as defined in the Agreement), the Deposit shall be refunded by the Title Company to the Buyer upon receipt of a written request from the Buyer, together with evidence that the Buyer has given the Seller written notice of termination in accordance with the terms of the Agreement. Following the Satisfaction Date, if the Title Company has not received any written request from the Buyer as set forth above, the Deposit and any Additional Deposits (as defined in the Agreement) shall be distributed to Seller and/or Buyer as directed in Section 4 of the Agreement.

Following the Satisfaction Date, the Title Company is hereby expressly authorized to disregard, in its sole discretion, any and all unilateral notices or warnings given by any of the parties hereto, or by any other person or corporation, except as otherwise expressly provided herein, but Title Company is hereby expressly authorized to regard and to comply with and obey any and all orders, judgments or decrees entered or issued by any court with or without jurisdiction, and in case Title Company obeys or complies with any such order, judgment or decree of any court it shall not be liable to any of the parties hereto or any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being entered without jurisdiction or being subsequently reversed, modified, annulled, set aside or vacated. In case of any suit or proceeding regarding this escrow, to which Title Company is or may at any time become a party, it shall have a lien on the contents hereof for any and all costs, attorneys’ fees, whether such attorneys shall be regularly retained or specially employed, and any other expenses which it may have incurred or become liable for on account thereof, and it shall be entitled to reimburse itself therefor out of said deposit, and the undersigned jointly and severally agree to pay Title Company upon demand all such costs, fees and expenses so incurred.

Except as expressly provided herein, in no case shall the above mentioned deposits be surrendered except on an order signed by the parties hereto, their respective legal representatives or assigns, or in obedience of the process or order of court as aforesaid.

Unless directed otherwise in writing by Buyer, all deposits made pursuant to this Escrow Agreement shall be invested on behalf of the Buyer in investments limited to interest-bearing, federally-insured instruments with a national bank or federal savings bank or in a money market fund authorized to invest solely in direct obligations of the United States of America (“**Qualified Investments**”). The funds

invested in this manner shall have a maturity of 30 days or less. Interest and other earnings on any funds invested hereunder shall be added to the funds held on deposit by Title Company hereunder, and losses, if any, incurred from any such investment shall reduce the balance of the funds on deposits hereunder. Buyer shall provide Title Company with a Form W-9 with its taxpayer identification number and such other investment forms as it may reasonably require. Title Company shall, upon request furnish information concerning its procedures for such investment, but shall not charge or otherwise assess any additional fees for the investment of such funds.

Billing Instructions: Escrow fee in the amount of \$0.00 will be billed as follows: Half to Seller and half to Buyer. NOTE – ESCROW FEES WAIVED IN ANTICIPATION THAT THE TITLE COMPANY WILL BE PROVIDING TITLE INSURANCE UNDERWRITING SERVICES IN CONNECTION WITH THE AGREEMENT FOR WHICH IT WILL BE COMPENSATED AT CLOSING.

Except as to deposits of funds for which Title Company has received express written direction concerning investment to other handling, the parties hereto agree that the Title Company shall be under no duty to invest or reinvest any deposits at any time held by it thereunder; and, further that Title Company may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds held as a fiduciary under applicable law, provided, however, nothing herein shall diminish Title Company's obligation to apply the full amount of the deposits in accordance with the terms of the Agreement.

In the event the Title Company is requested to invest deposits hereunder in Qualified Investments pursuant to this agreement, Title Company shall not be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of these escrow instructions except to the extent that Title Company negligently or willfully fails to follow such investment directions.

This Escrow Agreement is intended to be executed in triplicate, but may be executed in multiple counterparts. Each such counterpart shall be deemed an original, but all of which together shall constitute one and the same document. The parties agree that, except for notice purposes, signatures transmitted by facsimile or scanned and e-mailed shall have the legal effect of original signatures. Upon the request of any party, the parties shall promptly exchange executed original counterparts of this Escrow Agreement.

[Remainder of this Page Intentionally Blank.]

EXHIBIT C

ENVIRONMENTAL SITE ASSESSMENT OWNER'S DISCLOSURE

[ATTACHED]

The following information is to be completed by the owner of the property.

LANDOWNER	Name:				Contact:			
	Address:							
	City:				State:		Zip Code:	
	Phone:		Fax:		Email:			

Site Address:							
City:				State:		Zip Code:	
Site or Facility Description, Assessor's Parcel No. (if undeveloped land):							

SITE INFORMATION				
Advise the following characteristics of the site:	Yes	No	Unk	Comments / Details
Property acreage:				
Date property developed:				
Garage?				
Garage floor drains?				
Truck wash area?				
Dock / warehouse floor drains?				
Dry wells?				
Sanitary sewer?				
Storm sewers?				
Septic systems?				
Well water systems?				
Public water?				
Sump systems?				
Oil/water separator systems?				
Service pits?				
Asphalt paving?				
Stone paving?				
Oil/gas spills on the site?				
Underground tanks?				
Aboveground tanks?				
Were tanks removed from site?				
Offsite fill used?				
Radon issues?				
Asbestos containing materials?				
Flood plain?				
Wetlands?				
Other environmental concerns with site?				

SITE INFORMATION

Advise uses and activities performed onsite:

Current use of property:	
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Past use of property:	
-----------------------	--

	Yes	No	Unk	Comments / Details
Was used oil ever used for dust control?				
Hazardous wastes generated on site?				
Drums or containers stored onsite?				
Other environmental concerns?				

Indicate adjacent uses of property (i.e., industrial, commercial residential, roads, rail, undeveloped, etc.):

North	
South	
East	
West	

Advise if the following information is available:	Yes	No	Unk	Comments / Details
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Real estate appraisal				
Locator map				
Property survey				
Legal description				
Title commitment				
Geotechnical reports				
Environmental assessment or remediation reports				
Facility plans				
Environmental permits				
Inspection reports or notices of violations				
Public complaints about property				
Other information available?				

Completed by (print):			
Signed by:		Date:	