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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2007 094835

2007 DEC -3 PM 12: 31

SEWER INSTALLATION REIMBURSEMENT AGREEMENT
MICHAEL A. BROWN
RECORDER

THIS AGREEMENT "(Agreement)", is made and entered into on the 16th day of October, 2007 by and between the Town of Winfield, an Indiana municipal corporation ("Town") and Stonegate Development of Winfield, L.L.C., an Indiana limited liability company ("Developer").

RECITALS:

- A. Developer intends to install certain sewer line infrastructure improvements ("Infrastructure"), in Stonegate Subdivision ("Subdivision") and along Randolph Street and through other properties within the corporate limits of the Town.
- B. Developer has the right to recapture an allocable share of the costs of constructing certain of these public improvements ("Recapture Items"), which will ultimately provide benefit to other properties ("Benefitted Properties") from the owners of the Benefitted Properties ("Benefitted Owners"). The Benefitted Properties are described in "Exhibit A" attached hereto and made a part hereof.
- C. The Town has established a sewer service area to provide sewer services to the Subdivision and to the Benefitted Properties.
- D. Developer and the Town are desirous of entering into this Agreement to provide for the fair and allocable recapture by Developer of the proportionate costs of the Recapture Items from the Benefitted Owners, subject to the terms and conditions set forth in the Agreement.

NOW, THEREFORE, under authority of Indiana Code 36-9-22-1 *et. seq.*, and in consideration of the foregoing recitals and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. **RECAPTURE ITEMS.** The Recapture Items, being elements of the sanitary sewer system public improvements to be constructed in connection with the development of the Subdivision, are listed in "Exhibit B" attached hereto and made a part hereof ("Recapture Schedule"). The Recapture Items have been designed to serve a total population equivalent ("Population Equivalent or "P.E.") of 5490. For purposes of the Agreement, the Population Equivalent for all dwelling units shall be 3.1, and for all Commercial Areas shall be 10 per acre. The Recapture Schedule identifies each Recapture Item and the estimated cost to construct each Recapture Item, including the maintenance and repair costs required to obtain acceptance thereof by the Town ("Estimated Cost"). Developer shall cause each of the Recapture Items to be constructed in compliance with all applicable laws and ordinances and the approval of the Town Engineer and shall be conveyed to the Town upon acceptance by the Town. Prior to the

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Town's acceptance of each Recapture Item, Developer shall deliver copies of paid invoices verifying the actual costs paid by Developer for constructing and obtaining the Town's acceptance of such Recapture Item ("Actual Cost"). The Actual Cost for each Recapture Item, as reviewed and approved by the Town's Engineer, shall be the total of Developer's Direct Costs, as defined in Paragraph 1(a) below, and shall be utilized in administering this Agreement and collecting the Recapture Expenses, as hereinafter defined, for each Benefitted Property for the applicable Benefitted Owner.

- (a) As used in this Agreement, "Direct Costs" shall include all of the direct costs incurred by Developer in connection with the installation of each Recapture Item including, but not limited to the reasonable direct construction costs including the permitting, bonding, installation and restoration of all subject improvements, developer's engineering fees, construction management and surveying costs and developer's legal fees, all only as related to the installation of the subject improvements. When any such fee or charge constitutes an aggregate charge for more than a single Recapture Item, it may be ratably allocated among each covered Recapture Item.

2. POPULATION EQUIVALENT ALLOCATION FOR BENEFITTED PROPERTIES. The amount of P.E. allocated for each of benefitted Properties is set forth in "*Exhibit A*" attached hereto and made a part hereof.

