

SPECIAL SANITARY SEWER AND WATER SERVICE AGREEMENT

Jackson Run North – Section 1

Whitestown, Indiana

This Sanitary Sewer and Water Service Agreement (“Agreement”), made and entered into this ___ day of _____, 2022 (“Effective Date”), is between WHITESTOWN MUNICIPAL UTILITIES (“Whitestown”), and BRAUN PROPERTY DEVELOPMENT, LLC (“Developer”), and is regarding the provision of sewer and water service to the first phase of a residential development to be generally located southwest of the corner of County Road 200 South and County Road 700 East in Whitestown.

RECITALS

A. Developer owns an approximately 64.31 acre parcel legally described in Exhibit A attached hereto and incorporated herein (the “Property”).

B. The Developer plans to construct Section 1 of a residential development generally known as Jackson Run North on the Property, to include a total of fifty-six (56) single-family homes.

C. The Developer desires sanitary sewer and water service for the Property.

D. In order to receive the desired service from Whitestown, the Developer will extend distribution and collection facilities to and on the Property and thereafter dedicate such facilities to Whitestown.

E. Whitestown will reimburse the Developer for a portion of the off-site sewer mains being constructed by the Developer at Whitestown’s request and in addition to the facilities that will serve the Property.

F. Once the Developer completes the extensions, Whitestown will be able to provide adequate capacity in Whitestown’s sewer and water systems to serve the Property.

G. Developer desires to obtain a specific assignment of capacity within Whitestown’s sewer and water facilities and assurance of connection to Whitestown’s other facilities.

H. The parties desire to enter into an agreement that establishes the terms and conditions for the construction and extension of sewer and water facilities, including off-site facilities, for service to the Property.

NOW, THEREFORE, in consideration of the mutual agreement and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

ARTICLE I
RIGHTS AND RESPONSIBILITIES OF WHITESTOWN

Section 1.1. Specifications for Sewage and Water Facilities. Prior to the beginning of construction, Whitestown will provide the Developer with: (i) the locations, at Whitestown's sole discretion, for the Property's connection to Whitestown's sewer and water facilities; and (ii) a copy of Whitestown's construction specifications for the construction of applicable and necessary distribution, collection, or other special sewer and water facilities to be constructed for connection and service to the Property, including but not limited to the off-site facilities requested by Whitestown (collectively, the "Utility Facilities").

Section 1.2. Approval of Plans for and Construction of Utility Facilities. Where applicable, Whitestown may review and approve or reject any plans for the Utility Facilities.

Section 1.3. Compliance with Whitestown's Specifications. Whitestown shall have the authority during all phases of construction and inspection of any applicable Utility Facilities to enter upon the Property to inspect the Utility Facilities (with or without notice) and notify the Developer of any failure of materials or workmanship to meet Whitestown's specifications and halt construction of Utility Facilities if Whitestown's specifications are not being met. Whitestown, in its sole discretion, shall also have the right to direct the Developer to submit change orders to the Developer's contractor to cure any defects in material or workmanship revealed by Whitestown's inspection. Whitestown may not permit connection to its facilities, accept dedication of any Utility Facilities, or accept waste from or provide service to the Property until such facilities are completed and any defects cured in accordance with Whitestown's construction specifications.

Section 1.4. Provision of Service. Whitestown agrees to accept up to three hundred ten (310) gallons per day of wastewater and provide water service to the Property for each purchased equivalent dwelling unit ("EDU") of capacity, subject to: (i) the Agreement Between the Consolidated City of Indianapolis and Town of Whitestown (as successor to Boone County Utilities, LLC) for Sewage and Wastewater Treatment and Disposal Services (and any amendments); (ii) the Agreement Between the Indianapolis Water Company and Town of Whitestown (as successor to Boone County Utilities, LLC) for Purchase of Water Services (and any amendments); (iii) timely and full payment by the Developer, property owner, or user of all applicable rates and charges; (iv) all ordinances of the Town of Whitestown, and rules, regulations, and directives within the authority of Whitestown; and (v) compliance by the Developer with all provisions of this Agreement. Whitestown will serve the Property following construction

of any required facilities, connection, approval by Whitestown, and payment of all applicable fees. The Developer, property owner, and user's use of Whitestown's services must be in conformance with all other applicable agreements and Town of Whitestown ordinances, rules, regulations, and directives relating to utility service. Whitestown shall have the right to terminate this Agreement and use any capacity allocated herein for other customers if the Developer does not complete construction of waste producing structures and connect the Property within ten (10) years, or otherwise breaches the Agreement.

