

CROSS REFERENCE: 060006590

### **GRANT OF DRAINAGE EASEMENT**

THIS INDENTURE made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “**Effective Date**”), WITNESSETH, that TOWER MCCORDSVILLE, LLC, a Delaware limited liability company (hereinafter referred to as the “**Grantor**”), grants and conveys a perpetual, non-exclusive drainage easement and right-of-way, for the purpose of constructing, installing, maintaining, inspecting, servicing, operating, repairing, replacing, and removing, as the case may be, a storm sewer, stormwater drainage ditch, and related stormwater drainage facilities (collectively, the “**Sewer Improvements**”), and to operate by means thereof a system for the collection and transportation of stormwater, on, over, under, across, and through that certain real estate located in Hancock County, Indiana, which real estate is depicted and described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the “**Easement Area**”), to the TOWN OF MCCORDSVILLE, INDIANA (hereinafter referred to as “**Grantee**”).

It is stipulated and agreed that Grantee, and its agents, servants, employees, contractors, and subcontractors, shall have the right to enter upon the Easement Area for purposes of constructing, installing, maintaining, inspecting, servicing, operating, repairing, replacing, and removing, as the case may be, the Sewer Improvements, and Grantor, and its successors and assigns, shall not use the Easement Area in any manner which may unreasonably restrict, prohibit, or impede Grantee, and its agents, servants, employees, contractors, and subcontractors, from such use. Furthermore, Grantee shall be responsible for and shall hold Grantor harmless for any damage, destruction, or injury to any property or person as a result of Grantee’s usage of said easement. Grantee shall return the Easement Area, after construction and installation of the Sewer Improvements and after any subsequent maintenance, inspection, service, repair, replace, or removal of the Sewer Improvements, and upon the expiration of this instrument (which obligation shall survive the expiration of this instrument), to its original condition as near as reasonably possible and practicable.

It is further stipulated and agreed that Grantee, and its agents, servants, employees, contractors, and subcontractors, shall have the right to enter upon the Easement Area and, temporarily, any portions of Grantor’s property within ten (10) feet of the Easement Area, for the purposes of constructing, installing, maintaining, inspecting, servicing, operating, repairing, replace, and removing the Sewer Improvements within the Easement Area.

It is further stipulated and agreed that Grantor shall have the right to encroach upon the Easement Area with landscaping (including, but not limited to, plantings such as shrubs, grasses,

other ground cover, and the like; mulch, rock, brick, and other hardscapes), dirt, mounding, gravel, concrete, asphalt, and the like for a driveway, street, or path, as permitted by all applicable governing agencies.

In the event any mechanic's lien is filed against the Easement Area as a result of services performed by or for Grantee, or materials furnished for the use of Grantee, Grantee shall cause such lien to be discharged within sixty (60) days after receipt of actual notice of the lien.

Notwithstanding anything in this instrument to the contrary, this instrument and all easements created hereby shall automatically expire and be of no further force and effect on the date that a construction permit for the development of the Easement Area, or any other real estate that also includes the Easement Area, is approved by the Town of McCordsville, Indiana. After the issuance of such a construction permit, Grantee agrees, within thirty (30) days following request from Grantor, to provide a supplement to this instrument in recordable form acknowledging the issuance of such construction permit and the termination of this instrument and all easements created hereby.

Grantor represents and certifies to Grantee that Grantor is the fee simple owner of the Easement Area, and that the Easement Area is free of any lien or encumbrance, except the lien of current property taxes and assessments and any other lien or encumbrance that appears of public record. Grantor guarantees the quiet possession and enjoyment of the Easement Area to Grantee subject to the terms and conditions contained herein. Subject to the foregoing, Grantor shall warrant and defend Grantee's title to the Easement Area granted hereby against all lawful claims. Grantor further represents and warrants to Grantee that Grantor has the full right and authority to enter into this instrument and grant the interests herein granted.

This instrument shall constitute a covenant running with the Easement Area and shall be binding upon, and inure to the benefit of, Grantor, Grantee, and their respective successors and assigns.

The construction and performance of this instrument shall be governed by the laws of the State of Indiana without regard to its principles of conflicts of law. If any one or more of the provisions contained in this instrument should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This instrument shall be recorded in the Office of the Recorder of Hancock County, Indiana.

The prior deed reference required by Indiana law as in effect as of the Effective Date for the property described herein is the instrument bearing the instrument number first listed above, as was recorded in the Office of the Recorder of Hancock County, Indiana.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE AND  
ACKNOWLEDGEMENT ON THE FOLLOWING PAGE]*

IN WITNESS WHEREOF, Tower McCordsville, LLC, a Delaware limited liability company, as Grantor, has hereto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, for this Grant of Drainage Easement to be effective as of the Effective Date.

GRANTOR:

**TOWER MCCORDSVILLE, LLC,**  
a Delaware limited liability company

By: Tower Investments, LLC  
Its: Sole Member

By: Tower Management Group, Inc.  
Its: Manager

By: \_\_\_\_\_  
Stephen Marks, Jr., its SVP & Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

STATE OF CALIFORNIA                    )  
COUNTY OF YOLO                        )

On \_\_\_\_\_, 202\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Stephen Marks, Jr., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

This instrument was prepared by, and upon recording return to, Kyle T. Resetarits, Esq., Bingham Greenebaum Doll LLP, 2700 Market Tower, 10 W. Market St., Indianapolis, Indiana 46204.

I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *Kyle T. Resetarits, Esq.*

## **EXHIBIT A**

### **Depiction and Description of the Easement Area**

[insert 2-page exhibit from HWC Engineering]