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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2007 100803

2007 DEC 27 PM 1:15

MICHAEL A. BROWN
RECORDER

SEWER RECOUPMENT AGREEMENT

THIS AGREEMENT executed this 17th day of December, 2007, by and between the ST. JOHN SANITARY SEWER DISTRICT ("Sanitary Sewer District"), and SADDLE CREEK DEVELOPMENT LLC, an Indiana Limited Liability Company, ("Owner").

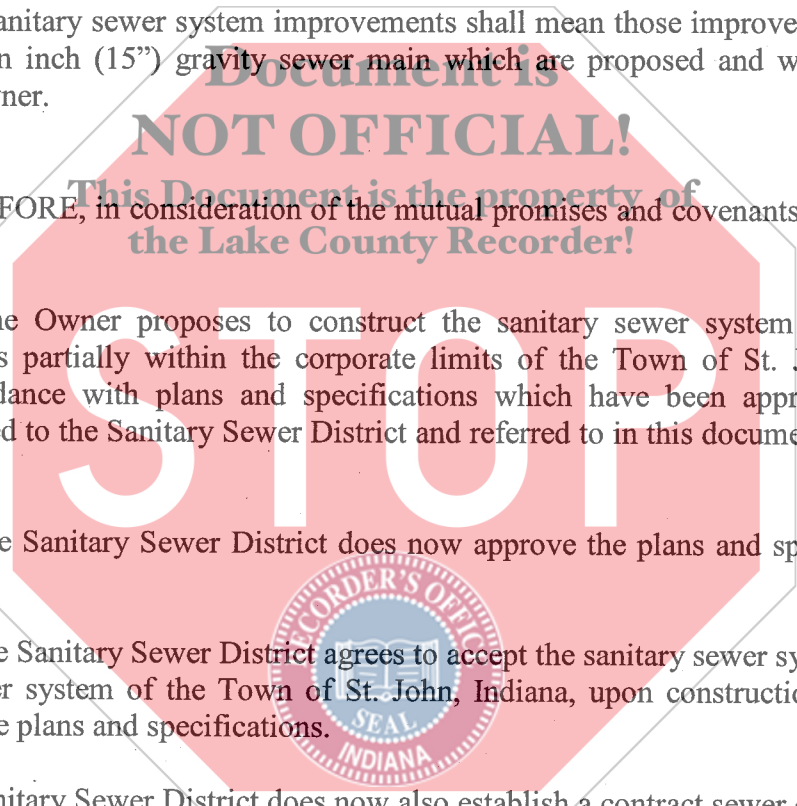
WITNESSETH

WHEREAS, The Owner has made application to the Town of St. John for approval of a certain development located around the geographical area described in Attachment "A", which will require the construction of certain public improvements, including the extension and provision of sanitary sewer system improvements.

WHEREAS, sanitary sewer system improvements shall mean those improvements to lift station, force main and fifteen inch (15") gravity sewer main which are proposed and will be designed and constructed by the Owner.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. That the Owner proposes to construct the sanitary sewer system improvements, the location of which lies partially within the corporate limits of the Town of St. John, Lake County, Indiana, all in accordance with plans and specifications which have been approved by the Town Engineer and submitted to the Sanitary Sewer District and referred to in this document as sanitary sewer system improvements.
2. That the Sanitary Sewer District does now approve the plans and specifications and the construction thereof.
3. That the Sanitary Sewer District agrees to accept the sanitary sewer system improvements into the sanitary sewer system of the Town of St. John, Indiana, upon construction, completion, and testing according to the plans and specifications.
4. The Sanitary Sewer District does now also establish a contract sewer district be served by the sanitary sewer system improvements, which "contract sewer district" area is described as set forth on Attachment "A".
5. That the sanitary sewer system improvements shall be used as a sanitary sewer, and no connections to same shall be made for any other purpose.



FILED

DEC 27 2007

PEGGY HOLINGA KATONA 025589
LAKE COUNTY AUDITOR

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6. That the Sanitary Sewer District agrees that from and after the date of acceptance of the sanitary sewer system improvements on behalf of the Town of St. John, no person, firm or corporation shall be granted a permit to tap into or deposit sewage in the sanitary sewer system improvements or any extension thereof for a period of fifteen (15) years from the date of acceptance of the sanitary sewer system improvements, without first obtaining the approval of the Sanitary Sewer District and without paying in addition to all other costs and charges for such a tap or deposit, the amount set forth in Attachment "B", which is attached and incorporated herein by reference, provided however that such recoupment amount, other than the Sanitary Sewer District's tap-on fee, may be waived in writing by the Owner, wherein the Sanitary Sewer District shall not be required to collect the recoupment amount. The Owner agrees to waive interest charges on the recoupment amount for a period of fifteen years for the connection of those residences lawfully occupied within the contract sewer district on the date of execution of this Agreement. Existing residences (existing at the time of execution of this Agreement) shall pay the recoupment amount at the time of an individual tap-on. If a main is connected to the sanitary sewer system improvements to serve property to be developed, the recoupment amount shall be paid at the time of that main connection and shall include the recoupment amount for all residential and commercial structures to be served by the main, i.e., if a main is connected to serve a subdivision of ten lots (commercial or residential), the recoupment amount to be paid at the time of connection shall be for all ten lots.