Section 1.5. Rates and Charges. Whitestown will impose all of Whitestown's prevailing rates and charges, including, but not limited to, the following:

- a. Capacity fees;
- b. Tap fees;
- c. Regional improvement fees;
- d. Monthly user rates;
- e. Private hydrant fees, as applicable;
- f. Inspections and plan review fees; and
- g. Any other fees that are subsequently enacted by ordinance.

Regardless of the name on the utility service account, the property owner is and may be held responsible for all rates and charges, including late fees and penalties, for utility service to any property. In addition, Whitestown may separately bill the property owner as a separate service account for water service/lines related to irrigation and fire suppression, where applicable.

Section 1.6. Right to Impose Additional Capacity and Regional Improvement Fees. Whitestown reserves the right to impose additional capacity, regional improvement, and other applicable fees in the event the Developer and/or any future owner/tenant changes its anticipated use, expands the Property or use thereof, adds additional structures, and/or hires additional employees which will result in wastewater flows and/or water usage in an amount in excess of the amounts anticipated herein. The amount of the additional fees shall be based upon the increased flows or usage that are anticipated to be generated by the new use, expansion, and/or addition of new employees, and such fees shall be imposed at the rate and charge in effect at that time. Whitestown reserves the right to require the Developer and/or any future owner/tenant to install flow meters and/or provide usage data from any and all sources of water supply to the Property.

Section 1.7. Construction and Maintenance of Utility Facilities. Whitestown will not be responsible for any portion or cost of the design, construction, or installation of the Utility Facilities, except for reimbursements to the Developer as specifically set forth in Section 2.2 below. The parties further agree that except as set forth in Section 2.2, Whitestown will not collect fees to reimburse the Developer for any portion of such costs (including but not limited to subsequent connector fees or other fees from users connecting to the Utility Facilities). Following dedication of any Utility Facilities and acceptance of such dedication by Whitestown, Whitestown will maintain and operate the accepted Utility Facilities subject to the other terms herein. The Developer (or subsequent property owner, where applicable) will own, maintain, and operate the Utility Facilities not dedicated to Whitestown (including but not limited to service laterals).

Section 1.8. Right to Enter the Property. Whitestown shall have the right to enter upon the Property and premises at all reasonable times to inspect, repair, and/or replace any equipment used in connection with, or which has an impact on, Whitestown's service, provided that, except in the event of an emergency, Whitestown will provide reasonable notice to Developer or any primary occupant of any inspection, repair or replacement prior to entry upon the Property. However, Whitestown does not, in any way, have or assume any obligation to maintain any facilities not owned by Whitestown.

Section 1.9. Whitestown's Liability. Absent gross negligence, Whitestown will not be liable for any damage resulting from Whitestown's sewer and/or water service on and around the Property, including, without limitation, damage caused by events of force majeure. For purposes of this Agreement, an event of force majeure means a strike, vandalism, power failure, pipe failure or breakage, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God or nature, war, national emergency, civil disturbance, riot, act of sabotage or terrorism, restraint by court order or order of another governmental authority, or any other unexpected and/or uncontrollable events. Whitestown also does not warrant fire flows, or that service will be uninterrupted. Whitestown shall further not be liable for any indirect, special, incidental, or consequential damages.

Section 1.10. Recovery of Attorney Fees. Whitestown is entitled to recover its costs including, but not limited to, reasonable attorneys' fees and court costs in any action brought to enforce the terms of this Agreement.

ARTICLE II **RIGHTS AND RESPONSIBILITIES OF THE DEVELOPER**

Section 2.1. Cost of Installation and Facilities. The Developer shall be responsible for paying the cost of installing the Utility Facilities and any and all other facilities that are necessary for the provision of sanitary sewer and/or water service to the Property, with Whitestown's only reimbursement obligation specifically set forth in Section 2.2 below. When required by Whitestown, the property owner shall also install

grease traps that are in accordance with Whitestown's specifications. The Developer or future property owner/tenant shall further take any other measures Whitestown determines to be necessary to prevent excessive strength effluent from entering into Whitestown's wastewater collection system.

