

### Cross Reference

This Agreement encumbers real estate that does not lie within a subdivision. The instrument by which the encumbered real estate was most recently transferred is recorded as Instrument Number \_\_\_\_\_, in the office of the Recorder of Hancock County, Indiana. State Parcel Number \_\_\_\_\_.

### **UTILITY RELOCATION AND REIMBURSEMENT AGREEMENT**

THIS UTILITY RELOCATION AND REIMBURSEMENT AGREEMENT (this “Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), by and between the Town of McCordsville (“McCordsville”), and Citizens (“Utility Provider”).

### **RECITALS**

WHEREAS, McCordsville is the owner of certain right-of-way real estate as depicted on Exhibit A, attached hereto and incorporate by reference herein; and

WHEREAS, Platinum Properties, hereinafter referred to as “Developer” is undertaking the construction of water service infrastructure located within McCordsville’s right-of-way, that will be dedicated to the Utility Provider in Hancock County, Indiana upon completion and acceptance of McCordsville; and

WHEREAS, in furtherance of the construction, installation, replacement, and maintenance of the aforementioned water service infrastructure, McCordsville and Utility Provider desire to enter into an agreement regarding an allocation of the costs and expenses to relocate all or any part of said infrastructure should the same become necessary in the future solely due such a request by McCordsville.

NOW, THEREFORE, in consideration of the promises herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Right-of-Way and Utility Relocation.

(i) McCordsville hereby grants to Utility Provider, authorization and for the installation, maintenance, repair, removal, and replacement of water service infrastructure and associated equipment within the McCordsville right-of-way.

(ii) McCordsville shall be solely responsible for any and all costs and expenses in connection with any future relocation of the water service infrastructure and associated equipment within the right-of-way if and only if requested by McCordsville.

(iii) McCordsville shall have the continuing right, in its sole discretion, to relocate the right-of-way area from time to time, provided that: (a) McCordsville gives Utility Provider reasonable prior written notice in advance of such relocation, (b) McCordsville takes all

reasonable measures to minimize any disruption of utility service associated with such relocation, and (c) McCordsville pays for the entire cost of the relocation of any then present utility lines and equipment that is required by such relocation of the right-of-way area.

2. Indemnity.

Utility Provider agrees to indemnify, defend and hold all third parties to which McCordsville grants rights with respect to the McCordsville property harmless from and against any and all injuries, liabilities, losses, damages, costs, and expenses of every kind and nature (including but not limited to reasonable attorneys' fees) incurred by such party and arising from or in connection with (i) any negligence or intentional misconduct of Utility Provider, its employees, agents or contractors in, on, or about the McCordsville property or the exercise by Utility Provider of any of its rights hereunder, except to the extent caused by the negligence or intentional misconduct of McCordsville or such third parties, and (ii) any liens filed against the McCordsville property or claims or demands made against McCordsville or the McCordsville property for work performed by or on the behalf of Utility Provider. This paragraph shall be enforceable by each party intended to be benefited hereby.

McCordsville agrees, to the extent permitted by applicable law, to indemnify, defend and hold Utility Provider harmless from and against any and all injuries, liabilities, losses, damages, costs and expenses of every kind and nature (including but not limited to reasonable attorney's fees) incurred by Utility Provider and arising from or in connection with any negligence or intentional misconduct of McCordsville, its employees, its agents or contractors (which shall not include Utility Provider or any other utility provider entering into a similar agreement with McCordsville) with respect to the maintenance and operation of the right-of-way area, except to the extent caused by the negligence or intentional conduct of Utility Provider.

Any claim for indemnification under this Section 2 shall exclude matters for which a party is paid pursuant to, but only to the extent of, insurance.

3. Limitation of Liability.

Utility Provider acknowledges and agrees that McCordsville may grant other rights over, under, and across the right-of-way area in connection therewith. Notwithstanding any provision in this Agreement to the contrary, (i) in no event shall either McCordsville or Utility Provider be liable or responsible for the actions or inactions of any party to which rights similar to those granted in this Agreement are granted and Utility Provider hereby waives any and all such rights in connection therewith, and (ii) in no event (whether or not caused by the negligence of McCordsville) shall McCordsville have any responsibility or liability with respect to any consequential damages or losses of Utility Provider, including but not limited to any damages or losses resulting from interruption of service.