7. That the Sanitary Sewer District agrees to use reasonable diligence to collect said recoupment amount, and having so acted, it shall not be responsible to the Owner for the amount of such recoupment amount in cases where, through oversight or mistake, the Town of St. John fails to collect said recoupment amount; provided, however, that in the event any payment having not been made, and without such payments having been waived by the Owner, then, on request of the Owner, the Sanitary Sewer District shall remove or cause to be removed such unauthorized tap or connection, as provided for in I.C. 36-9-22-4.

8. That the Sanitary Sewer District agrees to accept sewage from and operate the sanitary sewer system improvements and to be responsible for all further maintenance of the sewer and the cost thereof, after a period of two years from the date of final acceptance of the sanitary sewer system improvements and to determine any defects in construction during said period. The Owner shall adhere to the Sanitary Sewer District's typical bonding requirements for the installation of the sanitary sewer system improvements.

9. That the Sanitary Sewer District shall be permitted to charge to each person, including the Owner, the usual and regularly established sewage disposal and sanitation fees according to the sewer rate schedule as amended from time to time for using the sewer or any lateral extension thereof.

10. That no owner of real property located outside the municipality shall be permitted tap into or connect to the sanitary sewer system improvements contracted for in this Agreement; provided that in the event that real property is annexed by and becomes a part of the Town of St. John, or that an approval is given by the Sanitary Sewer District to owners of that real property, the owners of that real

property shall be permitted to tap into or connect to the sanitary sewer improvements contracted for in this Agreement and if granted a permit to tap in within the fifteen (15) year period described in this agreement, the amount to be charged under this Agreement (in addition to all other costs and charges for such tap or deposit) shall be the amount set forth for the real property on Attachment "B".

11. That upon satisfactory completion of said sanitary sewer system improvements, according to the Sanitary Sewer District's specifications, the sanitary sewer improvements shall become the property of the Sanitary Sewer District.

12. That all owners of real property who did not contribute to the original cost of the sanitary sewer system improvements and who subsequently tap into or use the same, within a period of fifteen (15) years, shall pay a fair pro-rata share of the cost of said sanitary sewer system improvements, determined as shown in Attachment "B", this provision shall apply to all owners of real property described in Attachment "A", subject to such reasonable rules and regulations as the Sanitary Sewer District may adopt pursuant to this Agreement, notwithstanding the provisions of any other law or statute relating to the function of local governmental units, provided, that the provisions of this Agreement shall not be effective as to any owner of real property described in Attachment "A", unless this Agreement shall be recorded in the Office of the Lake County Recorder prior to the time of connection by the property owner.

13. That each owner of real property that taps into, uses or deposits sewage into the sanitary sewer system improvements shall pay a sum of money determined to be a fair pro rata share of the cost of the construction of the sanitary sewer system improvements, determined as shown in Attachment "B", with interest computed at the rate of eight percent per annum, computed from the date the sanitary sewer system improvements are accepted by the Sanitary Sewer District until the date payment is made to the Town of St. John.

14. That no owner of real property may be granted a permit to tap into the sanitary sewer system improvements without first obtaining approval of the Sanitary Sewer District and paying to the Sanitary Sewer District the charges assessed for the tap in. In the event of any tap or connection into, use of or deposit of sewage made into the sanitary sewer system improvements without payment having been made and approval obtained from the Sanitary Sewer District, the Sanitary Sewer District shall remove or cause to be removed, and shall dispose of the unauthorized tap, connecting or use, and all connecting tile or materials located in the facility right of way, without any liability whatsoever on the part of the Sanitary Sewer District.

15. That the financial obligation of the Sanitary Sewer District to the Owner under the terms of this Agreement shall be limited to the sums actually collected by the Sanitary Sewer District pursuant to the provisions herein stated. All amounts received by the Sanitary Sewer District under this Agreement shall be paid out, without appropriation, within sixty (60) days after they are received by the Clerk-Treasurer.

16. That in the event it becomes mutually desirable by the parties that owners of real property outside the corporate boundaries of the Town of St. John tap into and use the sanitary sewer system improvements, said real property shall be annexed into the Sanitary District and each owner of real property shall pay a fair pro rata share of the recoverable cost of the sanitary sewer system improvements, as determined in Attachment "B".