Section 2.2. Whitestown Reimbursement. Following completion of construction of the Utility Facilities and acceptance of such Utility Facilities by Whitestown, Whitestown will reimburse the Developer for the Developer's actual verified cost of the "Jackson Run North, Phase 1" portion of the "18" Sewer Costs" of the off-site sanitary sewer costs as set forth in Exhibit B (the "Town Reimbursement"). The Town Reimbursement shall not exceed a total amount of \$245,444 without written consent of the Whitestown Utility Superintendent prior to the Developer incurring any such additional costs.

Section 2.3. Payment of Rates and Charges. The Developer shall be responsible for timely payment of Whitestown's prevailing rates and charges, including: (i) a sewer capacity fee of Four Thousand Dollars (\$4,000) per EDU; (ii) a regional sewer improvement charge of One Thousand Five Hundred Dollars (\$1,500) per EDU, (iii) a sewer tap fee of Seven Hundred Fifty Dollars (\$750.00) per tap, exclusive of excavation (assuming no larger than 3/4 inch residential meter service); (iv) a water capacity fee Two Thousand One Hundred Dollars (\$2,100) per EDU; and (v) a water tap fee of Five Hundred Fifty Dollars (\$550.00) per tap, exclusive of excavation (assuming no larger than 3/4 inch residential meter service). Whitestown understands, based upon the Developer's representations, that the initial regional improvement charge and sewer and water capacity fees shall be based on 56 EDUs for 56 lots, plus one additional water connection and EDU for irrigation. Therefore, the initial capacity, regional improvement, and tap fees are as follows:

(i)	sewer capacity fees (for 56 lots):	\$224,000
(ii)	regional sewer improvement charge (for 56 lots):	\$ 84,000
(iii)	sewer tap fees (for 56 taps):	\$ 42,000
(iv)	water capacity fees (for 56 lots & 1 irrigation):	\$119,700
(v)	water tap fees (for 56 lots & 1 irrigation):	\$ 31,350

The tap, capacity, and regional improvement fees, in the total amount of Five Hundred One Thousand Fifty Dollars (\$501,050), shall be paid prior to the Effective Date. The Property owner, user, or customer at the time service is provided will be responsible for the respective monthly user fees, or other costs and fees that accrue.

The Developer (or ultimate property owner, user, or customer) will further pay additional tap, capacity fees, or regional improvement fees based upon then prevailing

rates if the Developer and/or any future owner/tenant adds additional taps and/or modifies, expands, or changes its use of the Property so as to use more water or discharge more sewage into Whitestown's system, or Whitestown otherwise determines that the Property is utilizing more capacity than was anticipated for purposes of this Agreement (See also Section 1.6). Additional capacity fees will also be required for any irrigation system. The Developer (or ultimate property owner, user, or customer) must also pay additional capacity and regional improvement fees if the strength of its sewage exceeds the limits set forth in Whitestown's ordinances. If the Developer places an additional structure on the Property, additional capacity, regional improvement, and tap fees will be owed for such structure at the then prevailing rates. Nothing contained herein shall prevent Whitestown from prospectively adjusting its rates and charges as allowed under Indiana law.

Section 2.4. Plan Review and Construction of Utility Facilities. Prior to initiating construction of applicable Utility Facilities, the Developer must provide the plans and specifications for the Utility Facilities to Whitestown (and/or its engineer) for review and approval or rejection. Once Whitestown (and/or its engineer) approves the plans for the proposed Utility Facilities, the Developer shall install the Utility Facilities in accordance with Whitestown's construction specifications and ordinances and pay the cost of any modifications or revisions that are required to any existing Whitestown facilities. The Developer shall pay Whitestown's cost of reviewing the Developer's plans for the Utility Facilities, inspecting the installation of the Utility Facilities, and performing the testing (as required in Section 2.5 below). The Developer will also be responsible for obtaining all applicable easements, permits, approvals, and consents required and in a form approved by Whitestown for the construction of the Utility Facilities.

Section 2.5. Sampling and Flow Measuring Manholes. The Developer will install sampling and flow measuring manholes ("Manholes") at locations on the Property that are easily accessible by Whitestown. Whitestown will have access to the Manholes to sample and measure the flow from the Property.

Section 2.6. Testing and As-Built Drawings. The Developer will test any Utility Facilities as required by Whitestown's construction standards and remedy any deficiencies as required by Whitestown. Upon completion of the testing (and remediation of all deficiencies), the Developer will provide Whitestown with three (3) sets of as-built drawings and copy of the electronic CAD files at a scale of 1" = 100' showing the location of any Utility Facilities, including the taps.

