

CITY OF BELVIDERE, ILLINOIS

ORDINANCE #659H

AN ORDINANCE AUTHORIZING EXECUTION OF A RECAPTURE AGREEMENT BETWEEN THE CITY OF BELVIDERE AND SCANNELL PROPERTIES #554 LLC AND ESTABLISHING RECAPTURE FOR THE CONSTRUCTION OF WATER MAINS AT IRENE ROAD AND NORTH OF US ROUTE 20 IN THE CITY BELVIDERE, ILLINOIS

PASSED AND ADOPTED

BY THE CITY COUNCIL

OF THE CITY OF

BELVIDERE, ILLINOIS

ON THE 19th DAY OF FEBRUARY 2024.

APPROVED BY THE

MAYOR OF THE CITY OF

BELVIDERE, ILLINOIS

ON THE 20th DAY OF FEBRUARY, 2024

Published in Pamphlet Form this 20th day of February 2024.

ORDINANCE #659H
AN ORDINANCE AUTHORIZING EXECUTION
OF A RECAPTURE AGREEMENT
BETWEEN THE CITY OF BELVIDERE AND
SCANNELL PROPERTIES #554 LLC AND
ESTABLISHING
RECAPTURE FOR THE CONSTRUCTION OF WATER
MAINS AT IRENE ROAD AND NORTH OF US ROUTE 20
IN THE CITY OF BELVIDERE, ILLINOIS

WHEREAS, Scannell Properties #554 LLC (Scannell), on behalf of the City of Belvidere (the City) constructed, or caused to be constructed, certain improvements (the Improvements) consisting of extension of the City's Water System in connection with the development of the Kelly Farms subdivision north of U.S. Route 20 and East of Irene Road which included oversizing of water mains to service contiguous land west of Irene Road; and

WHEREAS, the total cost of constructing the Improvements was \$614,112.00. The amount subject to recapture due to the oversize of the mains is \$121,566.08 (the Recapture Amount); and

WHEREAS, the oversized water main will benefit parcels fronting on the West side of Irene Road from the south right of way line of the Union Pacific Railroad extending south along Irene Road a distance of 794.29 feet as shown on the attached Exhibit A (the Benefited Properties).

NOW THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Belvidere, Boone County, Illinois, as follows:

SECTION 1: The foregoing recitals are incorporated herein by this reference.

SECTION 2: The Recapture Agreement between the City and Scannell, attached hereto as Exhibit B, is approved. The Mayor and Clerk are authorized to execute and attest the Recapture Agreement.

SECTION 3: The Corporate Authorities find that the properties identified in Exhibit A, which is attached hereto and incorporated herein, have benefited or will benefit from the Improvements. These properties may be referred to as the Benefited Properties. In the event any of the Benefited Properties are sub-divided or split in the future, each new property shall also be considered a Benefited Property. The Benefited Properties shall pay a Recapture Fee for a proportionate share of constructing the Improvements.

SECTION 4: The Corporate Authorities find that the most equitable method of assessing the Recapture Amount is on a "front foot" basis based upon each of the Benefited Properties' linear frontage upon Irene Road. The front foot recapture fee (the Recapture Fee) shall, as of the date of this Ordinance, be \$153.05 per linear foot of frontage upon Irene Road as described in the Recitals and Exhibit A.

The Recapture Fee shall be adjusted annually in accordance with the Recapture Agreement.

SECTION 5: The City of Belvidere shall collect, and each Benefitted Property shall pay to the City of Belvidere, the applicable Recapture Fee upon the earliest to occur of: 1) prior to approval of any plat of subdivision or planned unit development; 2) prior to issuance of any building permit by the City of Belvidere for any structure on the Benefitted Property; or 3) prior to any connection to the City's water system. The owner(s) of any Benefitted Property may pre-pay the Recapture Fee without penalty if they so choose. The Corporate Authorities may modify the payment obligations of the Recapture Fee set forth in this Ordinance through the approval of any annexation agreement or development agreement adopted and approved by the Corporate Authorities without amending this Ordinance, but only in accordance with the Recapture Agreement.

SECTION 6: In the event a Recapture Fee is not paid when due and owing, any of the above approvals may, at the option of the City of Belvidere, be deemed void. Further, the Recapture Fee shall become a lien upon the Property and the City may proceed to collect the Recapture Fee by an action at equity or law against the then current owners of the relevant Benefitted Property.

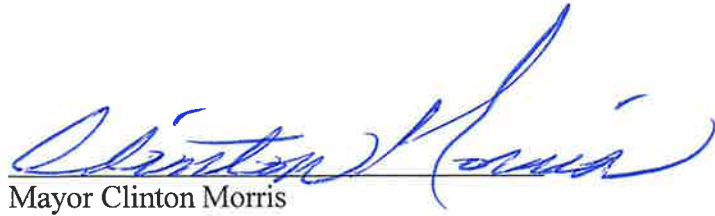
SECTION 7: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 8: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 9: This Ordinance shall be in full force and effect from and after its passage and publication in pamphlet form as required by law which publication is hereby authorized.

Voting Aye: Gramkowski, McGee, Mulhall, Snow, Stevens, Albertini, Brereton, Fleury and Frank.
Voting Nay: None.
Abstain: None.
Absent: Freeman.