3. RECAPTURE EXPENSE. The Recapture Item(s) which will benefit the Benefitted Properties, and the pro-rata share of the Actual Cost, for each P.E. of each such Recapture Item to be allocated to a Benefitted Property, are set forth in "*Exhibit B*" attached hereto and made a part hereof. Each Benefitted Property shall pay a Recapture Expense in accordance with the Allocation Schedule for the amount of P.E. attributable to such Benefitted Property, based on the development proposed for such Benefitted Property. The aggregate amount of the proportionate share of the Actual Costs, for each of the Recapture Items allocable to a Benefitted Property is referred to herein as the "Recapture Expense". The Recapture Expense shall bear interest at the rate of 8.0% per annum, commencing on the date that the applicable Recapture Item is completed, approved and conveyed to the Town, and operational and continuing thereafter until the first to occur of either: (i) the payment in full of such Recapture Expenses, plus accrued interest, for such Benefitted Property, or (ii) the 7th anniversary date of the commencement of such interest. As used in this paragraph "operational" shall mean the date that the Town approves and accepts the installation and water or effluent is running through the infrastructure without material defect. The Town shall acknowledge the same within 3 business days of being notified in writing by Developer or the Town's acknowledgment will be deemed to be waived. At the end of said seven (7) year period, the Recapture Expenses, plus accrued interest, shall continue as an obligation running with and against the Benefitted Property for a period of fifteen (15) years from the date hereof, except that no additional interest shall accrue on said obligation after said seven-

year period. The Agreement shall terminate upon payment of all sums due, or fifteen (15) years from the date hereof, whichever shall first occur.

4. **COLLECTION OF RECAPTURE EXPENSE.** The Town shall assess against and collect from the Benefitted Owner of a Benefitted Property, or any portion thereof, his successors and assigns, the recapture expense, plus accrued interest, calculated under Paragraph 3 of this Agreement for such Benefitted Property, as a condition to approval of any connection to the infrastructure system by the Benefitted Property. The Benefitted Owner thereof shall pay, and the Town shall collect from such Benefitted Owner, or its agent or representative, the Recapture Expenses, plus accrued interest, owed hereunder by such Benefitted Property. The Town shall not issue to a Benefitted Property an Approval or any connection permit for direct or indirect connection to the Recapture Items until such Benefitted Property has fully paid the recapture Expenses, plus accrued interest owed by such Benefitted Property under this Agreement.

5. **PAYMENT OF RECAPTURE EXPENSE.** Each Recapture Expenses, plus accrued interest, collected by the Town pursuant to this Agreement shall be paid to Developer, or such other person or entity as developer may direct by written notice to the Town, within sixty (60) days following collection thereof by the Town. The Town may retain an amount not to exceed one percent (1%) of the total amount collected for each Benefitted Property as the Town's sole and exclusive fee for entering into and administering this Agreement ("Administration Fee").

6. **RECIPROCAL PAYMENT.** In the event that a Benefitted Owner, with Developer's written agreement and consent, installs one or more Recapture Item(s), then said Benefitted Owner or its designee, shall receive the associated Recapture Expense, plus any accrued interest from the Town, under the same terms and conditions as set forth in paragraphs 4 and 5 of this Agreement.

7. **JOINT RELEASE.** If Developer, jointly with any Benefitted Owner, sends a written notice ("Joint Notice") to the Town that they have installed the infrastructure and made provisions for payment thereof outside of the terms of this Recapture Agreement, then Developer shall release the Town from any further obligations hereunder for each Recapture Item and Recapture Expense identified in the Joint Notice.

8. **TOWN'S OBLIGATION: INDEMNIFICATION OF TOWN.** It is understood, acknowledged, and agreed:

- (a) The Town's obligation to reimburse Developer shall be limited to funds collected from the Benefitted Owners as provided herein, and payments made hereunder shall be made solely out of said funds. This Agreement shall not be construed as creating any obligation upon the Town to make

payments from its general corporate funds or revenue.