Section 2.7. Dedication of Utility Facilities and Easements. The Developer agrees to dedicate the applicable distribution and transmission Utility Facilities, exclusive of any service laterals, to Whitestown after final inspection by Whitestown, interconnection of the Utility Facilities to Whitestown's facilities, and acceptance of the same in Whitestown's sole discretion. The dedication of Utility Facilities shall occur by the execution of a Bill of Sale in the form required by Whitestown, a copy of which is attached as Exhibit C. The Developer shall also provide adequate and necessary

easements for all Utility Facilities and related facilities in a form required Whitestown, and shall record all necessary documents in the Boone County Recorder's Office in Whitestown's name. The Developer shall ensure that all facilities are located within the easements as approved by Whitestown (and not within the right-of-way except for road crossings) and shall be responsible for indemnifying Whitestown and all costs associated with relocating facilities and/or easements in the event the facilities are not located within the easements.

Section 2.8. Bond for Utility Facilities. Prior to the dedication of any applicable Utility Facilities, the Developer must provide a three (3) year maintenance bond covering material and labor in an amount equal to twenty percent (20%) of the total cost of the Utility Facilities with a surety in terms that are acceptable to Whitestown. To the extent any repairs are not covered by the maintenance bond, the Developer shall be responsible for the expense of repair, replacement, and/or maintenance that occurs, either prior to acceptance of the Utility Facilities by Whitestown or within the three (3) years the maintenance bond is in effect.

Section 2.9. Indemnification of Whitestown. Prior to beginning construction, the Developer must provide Whitestown with certification that Whitestown is an additional named insured on a policy insuring Whitestown against any and all claims for personal injury or property damage resulting from construction of any utility facilities. The Developer shall further indemnify and hold harmless Whitestown against any and all such claims; and indemnify Whitestown for all reasonable costs, including but not limited to reasonable attorneys' fees, incurred by Whitestown as a result of any and all such claims.

Section 2.10. Use of Whitestown's System. The Developer agrees to obtain sanitary sewer and water service only from Whitestown; however, the Developer will refrain from discharging or using Whitestown's sewer and water systems in any way which inhibits Whitestown from providing service or causes damage to Whitestown's facilities. The Developer is prohibited from working on or altering Whitestown's facilities and the Developer will not permit or allow the unauthorized connection or extension of its facilities or any part of Whitestown's system.

Section 2.11. Additional Easements. The Developer (and its successors and assigns) agrees to provide additional water and/or sanitary sewer easements (in, over, and across the Property) without additional compensation, and in a form reasonably acceptable to Whitestown, to facilitate the provision of sewer and water service to future users in and around the Property to the extent such is necessary or appropriate for the use by future users. The exact location of the easements will be determined at a future date by the parties so as to minimally impact the reasonable use and/or anticipated development of the Property.

Section 2.12. Waiver of Annexation. In exchange for the benefits bestowed upon the Property by Whitestown's provision of the desired service, the Developer

hereby releases and waives all rights to remonstrate against any annexation(s) by Whitestown, for itself and its successors and assigns.

ARTICLE III **MISCELLANEOUS**

Section 3.1. Legal Description for Property. The Developer represents that the legal description attached hereto as Exhibit A and incorporated herein by reference is a true and accurate legal description of the Property.

Section 3.2. Binding on Successors and Assigns. The parties agree that Whitestown's service touches and concerns the land, and the terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their grantees, successors, and assigns.

Section 3.3. Entire Agreement. This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any prior agreements or understandings between the parties pertaining to the subject matter hereof.

Section 3.4. Amendment and Waiver. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by written instrument. Failure to insist upon strict adherence to any term of this Agreement shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

Section 3.5. Counterparts. This Agreement may be executed in counterparts, including facsimile or photocopy counterparts, each of which shall be deemed an original, but all of which taken together shall constitute a single document.

Section 3.6. Recordation. Developer and Whitestown shall execute a memorandum of this Agreement, attached as Exhibit D, which shall be recorded by Developer. Whitestown may further record this Agreement at Whitestown's option, and Developer will execute all documents reasonably requested by Whitestown for such recording.

Section 3.7. Authority of Parties. Each party and signatory hereto has the authority to enter into this Agreement and at all times has full authority to perform this Agreement. No further approval or consent by any other person or authority is required.

Section 3.8. Captions. The captions to this Agreement are for convenience of reference only and shall not be given any effect in the interpretation of this Agreement.