APPROVED:



Clinton Morris

ATTEST:



City Clerk Sarah Turnipseed

(SEAL)

Passed: February 19, 2024
Approved: February 20, 2024
Published: February 20, 2024

EXHIBIT B

SCANNELL PROPERTIES #554, LLC
RECAPTURE AGREEMENT

WATER EXTENSION
IRENE ROAD AND US Route 20

THIS RECAPTURE AGREEMENT (this "Agreement") is made and entered into this day of January, 2024, by and between the City of Belvidere, a municipal corporation of the State of Illinois, Boone County, ("City") and Scannell Properties #554, LLC, an Indiana limited liability company (hereinafter "Owner" or "Developer").

RECITALS

A. Developer and City entered into that certain Annexation Agreement on or about May 2, 2022 (the "Annexation Agreement"), which was recorded in the Official Records of the Boone County Clerk and Recorder on May 26, 2022 as Instrument Number 2022R03066; and

B. Pursuant to the Annexation Agreement, and the City of Belvidere Municipal Code, Developer constructed and dedicated, or will dedicate, to the City potable water utilities (the "Utilities") which will benefit other properties (collectively, the "Benefited Properties") in proximity to the Owner's property; and

C. The Benefited Properties are the parcels fronting the West side of Irene Road from the south right of way line of the Union Pacific Railroad extending south along Irene Road a distance of 794.29 feet as shown in the attached Exhibit A, which is incorporated herein by this reference; and

D. Owner agreed to construct and has constructed the Utilities to the City's specifications to serve the Benefited Properties if the City agreed to recapture an equitable portion of the cost of such construction from the Benefited Properties; and

E. The City agrees that Owner is entitled to recapture a portion of the cost of constructing the Utilities that is allocable to the Benefited Properties from the Recapture Fees that are paid from time to time by the owners or developers of the Benefited Properties.

NOW, THEREFORE, in consideration of mutual promises and agreements contained herein, the City and Developer agree as follows:

1. Recitals: The foregoing recitals are incorporated herein by this reference.
2. Recapturable Improvements: The Recapturable Improvements are the Utilities. Owner represents and warrants that it has fully completed and paid for all costs of the Utilities in accordance with the Annexation Agreement, the approved Plat of Subdivision, and the approved

construction plans for the Utilities. The City and Owner agree that the total cost of constructing the Utilities is \$614,112.00.

3. Recapture Fees: The City and Owner agree that the entire amount subject to recapture is \$121,566.08 (the "Recapture Fees"), which represents that portion of the total construction cost of the Utilities that benefits the Benefited Properties.

4. The Benefited Properties shall pay the recapture fee based upon their frontage upon that portion of Irene Road lying 794.29 feet south of the Union Pacific Railroad as shown on Exhibit A at the rate of \$153.05 per linear foot.

5. The City will use its best efforts to collect the Recapture Fees provided herein from each parcel of the Benefited Properties at the time they seek to connect to the City's potable water system, or earlier at the City's discretion based upon the applicable parcel's frontage upon that portion of Irene Road subject to recapture as set forth above. The City shall not be liable to Developer if the City is, for any reason, unable to collect said costs. The City's responsibility to reimburse Developer shall be limited to payments from funds actually collected from Benefited Property owners and as such the City's obligations under this Agreement are non-recourse to the City's other general and special funds.

6. Developer agrees to indemnify, defend and hold harmless, the City, its officials, officers, employees and agents, in both their official and individual capacities, from and against any claim, demand, liability and/or litigation arising out of, or in any way related to, this Agreement or the City's collection of the Recapture Fees contemplated herein, from any third party, except to the extent of the City's negligence or willful misconduct.

7. Either party may enforce this Agreement by any action or proceeding at law or in equity. The parties agree that any action relating to this Agreement shall be brought in the 17th Judicial Circuit, Boone County, Illinois, and both parties submit to jurisdiction and venue in that Court. This Agreement shall be construed under Illinois law without regard to conflicts of law provisions.

8. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same Agreement.

[Remainder of page intentionally left blank; signature page follows.]

WHEREFORE, the parties hereto have set their hands this 20th day of Feb, 2024.


CITY:

City of Belvidere,
an Illinois municipal corporation

By: 
Mayor Clinton Morris

DEVELOPER:

Scannell Properties #554, LLC,
an Indiana limited liability company

By: 
Marc D. Pflieger, Manager

ATTEST:


City Clerk

AFFIDAVIT

STATE OF ILLINOIS)
)
COUNTY OF BOONE)

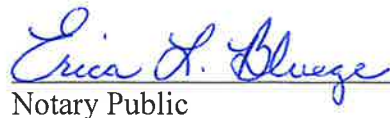
Sarah Turnipseed, first being duly sworn on oath deposes and says as follows:

By authority of the City Council of the City of Belvidere, Illinois, I published Ordinance #659H of the City of Belvidere, Illinois, in pamphlet form on February 20, 2024, and as a convenience for the public; I posted the pamphlet form of Ordinance #659H on the bulletin board in the lobby of Belvidere City Hall at 401 Whitney Blvd., Belvidere, Illinois; said location being readily accessible to the public during business hours of the City Clerk's office.



Sarah Turnipseed
City Clerk

SUBSCRIBED AND SWORN TO BEFORE ME
this 20th day of Feb, 2024.



Notary Public