17. That this Agreement shall be automatically terminated fifteen years after the acceptance of the sanitary sewer system improvements, or upon the Owner actually or constructively receiving fees equal to the total recovery cost of the sanitary sewer system improvements, whichever occurs first. The total recoverable cost of these sanitary sewer system improvements is \$210,473.00, exclusive of interest.

18. That upon approval by the Sanitary Sewer District and execution by the parties, this Agreement shall be recorded by the Owner, at the Owner's expense, in the Office of the Lake County Recorder, within fifteen (15) days of approval by the Sanitary Sewer District and a recorded copy must be filed with the Sanitary Sewer District by the Owner.

19. That this Agreement shall be construed in accordance with the statutes of the State of Indiana, the St. John Municipal Code and other applicable Indiana law.

20. That this contract is made and entered into pursuant to the terms, conditions and provisions of I.C. 36-9-22-1, et seq., as amended from time to time.

21. That the parties hereto mutually covenant and agree that the execution of this Agreement hereby rescinds and revokes any recoupment agreement previously presented, executed, and/or recorded.

22. That in the event any provision of this Agreement shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Agreement. Any illegal or invalid provision shall be rewritten to provide for recoupment of sewer costs at the earliest possible date.

23. This AGREEMENT has been approved by affirmative action of the St. John Sanitary Sewer District of the Town of St. John, Indiana on December 17, 2007, and whereby the President of St. John Sanitary Sewer District and Clerk-Treasurer were each authorized to execute and attest the same for and on behalf of the Town.

24. All notices and other communications in connection with this AGREEMENT shall be in writing and shall be deemed made, given or delivered to the addressee thereof, (i) upon receipt, if delivered by personal delivery, or (ii) One (1) day after deposit with any nationally recognized courier service, (delivery charges prepaid), or (iii) Five (5) days after deposit in any main or branch United States Post Office, certified mail (postage prepaid), return receipt requested, or (iv) when sent after receipt of confirmation of answer back is sent by telecopy, or other similar facsimile transmission, in any case addressed to the Parties, respectively as follows:

For Notices to Owner:

Saddle Creek Development LLC
8051 Wicker Avenue, Suite A
St. John, Indiana 46373

For Notices to Sanitary Sewer District:

Town of St. John
Attention: St. John Sanitary Sewer District
10955 W. 93rd Avenue
St. John, Indiana 46373

24. The Owner agrees to waive its right to remonstrance against annexation for the real property within the contract sewer district area described as set forth in Attachment "A", in conformance with the concurrence to the terms and provisions of I.C. 36-9-22, as amended from time to time. It is contemplated that all owners of real property within the contract sewer district area described as set forth in Attachment "A" attached hereto shall also waive rights of remonstrance against annexation pursuant to the applicable law set forth herein in the event of connection and service to the sanitary sewer system improvements contracted for by this Agreement,

IN WITNESS WHEREOF, this Agreement has been executed by the St. John Sanitary Sewer District and the Owner, by its designated representative, on the day and year first written above.

ST. JOHN SANITARY SEWER DISTRICT

By: Robert Myers

Title: President, Board of Sanitary Sewer Commissioners

ATTEST:

