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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2014 010537

2014 FEB 21 AM 10:05

Cross Reference: MICHAEL B. BROWN  
RECORDED 2014 010537

**SANITARY SEWER EASEMENT AGREEMENT**

THIS SANITARY SEWER EASEMENT AGREEMENT (the "Agreement") is made and entered as of the 20<sup>th</sup> day of December, 2013, by NWI Veterans Village, LP, an Indiana limited partnership ("Grantor") and the Gary Sanitary District ("Grantee").

**RECITALS**

A. Grantor is the owner in fee simple of certain real estate located in Lake County, Indiana, being more particularly described on Exhibit A attached hereto and incorporated by reference herein (the "Property");

B. Grantee currently maintains certain sanitary sewer facilities within a vacated alley which is a part of the Property;

C. Grantor is executing this Agreement to provide for a perpetual, non-exclusive easement for the purpose of constructing, reconstructing, operating, patrolling, maintaining, repairing, replacing, adding to and modifying sanitary sewer facilities, including but not limited to, all necessary and convenient supporting structures, manholes, surface equipment, and all other appurtenances, fixtures and equipment (collectively, "Sanitary Sewer Facilities") for the collection and transportation of sewage from the Property in, upon, over, under, along, through and across a portion of the Property described and depicted on Exhibit B attached hereto and made a part hereof (the "Sanitary Sewer Easement Area").

**AGREEMENT**

NOW, THEREFORE, in consideration of these premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual undertakings hereinafter contained, the parties do hereby agree as follows:

1. Binding. This Agreement shall be deemed a present grant and Agreement in favor of Grantee and its respective successors and assigns and shall be binding upon any third-party purchaser/fee title holder or subsequent mortgagee of all or any portion of the Sanitary Sewer Easement Area.

2. Easement. Grantor does hereby establish, give, grant, create, make and convey, for the benefit of Grantee, a perpetual, non-exclusive easement in, upon, over, under, across and through the Sanitary Sewer Easement Area for the purpose of constructing, reconstructing, operating, patrolling, maintaining, repairing, replacing, adding to and modifying the Sanitary Sewer Facilities for the collection and transportation of sewage from the Property, and any adjoining properties, in, upon, over, under, along, through and across the Sanitary Sewer



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Easement Area to connect to the public utilities located adjacent to the Property, such easement to be appurtenant to the Property (collectively, the "Sanitary Sewer Easement").

3. Maintenance and Repair of Sanitary Sewer Facilities. Grantee shall be responsible for repair, replacement and/or maintenance of the Sanitary Sewer Facilities and shall promptly make any and all repairs, replacements and/or maintenance that may be necessary in order to keep the Sanitary Sewer Facilities in good order, repair and condition or which may be required by applicable federal, state or local laws, rules, regulations, codes, orders, ordinances and permits.

- (a) Notwithstanding the foregoing, Grantee shall consult with the Owner (defined below) of the Property in evaluating the need for any such repair, replacement and/or maintenance to the Sanitary Sewer Facilities before making a determination.
- (b) In the event that Grantee does not repair, replace and/or maintain the Sanitary Sewer Easement Area, including but not limited to the Sanitary Sewer Facilities located on, over or under the Sanitary Sewer Easement Area as required under this Section, then the Owner of the Property may complete such maintenance and repairs and seek reimbursement from Grantee provided Grantee does not commence the requested maintenance or repairs within thirty (30) days after written notice to Grantee requesting such maintenance or repairs to be performed.
- (c) Grantee shall repair any damage to improvements, landscaping, etc. located on the Property which is damaged as a result of Grantee's repair, replacement and/or maintenance of the Sanitary Sewer Facilities.

4. Nature of the Easement; Right to Assign. The term "Owner" shall refer to the fee simple owner of the Property, or any portion thereof, or a ground lessee which has assumed the rights and obligations of the fee simple owner of the Property, or any portion thereof, from time to time. This Agreement shall be construed as appurtenant to the Property, and the obligations and covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their successors, assigns, invitees, tenants, customers and licensees and shall not be affected by a conveyance of all or any part of the Property. When any person or entity who is an Owner or a successor thereof shall sell or assign its entire interest or estate in the Property, it shall have no further liability for the performance thereafter of the obligations of the Owner hereunder other than those that accrued while it owned the Property and remain outstanding after such conveyance or assignment.