Section 3.9. Notices. All notices, consents and other communications (collectively, "Notices") shall be given to Whitestown or the Developer in writing to the addresses set forth below:

Whitestown: Whitestown Municipal Complex
6210 Veterans Drive
Whitestown, IN 46075
Attn: Utility Manager

With Copy To: Bose McKinney & Evans LLP
111 Monument Circle, Ste. 2700
Indianapolis, IN 46204
Attn: Stephen C. Unger

Developer: Braun Property Development, LLC
8099 Hunt Club Road
Zionsville, IN 46077-9340
Attn: Adam Braun, President
abraun@braunbpd.com

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision.

Section 3.10. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as part of this Agreement that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 3.11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Indiana.

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WHITESTOWN MUNICIPAL UTILITIES

By: _____
Danny Powers
Whitestown Utility Manager

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Danny Powers, by me known to be the Utility Manager for Whitestown Municipal Utilities, who acknowledged the execution of the foregoing "Sanitary Sewer and Water Service Agreement" on behalf of the Whitestown Municipal Utilities.

WITNESS my hand and Notarial Seal this _____ day of _____, 2022.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

BRAUN PROPERTY DEVELOPMENT, LLC

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of Braun Property Development, LLC, who acknowledged the execution of the foregoing "Sanitary Sewer and Water Service Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this ____ day of _____, 2022.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

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. Stephen C. Unger

This instrument was prepared by Stephen C. Unger, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204
4389254

Exhibit A

Legal Description

Jackson Run North

PART OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 18 NORTH, RANGE 2 EAST, WORTH TOWNSHIP, BOONE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 18; THENCE ALONG THE APPROXIMATE CENTER LINE OF COUNTY ROAD 700 EAST AND THE SECTION LINE SOUTH 00°28'20" EAST (ASSUMED BEARING) 1454.23 FEET; THENCE ALONG A NORTH DESCRIBED LINE OF THE RONALD R. GOOD & MICHAEL E. GOOD PROPERTY RECORDED AS INSTRUMENT NO. 0321525, BOONE COUNTY RECORDER'S OFFICE, SOUTH 88°02'08" WEST 1323.38 FEET; THENCE ALONG AN EAST DESCRIBED LINE OF THE ALLEN'S ACRES SUBDIVISION PROPERTY RECORDED IN PLAT BOOK 4, PAGE 163, IN THE OFFICE OF THE RECORDER OF BOONE COUNTY, INDIANA, NORTH 00°32'15" WEST 131.68 FEET; THENCE ALONG A NORTH DESCRIBED LINE OF ALLENS' ACRES SUBDIVISION PROPERTY SOUTH 88°02'08" WEST 664.25 FEET; THENCE ALONG AN EAST DESCRIBED LINE OF THE KENNETH L. ALLEN & CAROL J. ALLEN PROPERTY RECORDED IN DEED RECORD 228, PAGES 77-78, IN THE OFFICE OF THE RECORDER OF BOONE COUNTY, INDIANA, NORTH 00°35'46" WEST 1319.69 FEET; THENCE ALONG THE APPROXIMATE CENTERLINE OF COUNTY ROAD 200 SOUTH AND THE SECTION LINE, NORTH 87°57'20" EAST 1990.70 FEET TO THE POINT OF BEGINNING. (CONTAINING APPROXIMATELY 64.310 ACRES)

Exhibit B

Town Reimbursement for Off-Site Sewer Costs Jackson Run North, Phase 1

Jackson Run Sewer Cost by Phase			Jackson Run Sanitary Interceptor Total Costs				
Phase	Overall Cost	18" Sewer Cost	Item	Quantity	Unit	Unit Price	Cost
Jackson Run North, Phase 1	\$ 616,284.00	\$ 245,444.00	18" SDR-26 @ 16'-20'	1359	LF	\$ 130	\$ 176,670
Jackson Run, Phase 2	\$ 979,853.00	\$ 226,060.00	18" SDR-26 @ 20'-24'	1482	LF	\$ 137	\$ 203,034
			18" SDR-26 @ 24'-28'	612	LF	\$ 150	\$ 91,800
			Equivalent 8" Sanitary Pipe Where Applicable				
			8" SDR-26 @ 20'-24'	862	LF	\$ (80)	\$ (68,960)
						Amount Requested from Town	\$ 402,544

See next page for sanitary layout, **Blue Lines** Represent locations where only 8" lines would be necessary to service Jackson Run Phase 2 and Jackson Run North. **Red Lines** Represent locations where pipe was not necessary to service either development.