- (b) The Town shall not issue any infrastructure connection permit to any Benefitted Property until all recapture payments then due under this Recapture Agreement for said Benefitted Property have been paid to the Town.
- (c) The Town and its officers, employees and agents shall make reasonable efforts to collect the Recapture Expense, plus accrued interest, for each Benefitted Property but shall not be obligated to bring any suit to enforce the collection of same nor shall the Town or any of its officials be liable in any manner for the failure to make such collections. Developer agrees to hold the Town, its officers, employees and agents, harmless from the unintentional failure to collect said funds from Benefitted Owners. In any event, however, Developer may sue any Benefitted Owner owing any Recapture Expenses, plus accrued interest, hereunder for collection thereof, and in the event Developer initiates a collection lawsuit, the Town agrees to cooperate in Developer's collection attempts hereunder by allowing full and free access to the Town's books and records pertaining to the development of the Benefitted Property and the collection of any Recapture Expense therefore.

9. TOWN'S COLLECTION OF OTHER FEES AND CHARGES.

Nothing contained in this agreement shall limit or in any way affect the rights of the Town to collect other fees and charges due pursuant to ordinances or law. The Recapture Expenses provided for herein for each Benefitted Property is in addition to such other fees and charges.

10. TERM. This Agreement shall remain in full force and effect for a period of fifteen (15) years from the date of execution, unless sooner terminated by the mutual agreement of the parties hereto or by the completion of all duties to be performed hereunder. In the event no connection permit is issued by the Town for such Benefitted Property within fifteen years following the date of this Agreement, then this Agreement and each and every duty and undertaking set forth herein pertaining to such Benefitted Property, shall become null and void and no further force and effect as to such Benefitted Property.

11. LIEN. The recording of this Agreement with the Lake County, Indiana Recorder, against the Benefitted Properties shall, to the extent provided by law, create and constitute a lien against each Benefitted Property in favor of the Town and Developer, and subdivided lot hereafter contained therein, in the amount of the Recapture Expenses, plus interest, applicable hereunder to such Benefitted Property.

12. **RELEASE OF RIGHT TO REMONSTRATE.** Pursuant to I.C. 36-9-22-2(c) the Developer and its successors in interest hereby release and waive any right to remonstrate against pending or future annexations by the Town of the area served by the sewage works which are the subject of this Agreement. Any person tapping into or connecting to the sewage works contracted for herein is considered to waive his rights to remonstrate against the annexation of an area served by the sewage works.

13. **ASSIGNMENT** Developer may not assign its interest under this Agreement absent advance written approval of Town, which approval will not be unreasonably withheld.

14. **NO OBLIGATION OF LANDOWNERS TO UTILIZE SYSTEM**
Nothing herein shall be construed to require any landowner within the Recapture Area defined herein to be obligated to connect to the utility system and structures which are the subject of this Agreement if another alternative utility system is available and approved by the Town..

15. **MISCELLANEOUS PROVISIONS**

- Document is NOT OFFICIAL!**
This document is the property of the Lake County Recorder!
- (a) **Binding Effect:** Except as otherwise herein provided, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Developer and any successor municipal corporation of the Town.
- (b) **Enforcement:** Each party to this Agreement, and their respective successors and assigns, may either in law or in equity, by suit, action, mandamus, or other proceeding enforce and compel performance of this Agreement.
- (c) **Recording:** Upon execution by the Parties hereto, a true and correct copy of this Agreement shall be recorded at Developer's expense, with the Lake County Recorder's office. After the Actual Cost for each recapture Item has been inserted in "Exhibit B" in conformance with Section 1 hereof, this Agreement shall be re-recorded at Developer's expense and with said supplemented "Exhibit B", with the Lake County Recorder's Office. This Agreement shall constitute a covenant running with the land and shall be binding upon the Benefitted Properties in accordance with the terms and provisions set forth herein.
- (d) **Direct Payments:** In the event a Benefitted owner of a Benefitted Property pays a Recapture Expense directly to the Developer, the Town, upon written notice from the Developer, shall issue a release of lien to said Benefitted Owner. In the case of such direct payment to the Developer, the Town shall not be entitled to an Administration Fee in connection with said Recapture Expenses.

