

CROSS REFERENCE

In accordance with Indiana Code 32-23-2-5, this encroachment agreement is being created from real estate most recently transferred to Grantor in a deed recorded as Instrument Number _____, in the office of the Recorder of Whitley County, Indiana.

ENCROACHMENT AGREEMENT

This agreement (“Agreement”) is made and entered into this ___ day of __, 20_____ by and between the Town of Churubusco, Indiana, (hereinafter “Churubusco”) and _____ (hereinafter “Landowner”).

In consideration of Churubusco granting Landowner the right to encroach upon a drainage or utility easement previously platted and granted to Churubusco evidenced by Document # _____ (the “Easement”), Landowner agrees as follows:

1. **Scope and purpose of encroachment.** Landowner is granted the right to encroach upon the Easement for the limited purpose of:

_____ (the “Encroachment”):

Landowner may not change the scope or purpose of the Encroachment without the specific written consent of Churubusco, which such consent may be withheld at Churubusco’s sole discretion.

2. **No waiver of rights.** Landowner acknowledges that Churubusco does not, in any way, waive or forfeit its full right to use and enjoyment of the Easement. Upon request by Churubusco, Landowner shall remove the Encroachment for the purpose of allowing Churubusco, or any public utility access to the Easement.

Should any repair, maintenance or the exercise of any right under the Easement be required for which the Encroachment interferes (said interference determined at Churubusco’s sole discretion), the Landowner will have the option, as soon as is reasonably possible, to remove the Encroachment to Churubusco’s sole satisfaction or, in the event the Landowner does not act or chooses to have Churubusco do so, or there is no time (as determined in Churubusco’s sole

discretion) to provide the Landowner the option to remove, Churubusco shall remove the Encroachment and charge the Landowner for all costs associated with said removal. Churubusco shall have no obligation or cost to replace or repair the removed Encroachment. If the Encroachment is not removed due to feasibility or timing, as determined by Churubusco in its sole discretion, Churubusco shall have no liability for any damage to the Encroachment regardless of the cause.

3. **Limitation of liability.** Landowner agrees to indemnify and hold Churubusco harmless for any and all actions arising out of any claim for personal injury (including death), property damage, consequential damages, attorney fees and costs caused by Landowner's encroachment upon the drainage or utility easement. Under no circumstances will Churubusco, its contractors, employees or licensees or any public utility be liable for any claims by Landowner for any personal injury or damages caused by Churubusco or any public utility's removal of the Encroachment.

4. **Recording of Agreement.** Landowner shall cause this Agreement to be recorded in the Office of the Recorder of Whitley County and return a copy of this agreement with its recorded instrument number to the Planning and Building Department prior to the issuance of an Improvement Location Permit.

5. **Conflict.** In the event any terms and/or conditions of this Agreement conflict with those of the Easement, this document shall control and will be deemed to have amended the Easement to such extent; provided, however, that nothing in this Agreement shall diminish any rights Churubusco has under the Easement and Churubusco waives no rights thereunder.

6. **Effective date.** This Encroachment Agreement shall be effective upon its recording in the office of the Recorder of Whitley County and shall remain in full force and effect until revoked by either party in writing. This agreement is binding on the heirs and successors-in-interest of Landowner and shall run with the Land. Any amendment to this agreement must be in writing, signed by the parties hereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Columbia City and Landowners have executed this Agreement on the date and year first written above.

Town Council, Town of Churubusco

Landowners

Mark Pepple, President

Printed: _____

Nathan Van Horn, Vice-
President

Printed: _____

Devin Keener, Council Member

NOTARIZATION:

State of Indiana)
) SS:
County of Whitley)

ATTEST:

Subscribed and sworn to me, a Notary Public, this ____ day of
_____, 20____.

Madalyn Sade-Bartl, Clerk-Treasurer

Notary Public

Printed: _____

My Commission Expires: _____

County of Residence: _____

This instrument prepared by Andrew D. Boxberger, Attorney at Law, Attorney No. 23515-02

I affirm, under penalties for perjury, that I have taken reasonable care to redact
each Social Security number in this document. *Andrew D. Boxberger*