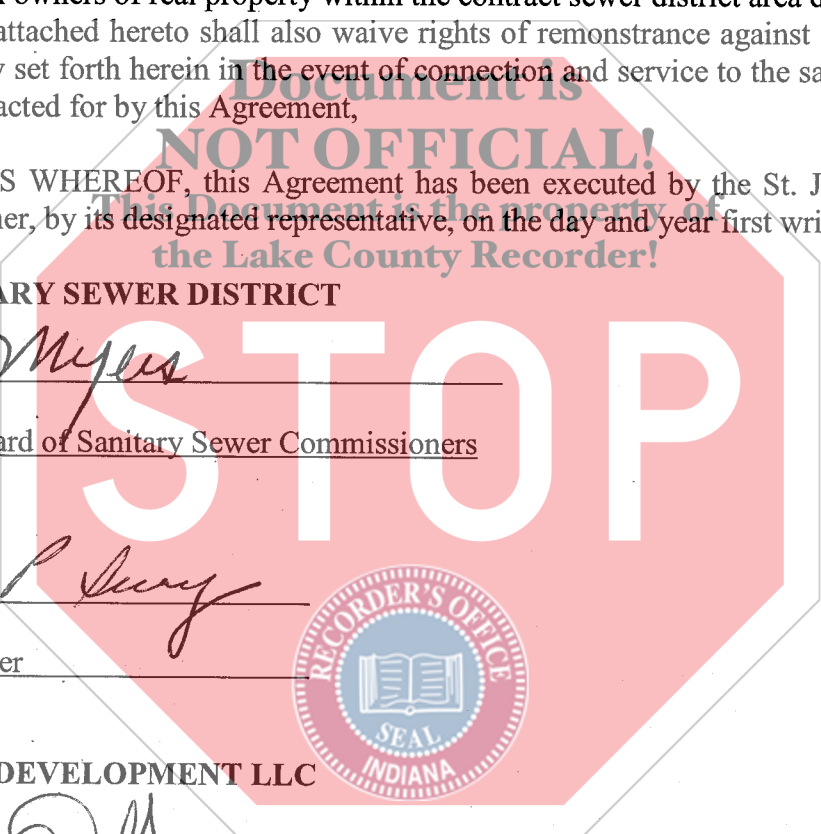
By: Sherry P. Seery

Title: Clerk-Treasurer

SADDLE CREEK DEVELOPMENT LLC

BY: [Signature]

TITLE: Vice President



STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

I, Andrea Oller, a Notary Public in and for County and State aforesaid, do hereby certify Todd Olthoff as Vice President of Saddle Creek Development LLC personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19 day of December, 2007.

Andrea Oller
Notary Public

My Commission Expires: Nov 27, 2013

Andrea Oller
Seal

Notary Public, State of Indiana
My Commission Expires November 27, 2013

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STOP



"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."

PREPARED BY: [Signature]

EXHIBIT A

Saddle Creek Recapture Zone

That part of Section 1, and Section 12, in Township 34 North, Range 10 West of the Second Principal Meridian, together with part of Section 36, in Township 35 North, Range 10 West of the Second Principal Meridian, together with part of Section 31, in Township 35 North, Range 9 West of the Second Principal Meridian, together with part of Section 6, and Section 12, in Township 34 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana and being more particularly bounded and described as follows:

Beginning at the intersection of Calumet Avenue and 101st Avenue, the same being the southwest corner of said Section 31; thence northerly along the West line of said Section 31, 2180 feet, more or less, to centerline of Bull Run Creek; thence easterly, southeasterly, northeasterly and northerly, 1800 feet, more or less, along said centerline of Bull Run Creek to the North line of the South Half of said Section 31; thence easterly along the North line of the South Half of said Section 31, 820 feet, more or less, to East line of the West 2030 feet of said Section 31; thence southerly 10500 feet, more or less, to the intersection of the East line of the West 2030 feet of the Northwest Quarter of said Section 7 and the South line of the Northwest Quarter of said Section 7; thence westerly along said South line and the South line of the North Half of said Section 12, 6900 feet, more or less, to the West line of said Section 12, also known as State Line Road; thence northerly along the West line of said Section 12, and the West line of said Section 1, one mile, more or less, to the South line of the North Half of Said Section 1; thence easterly along the South line of the North Half of said Section 1, 3500 feet, more or less, to the East line of the West Half of the Northeast Quarter of said Section 1; thence northerly along said East line, one half of one mile, more or less, to the North line of said Section 1; thence easterly along the North line of said Section 1, one quarter of one mile, more or less, to the intersection of Calumet Avenue and 101st Avenue and the Point of Beginning.

Containing 1160 acres more or less.



Revision date:11/30/2007

SADDLE CREEK RECAPTURE AGREEMENT

1/17/2007
04-549

Sanitary Sewer (15")		COST PER FOOT	
	8" Pipe	15" Pipe	
Cost Difference between 8" and 15" PVC SDR 35 Pipe	\$66.00	\$75.00	
Total Length of 15" Pipe		1597	
Cost Difference for Recapture Agreement			\$14,373.00
LIFT STATION			
Cost For Station Material and Installation			
	1640 GPM	100 GPM	
Cost Difference for Recapture Agreement	\$240,000.00	\$92,000.00	
			\$148,000.00
FORCE MAIN (Dual 8")			
Cost Difference for Recapture Agreement			\$33,100.00
<i>(From Olthoff)</i>			
WETWELL			
6' vs 10' Plus Additional Depth			\$15,000.00
Ultimate Difference in Cost 100 GPM vs. 1640 GPM \$210,473.00			

Recapture shall be \$84.74 per residential equivalent connection (utilizing 7000 gallons/month) Additional non-residential water usage will be calculated using the ratio of a residential equivalent to the actual water usage determined when the sewage capacity charge is calculated at time of building permits. (If a commercial establishment is calculated to use 21,000 gallons per month, the recapture shall be calculated at 21,000 gallons/7,000 gallons/month residential equivalent for a recapture of \$254.22

Developer shall not recapture more than \$210,473.00





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