4. Notices.

All notices and other communications which are required or permitted herein shall be in writing and shall be effective upon delivery or refusal of delivery is sent to the appropriate address

below (or such other address designated in writing in accordance with this Section 4) by either (i) certified mail, postage prepaid, return receipt requested, or (ii) prepaid overnight courier.

If to Utility Provider:

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with a copy to:

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If to McCordsville:

Town of McCordsville  
Thomas R. Strayer, Town Council President  
6280 W. 800 N.  
McCordsville, IN 46055

with a copy to:

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5. Miscellaneous.

(i) Use. McCordsville reserves the full use and enjoyment of the McCordsville Property for any and all uses and purposes which are not inconsistent with or do not materially limit the easements and rights granted herein.

(ii) Binding Agreement; Assignment. The rights, obligations and covenants created herein shall be appurtenant to and run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns. Utility Provider may not assign, encumber or otherwise transfer this Agreement to any other person or any other entity without the prior written consent of the other party (which consent shall not be unreasonably withheld); provided, that Utility Provider shall have the right, without McCordsville's consent, but with 180 days prior written notice to McCordsville, to assign or otherwise transfer this Agreement to any affiliate or to any entity into which Utility Provider may be merged or consolidated or to any entity that purchases all or substantially all of the assets of such party.

(iii) Authority. The undersigned persons executing this Agreement on behalf of their respective party represent and certify that they are an authorized representative of their respective party and have been fully empowered, by proper resolution of the governing body of their respective party, to execute and deliver this Agreement.

(iv) Further Assurances. The parties covenant and agree that they will from time to time, upon the request of the other party, and without further consideration, execute,

acknowledge, and deliver in proper form any further instruments, and take such other action as such party may reasonably require, in order to effectively carry out the intent of this Agreement.

(v) Cooperation. The parties agree to cooperate and consult with each other in good faith to accomplish the purposes of this Agreement.

(vi) Existing Encumbrances. This Agreement is made subject to all covenants, conditions, restrictions, encumbrances, and easements of record as of the date of this Agreement.

(vii) Choice of Law. The conditions, terms and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana without regard to any state's conflict of laws principles.

(viii) Amendment. This Agreement may only be modified or amended by written agreement signed by the parties hereto and recorded in the Office of the Recorder of Hancock County.

(ix) Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

(x) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

(xi) Entire Agreement. This Agreement reflects the entire agreement of the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned do hereby execute this Utility Relocation and Reimbursement Agreement as of the Effective Date.

[Counterpart Signature Pages Follow]

COUNTERPART SIGNATURE PAGE TO  
UTILITY RELOCATION AND REIMBURSEMENT AGREEMENT  
DATED AS OF \_\_\_\_\_, 2022

“McCordsville”

Town of McCordsville, Indiana,

By: \_\_\_\_\_  
Thomas R. Strayer, Town Council President

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF HANCOCK    )

Before me, a Notary Public in and for said County and State, personally appeared Thomas R. Strayer, Town Council President, who acknowledged the execution of the foregoing Utility Relocation and Reimbursement Agreement on behalf of said entity.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission Expires:  
March 27, 2024

\_\_\_\_\_  
Gregg H. Morelock, Notary Public  
Residing in Hancock County, Indiana

COUNTERPART SIGNATURE PAGE TO  
UTILITY RELOCATION AND REIMBURSEMENT AGREEMENT  
DATED AS OF \_\_\_\_\_, 2022

“Utility Provider”

Citizens

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, a Notary Public in and for the State of \_\_\_\_\_,  
do hereby certify that \_\_\_\_\_, \_\_\_\_\_ of Citizens,  
did personally appear before me affixing his or her signature on the attached document.

Sworn and Subscribed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed: \_\_\_\_\_, Notary Public  
Residing in \_\_\_\_\_ County, \_\_\_\_\_

EXHIBIT A

to Utility Relocation and Reimbursement Agreement

Right-of-Way Area

**(attached)**