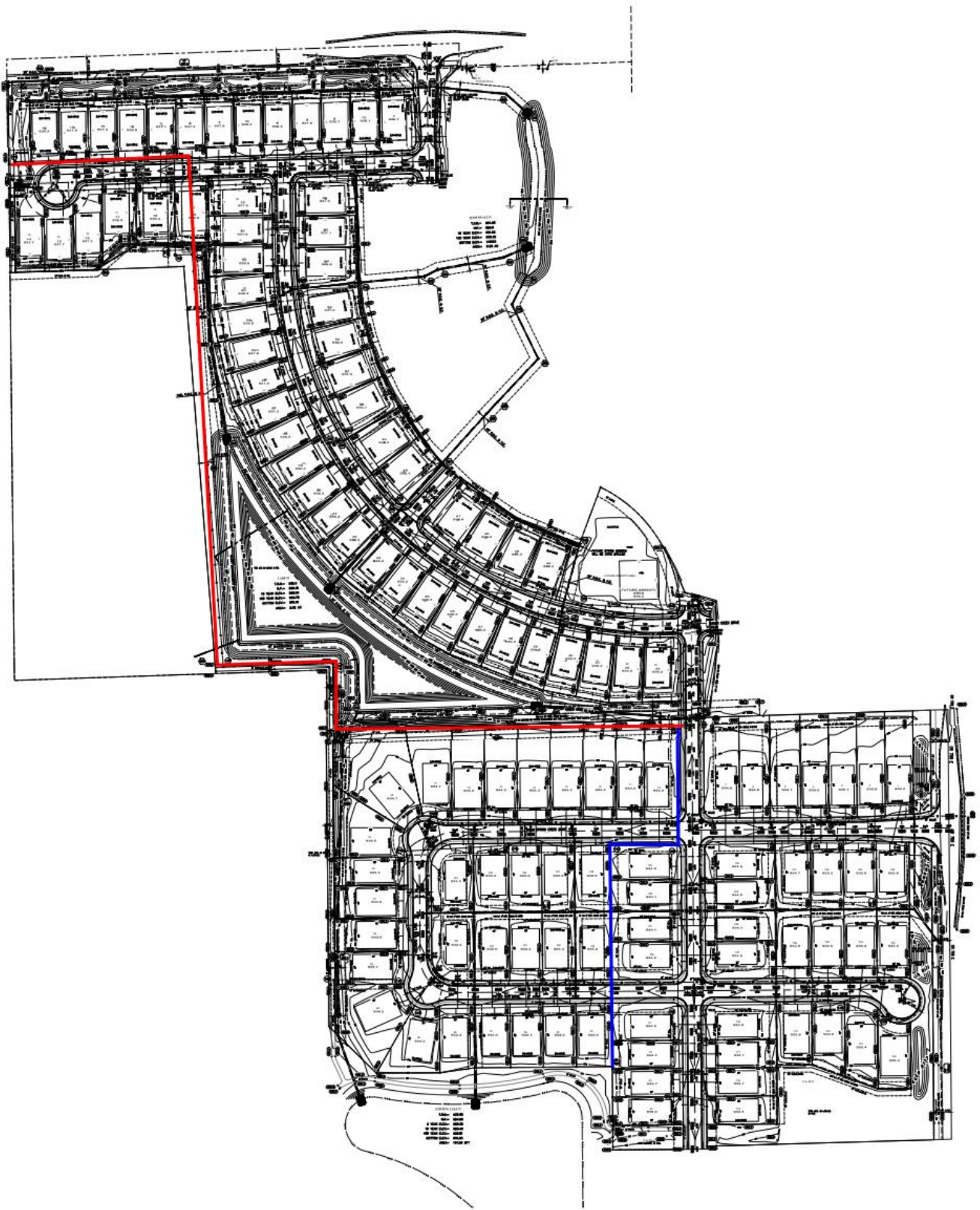


Exhibit C

Bill of Sale

Deed Cross-Reference: _____

BILL OF SALE AND EASEMENT DEDICATION

THIS BILL OF SALE AND EASEMENT DEDICATION (the “Bill of Sale”) is executed and delivered as of the ____ day of _____, 20__, by _____ (“Developer”) to and in favor of the TOWN OF WHITESTOWN (“Town”).

RECITALS:

A. Developer is the owner of and/or controls certain real property located in Boone County, Indiana, that is more particularly described on Exhibit 1 attached hereto and incorporated herein by reference (the “Property”).