- (e) Notices. Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, shall be in writing and shall be deemed to have been given on the date of personal delivery, on the date of confirmed facsimile transmission provided a hard copy of such notice is deposited in the regular mail addressed to the recipient within twenty-four (24) hours following the facsimile transmission, or on the date when deposited in the U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Town: Town of Winfield
10645 Randolph Street
Crown Point, IN 46307
Attn: Clerk-Treasurer

If to Developer: Providence Real Estate Development, LLC
879 Joliet St. #160
Dyer, IN 46311
Attn: Mr. John Borucki

- (f) Severability: The invalidity or unenforceability of any of the provisions hereof, or any charge imposed as to any portion of the Benefitted Properties, shall not affect the validity or enforceability of the remainder of this Agreement or the charges imposed hereunder.
- (g) Complete Agreement: This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other prior agreement regarding the subject matter of this Agreement shall be deemed to exist to bind the parties. This Agreement shall be governed by the laws of the State of Indiana.
- (h) Recitals and Exhibit: The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.
- (i) Release of Lien: Upon the written request of any Benefitted Owner who has paid in full the recapture expenses, including all accrued interest, as verified in writing by the Developer to the Town for any Benefitted Property, the Town shall issue a Release of Lien in recordable form stating that all payments due under this Agreement have been received for that Benefitted Property.

**ALL OF WHICH IS AGREED TO EFFECTIVE AS OF THE DATE
SET FORTH ABOVE.**

"Town"

"Developer"

TOWN OF WINFIELD

PROVIDENCE REAL ESTATE
DEVELOPMENT, LLC

BY: [Signature]
President, Town Council

BY: [Signature]

ATTEST:
[Signature]
Clerk-Treasurer



This Document Prepared by:

**RECAPTURE ANALYSIS
STONEGATE & STONEGATE COMMONS
WINFIELD, INDIANA**

March 13, 2007

COST ITEMS		NUMBER OF UNITS SHARING COST	COST/UNIT	P.E	COST/P.E.	
1A) Offsite 10" force main to Treatment Plant	\$	14,851.00	1771	\$ 8.39	5490.1	\$ 2.71
1B) Lift Station #2 Equipment & Installation	\$	171,613.00	1771	\$ 96.90	5490.1	\$ 31.26
8% for Engineering, Surveying and Construction Observation	\$	14,917.12	1771	\$ 8.42	5490.1	\$ 2.72
Contingency (5%)	\$	10,069.06	1771	\$ 5.69	5490.1	\$ 1.83
2) Offsite gravity main between LS #1 and LS #2	\$	309,923.15	1546	\$ 200.47	4792.6	\$ 64.67
8% for Engineering, Surveying and Construction Observation	\$	24,793.85	1546	\$ 16.04	4792.6	\$ 5.17
Contingency (5%)	\$	16,735.85	1546	\$ 10.83	4792.6	\$ 3.49
3A) Offsite 8" force main downstream of LS #1	\$	78,918.00	748	\$ 105.51	2318.8	\$ 34.03
3B) Lift Station #1 Equipment & Installation	\$	158,287.00	748	\$ 211.61	2318.8	\$ 68.26
8% for Engineering, Surveying and Construction Observation	\$	18,976.40	748	\$ 25.37	2318.8	\$ 8.18
Contingency (5%)	\$	8,863.17	748	\$ 11.85	2318.8	\$ 3.82
TOTAL	\$	827,947.60				

COST SHARING RELATIONSHIPS

SERVICE AREA 1 SHARES - 1A, 1B
SERVICE AREA 2 SHARES - 1A, 1B, 2
SERVICE AREA 3 SHARES - 1A, 1B, 2, 3A, 3B

Cost Items are base upon Opinion Of Construction Cost prepared by GFW Maintenance dated 03/13/07 and include 8% for engineering design, surveying and construction observation.