5. Intentionally Deleted.

6. Use by Owner. The Owner of the Property shall retain the right to use and enjoy the Sanitary Sewer Easement Area. Specifically, the Owner may perform such site and landscape work as is necessary or required to develop its multi-family housing project on the Property, which includes the Sanitary Sewer Easement Area; provided, however, that such use is not inconsistent with, and does not interfere with the Sanitary Sewer Easement and other rights granted under this Agreement. The Owner of the Property shall not construct or place, or permit

to be constructed or placed, any buildings, structures or obstructions in, on, over, through or across the Sanitary Sewer Easement Area that will in any way prevent or hinder the Sanitary Sewer Easement and other rights granted in this Agreement. Obstructions shall include but not be limited to: retaining walls, ponds or water features, blocks or rocks, shrubs or bushes, concrete or wooden structures. If such obstructions are found in the Sanitary Sewer Easement Area and need to be removed for any reason deemed appropriate by Grantee, said obstructions shall be replaced at the expense of Owner. It is understood that the Sanitary Sewer Facilities shall be underground, and that the Owner may have a driveway or other non-building improvements (e.g., parking, signage, sidewalks and landscaping) located on the surface of the Sanitary Sewer Easement Area.

7. Zoning. The exercise and enjoyment of any rights, licenses and easements under this Agreement are subject to any applicable governmental restrictions, including without limitation zoning restrictions.

8. Intentionally Deleted.

9. Taxes. Owner shall pay or cause to be paid prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against the Property.

10. Severability. The invalidity or unenforceability of any covenant, condition, term or provision in this Agreement shall not affect the validity and enforceability of any other covenant, condition, term or provision.

11. Notices. All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered via hand delivery, or on the first business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

If to Grantor: NWI Veterans Village, LP  
201 East 5<sup>th</sup> Avenue, Suite E4  
Gary, Indiana 46402

If to Grantee: Gary Sanitary District  
3600 West 3<sup>rd</sup> Avenue  
Gary, Indiana 46403  
Attn: Mr. Daniel F. Vicari, Executive Director

Harris Law Firm, P.C.  
11051 Broadway  
Crown Point, Indiana 46307  
Attn: Attorney Jewel Harris, Jr.

Any party may change its address for purposes of this Section by giving the other parties written notice of the new address in the manner set forth above.

12. Governing 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.

13. Construction. The Section headings are included only for convenience, and shall not be construed to modify or affect the covenants, terms or provisions of any Section.

14. Breach. In the event of breach or threatened breach of this Agreement, the Owner, its successors and assigns shall be entitled to any rights or remedies at law or in equity and may institute proceedings for full and adequate relief from the consequences of said breach or threatened breach.

15. Intentionally Deleted.

16. Last Deed of Record. The most recent deed of record relative to the Property is recorded as Instrument Number 2614-G16534 in the office of the Recorder of Lake County, Indiana.

17. Title. Grantor represents to its knowledge that execution and delivery of this Agreement and performance of its obligations pursuant to this Agreement will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation or ordinance to which Grantor is a party or by which Grantor or its assets or the Property is bound or which otherwise affect the Property.

18. Authority. The undersigned person executing this Agreement on behalf of Grantor represents and certifies that he has been fully empowered to execute and deliver this Agreement; that Grantor has full capacity to convey the Agreement, the rights herein, and all necessary action for the making of such conveyance has been taken and done.

19. Amendment and Termination. This Agreement may be amended, modified or terminated at any time, but only by a written instrument executed by the Owner of the Property and Grantee and recorded in the Lake County, Indiana Recorder's Office.

20. Interpretation. Nothing contained herein shall be construed as either creating a dedication or grant of any rights to the public or causing any party to be a joint venturer or partner of any other.

[Counterpart Signature Pages Follow]



IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement as of the day, month and year first written above.

“GRANTEE”

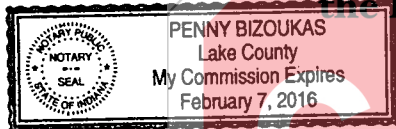
Gary Sanitary District

By: Daniel F. Vicari  
Printed: DAN VICARI  
Title: Executive Director

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Lake )

Before me, a Notary Public in and for said County and State, personally Daniel F. Vicari, as Executive Director of the Gary Sanitary District, who acknowledged the execution of the foregoing Sanitary Sewer Easement Agreement on behalf of Grantee and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 18<sup>th</sup> day of December, 2013.



Penny Bizoukas  
(signature)

Penny Bizoukas  
(printed name)

Notary Public

My Commission Expires:  
February 7, 2016

County of Residence: Lake



This instrument was prepared by, and upon recording return to: Matthew G. Nolley, Kuhl & Grant LLP, 55 Monument Circle, Suite 201, Indianapolis, Indiana 46204; Telephone: (317) 423-9900.

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. Matthew G. Nolley

**Exhibit A**

**Property Description**

LOTS 1 THROUGH 30 (INCLUSIVE) AND ALSO THE 20-FOOT WIDE ALLEY BEING VACATED PER DOCUMENT 2013074816, ALL IN BLOCK 13 IN GARY LAND COMPANY'S FIRST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 15, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.



**Exhibit B**

**Sanitary Sewer Easement Description**

THE 20-FOOT WIDE ALLEY BEING VACATED PER DOCUMENT 2013074816, IN BLOCK 13 IN GARY LAND COMPANY'S FIRST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 15, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.





Sanitary Sewer Easement Depiction