B. Developer and Town entered into a Sanitary Sewer and/or Water Agreement dated _____, _____ (the “Agreement”), pursuant to which Town agreed to provide sanitary sewer and water service to Developer’s proposed development.

C. In order to receive service for the Property, Developer agreed in the Agreement to extend the Town’s sewage collection and water distribution facilities (“Utility Facilities”) to the Property.

D. As part of the Agreement, Developer also agreed to dedicate the Utility Facilities to the Town upon their completion and satisfactory inspection by the Town.

E. Developer now desires to dedicate and transfer the Utility Facilities to the Town.

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) paid Developer by Town and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer agrees as follows:

1. Defined Terms. All capitalized terms used but not defined in this Bill of Sale, shall have the meaning ascribed in the Agreement.
2. Transfers. Developer hereby sells, transfers, and conveys the Utility Facilities to the Town and its successors and assigns. Developer represents and warrants to the Town that: (i) it has the right, power, and authority to transfer the Utility Facilities to the Town, without obtaining the consent of any third party whose consent has not been obtained and written evidence thereof furnished to the Town; (ii) the Utility Facilities are free of all liens and encumbrances of any nature whatsoever; and (iii) Developer has received all necessary permits and approvals for the Utility Facilities, and such permits and approvals are final and no longer subject to appeal.

3. Easements. To the extent that the Utility Facilities are not located within the Easements dedicated to the Town as required by the Agreement, Developer hereby gives, grants, warrants, and conveys to the Town, its successors and assigns, a permanent easement lying 7 ½ feet along either side of the Utility Facilities (i.e., for a total of 15 feet) to construct, operate, inspect, maintain, and remove mains, ducts, or other related utility structures that are part of the Utility Facilities (“Easement Grant”). The Easement Grant shall include the right of the Town, its employees, agents, and contractors to ingress and egress over the Property to accomplish the purposes set forth herein. Developer further represents and warrants to the Town that it has the right and necessary authorization to enter into this Easement Grant, and that there are no encumbrances, liens, contracts, or options of any kind or character upon the Property which would prevent Developer from granting, warranting, and conveying to the Town this Easement Grant.

4. Further Representations and Warranties. Developer hereby represents and warrants to the Town that the Town hereby has and will have the necessary access to operate, maintain, replace, and/or expand the Utility Facilities. To the extent necessary, Developer agrees to execute whatever documents necessary to ensure that the Town has the requisite access to operate and maintain the Utility Facilities. The certified original cost of the Utility Facilities to be dedicated to the Town under this Bill of Sale is _____ (\$_____).

5. Binding on Successors and Assigns. The parties agree that the Town’s service touches and concerns the land and the terms of this Bill of Sale shall be binding upon and inure to the benefit of the parties hereto, as well as their successors and assigns.

IN WITNESS WHEREOF, Developer has caused this Bill of Sale to be executed as of the day and year first above written.

By: _____

Printed: _____

Its: _____

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of _____, who acknowledged the execution of the foregoing "Bill of Sale and Easement Dedication" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, 20__.

Notary Public

My Commission Expires:

(Printed Signature)

My County of Residence:

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. _____

This instrument prepared by and after recording return to Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.

Exhibit D

Memorandum of Agreement

MEMORANDUM OF AGREEMENT

Jackson Run North – Section 1

This MEMORANDUM OF AGREEMENT (“Memorandum”), made and entered into this ____ day of _____, 2022, is by and between the Whitestown Municipal Utilities (“Whitestown”), and Braun Property Development, LLC (“Developer”).

RECITALS:

- A. Whitestown and Developer have entered into a Special Sanitary Sewer and Water Service Agreement dated as of an even date herewith (“Service Agreement”).
- B. Developer represents that it owns or controls certain real estate consisting of approximately 64.31 acres as described on the attached Exhibit 1 (the “Development”).
- C. The Service Agreement describes the terms and conditions upon which Whitestown will provide sewer and water service to the Development.
- D. Whitestown and Developer desire to enter into and record this Memorandum acknowledging the existence of the rights and obligations of Whitestown and Developer, and their grantees, successors, and assigns, with respect to the provision of sewer and water service to the Development.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