SERVICE AREA	NO. ACRES	ESTIMATED # OF SERVICEABLE UNITS	COST PER UNIT	COST PER P.E.	TOTAL COST
1	64	225	\$119.40	\$38.51	\$ 26,864.08
2	362.5	798	\$346.73	\$111.85	\$ 276,687.63
3	784	748	\$701.06	\$226.15	\$ 524,395.88
					\$ 827,947.60

UNITS
Total units tributary to 10" Offsite forcemain for Treatment Plant 1771
Total units tributary to LS #2 1771
Total units tributary to Offsite gravity main between LS #1 & LS #2 1546
Total units tributary to 8" Offsite forcemain downstream of LS #1 748
Total units tributary to LS #1 748
(as shown in Sanitary Sewer Recapture Exhibit Sheet 1 of 1 by Manhard Consulting, Ltd.)

SERVICE AREA 1 RECAPTURE SUMMARY

Estimated # of Serviceable Units 225
(Approved Stonegate Commons Units = 186)
(Approved Commercial & Day Care Area Units = 16)

Cost Per Unit
\$119.40

SERVICE AREA 2 RECAPTURE SUMMARY

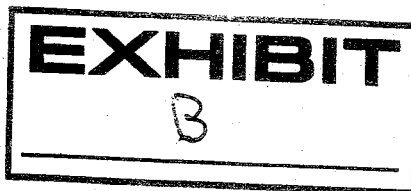
Estimated # of Serviceable Units 798
(Approved Stonegate Units = 152)
(Future Stonegate Units = 176)

Cost Per Unit
\$346.73

SERVICE AREA 3 RECAPTURE SUMMARY

Estimated # of Serviceable Units 748
(Approved Stonegate Units = 152)
(Future Stonegate Units = 176)

Cost Per Unit
\$701.06





HATCH LEGEND

	SERVICE AREA 1 - TRIBUTARY TO STONEGATE COMMONS GRAVITY SEWER AND LIFT STATION 2
	SERVICE AREA 2 - TRIBUTARY TO GRAVITY SEWER AND LIFT STATION 2
	SERVICE AREA 3 - TRIBUTARY TO LIFT STATION 1

SERVICE AREA CONSIDERATIONS

SERVICE AREA 1

APPROVED STONEGATE COMMONS SERVICE = 174 UNITS

FUTURE UNITS IN RECAPTURE AREA

- = 16 AC X 2.2 UNITS/AC = 35 UNITS
- = 6.35 ACRE COMMERCIAL AREA
- = 1.09 ACRE DAY CARE FACILITY

FUTURE COMMERCIAL AREA AVAILABLE FOR RECAPTURE

- = 4,050 GPD ÷ 310 GPD/UNIT = 13 UNITS
- = 13.06 UNITS ÷ 6.35 ACRES = 2.1 UNITS/ACRE

TOTAL DAY CARE FACILITY AVAILABLE FOR RECAPTURE

- = 825 GPD ÷ 310 GPD/UNIT = 3 UNITS

TOTAL UNITS AVAILABLE FOR RECAPTURE = 51 UNITS

SERVICE AREA 2

FUTURE UNITS IN RECAPTURE AREA

- = 80 AC X 2.2 UNITS/AC = 176 UNITS
- = 160 AC X 2.2 UNITS/AC = 352 UNITS
- = 90 AC X 2.2 UNITS/AC = 198 UNITS
- = 32.5 AC X 2.2 UNITS/AC = 72 UNITS

TOTAL UNITS AVAILABLE FOR RECAPTURE = 798 UNITS

SERVICE AREA 3

TOTAL NUMBER OF SERVICABLE UNITS = 748 UNITS

APPROVED STONEGATE SERVICE = 152 UNITS

FUTURE STONEGATE SERVICE = 80 AC X 2.2 UNITS/AC = 176 UNITS

TOTAL UNITS AVAILABLE FOR RECAPTURE = 748-152-176 = 420 UNITS

DATE: _____

DRAWN BY: NPH

SCALE: 1"=100'

PROJECT: _____


CODE: _____

DATE: _____

DRAWN BY: CHECK BY

REVISIONS

DATE



MWH CONSULTING LTD

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