- 1. Incorporation. The above and foregoing Recitals, including any defined term set forth therein, are hereby incorporated into and made a part of this Memorandum as if more fully restated herein.
- 2. Recordation. Upon final execution of this Memorandum, Developer will record this Memorandum at its cost in the chain-of-title for the Development.
- 3. Binding on Successors and Assigns. This Memorandum and the Service Agreement touch and concern the Development and shall be binding on Whitestown and Developer’s successors and assigns, including, without limitation, any future tenants or purchasers of the respective properties. Regardless of the name on the utility service account, the property owner is and may be held responsible for all rates and charges, including late fees and penalties, for utility service to the property.
- 4. Annexation Waiver. The Service Agreement expressly includes the waiver of any right to remonstrate against future annexation(s) by Whitestown, which runs with the land and is binding upon Developer and its successors and assigns.
- 5. Easements. In addition to the other terms and conditions in the Service Agreement, the Service Agreement includes a requirement that the Developer and its successors and assigns agree to provide additional water and/or sewer easements (in, over, and across the Development) to facilitate

the provision of sewer and water service to future users in and around the Development. The exact location of the easements will be determined at a future date by the parties so as to minimally impact the reasonable use and/or anticipated development of the Development.

6. Information. Any person or entity desiring to obtain additional information about the terms and conditions upon which Whitestown and Developer have agreed to extend sewer and water service to the Development may contact:

Whitestown: Whitestown Municipal Utilities
Whitestown Municipal Complex
6210 Veterans Drive
Whitestown, IN 46075

With Copy To: Bose McKinney & Evans LLP
111 Monument Circle, Ste. 2700
Indianapolis, IN 46204
Attn: Stephen C. Unger

Developer: Braun Property Development, LLC
8099 Hunt Club Road
Zionsville, IN 46077-9340
Attn: Adam Braun, President
abraun@braunbpd.com

7. Memorandum. This Memorandum is prepared for recording to put all persons on notice of the existence of the Service Agreement and the rights and obligations of Whitestown and Developer under such Service Agreement. Nothing contained herein shall be deemed to amend or modify the Service Agreement, and all terms set forth herein are subject to the terms and conditions of the Service Agreement.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Agreement to be executed by its duly authorized representatives the day and year first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHITESTOWN MUNICIPAL UTILITIES

By: _____
Danny Powers
Whitestown Utility Manager

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Danny Powers, by me known to be the Utility Manager of the Town of Whitestown, who acknowledged the execution of the foregoing "Memorandum of Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, _____.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

BRAUN PROPERTY DEVELOPMENT, LLC

By: _____

Printed: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of Braun Property Development, LLC, who acknowledged the execution of the foregoing "Memorandum of Agreement" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, _____.

Notary Public

(Printed Signature)

My Commission Expires:

My County of Residence:

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. Stephen C. Unger

This instrument prepared by Stephen C. Unger, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204

4389254

EXHIBIT 1

Jackson Run North

PART OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 18 NORTH, RANGE 2 EAST, WORTH TOWNSHIP, BOONE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 18; THENCE ALONG THE APPROXIMATE CENTER LINE OF COUNTY ROAD 700 EAST AND THE SECTION LINE SOUTH 00°28'20" EAST (ASSUMED BEARING) 1454.23 FEET; THENCE ALONG A NORTH DESCRIBED LINE OF THE RONALD R. GOOD & MICHAEL E. GOOD PROPERTY RECORDED AS INSTRUMENT NO. 0321525, BOONE COUNTY RECORDER'S OFFICE, SOUTH 88°02'08" WEST 1323.38 FEET; THENCE ALONG AN EAST DESCRIBED LINE OF THE ALLEN'S ACRES SUBDIVISION PROPERTY RECORDED IN PLAT BOOK 4, PAGE 163, IN THE OFFICE OF THE RECORDER OF BOONE COUNTY, INDIANA, NORTH 00°32'15" WEST 131.68 FEET; THENCE ALONG A NORTH DESCRIBED LINE OF ALLENS' ACRES SUBDIVISION PROPERTY SOUTH 88°02'08" WEST 664.25 FEET; THENCE ALONG AN EAST DESCRIBED LINE OF THE KENNETH L. ALLEN & CAROL J. ALLEN PROPERTY RECORDED IN DEED RECORD 228, PAGES 77-78, IN THE OFFICE OF THE RECORDER OF BOONE COUNTY, INDIANA, NORTH 00°35'46" WEST 1319.69 FEET; THENCE ALONG THE APPROXIMATE CENTERLINE OF COUNTY ROAD 200 SOUTH AND THE SECTION LINE, NORTH 87°57'20" EAST 1990.70 FEET TO THE POINT OF BEGINNING. (CONTAINING APPROXIMATELY 64.310 ACRES)