

8

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2016 034079

2016 JUN -2 AM 11:40

MICHAEL B. BROWN
RECORDER

STATE OF INDIANA)
)
) ss:
COUNTY OF LAKE)

AGREEMENT
(SANITARY)

THIS GRANT OF RIGHT TO INSTALL SEWER LINES, CONNECT TO THE SANITARY SEWER COLLECTION SYSTEM OF THE TOWN OF ST. JOHN, LAKE COUNTY, INDIANA, AND WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION AGREEMENT (hereinafter referred to as this "Agreement"), is made and entered into this 26 day of April, 2016, in accordance with I.C. § 36-9-23-6, as amended from time to time, by and between the TOWN OF ST. JOHN, Lake County, Indiana, a Municipal Corporation, by and through its duly elected Town Council, acting in its capacity as Town Utility Board (hereinafter collectively referred to as the "TOWN"), and ARLENE M. GAWRYS, the owner of real estate located at 8616 Christopher Drive, St. John, Indiana, Lake County (hereinafter, "GRANTEE").



RECITALS

WHEREAS, the TOWN is a unit of local government located in Lake County, Indiana, with jurisdiction over all real property and residents located within and inhabiting properties within the Municipal Corporate Boundaries of the Town; and

WHEREAS, the TOWN has the authority for operating the St. John Sanitary District pursuant to a Contract with the ST. JOHN SANITARY DISTRICT BOARD; and

WHEREAS, the TOWN has established, constructed and financed municipal sewage works (hereinafter the "Sewage Works"), and now owns and operates the Sewage Works pursuant to I.C. 36-9-23, *et seq.*, as amended from time to time, and other applicable laws; and

WHEREAS, the GRANTEE is the property owner of certain real estate within the jurisdiction of the TOWN, including the utilities and services provided to the GRANTEE'S parcel(s) of real property that is/are legally described on the enclosed legal description attached hereto as **Exhibit "A"**;

WHEREAS, the TOWN is authorized pursuant to I.C. § 36-9-23-6, as amended from time to time, to enter into contracts and/or agreements necessary or incidental to the operation, performance and connections to its Sewage Works; and

AMOUNT \$ 251.00
CASH _____ CHARGE _____
CHECK # 003478
OVERAGE _____
COPY _____
NON-COM _____
CLERK JAB

WHEREAS, the TOWN is required, pursuant to I.C. § 36-4-3-9, as amended from time to time, to provide within any sewer service extension and/or improvement agreement that the beneficial owners of the real estate identified in the agreement shall be required to waive their right to object to, remonstrate against, and/or appeal an annexation identified pursuant to same; and

WHEREAS, the GRANTEE, at its cost, will construct and connect sewer lines and appurtenances to the existing St. John sanitary sewer collection system, in accordance with the plans submitted and on file with the TOWN (hereinafter referred as "Sewer Facilities"). The GRANTEE, at its cost, shall furnish the necessary and required engineering services, labor and materials to install the Sewer Facilities, and obtain all necessary easements, permits, right-of-way grants, or other authority which is required to provide sanitary sewer service to the Property; and

WHEREAS, the GRANTEE seeks to connect to the Sewer Facilities to the TOWN upon completion, inspection, and acceptance of the Sewer Facilities by the TOWN; and

WHEREAS, the TOWN has been informed that the Sewer Facilities will result in additional extension(s) and connection(s) to the existing St. John sewer collection system; and

WHEREAS, the TOWN has determined that it is appropriate and necessary to enter into this Agreement under applicable Indiana Law with the GRANTEE for the additional tap-in(s) and connection(s) to the St. John sanitary sewer collection system; and

WHEREAS, the TOWN and the GRANTEE agree to set forth herein the terms and provisions of this Sewer Connection Agreement in order to avoid any misunderstandings or disagreements, and to set forth clearly all terms, provisions and understandings regarding the duties and responsibilities of the GRANTEE and the TOWN.

COVENANTS

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE TERMS AND CONDITIONS SET FORTH HEREIN, ALL OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. **OWNER.** GRANTEE is now, and at all pertinent times was, the owner of the real estate legally described on *Exhibit "A"*, attached hereto and incorporated herein.

2. **CONSTRUCTION OF IMPROVEMENTS.**

a. The Sewer Facilities are specifically described on *Exhibit "B"*, attached hereto and incorporated herein. The GRANTEE has paid, or will have paid, for the construction of the Sewer Facilities, and all related expenses related to the design, construction, installation, and testing of the Sewer Facilities.

b. The GRANTEE will build, construct, install, and pay for the Sewer Facilities, pursuant to plans, specifications, and drawings submitted to the TOWN, and approved by the TOWN. Full, true and accurate copies of such plans, specifications and drawings, as submitted, and as-built, shall be, or are, on file with the TOWN, as part of its official records.

c. The Parties agree that the Sewer Facilities are sized, extended, located, and constructed in such a way so as to be sufficient to serve the limited needs of GRANTEE'S Property.

3. **ACCEPTANCE OF IMPROVEMENTS:** The Parties agree that the submission made by GRANTEE upon completion of the Sewer Facilities and prior to the acceptance thereof by the TOWN have been reviewed by the TOWN'S Consulting Engineers who have determined that the construction materials and installation meet the Town standards and are acceptable for connection to the Town Collection System.

4. **TRANSFER OF IMPROVEMENTS.** The Sewer Facilities shall remain the property of the GRANTEE. The GRANTEE shall be responsible for all maintenance and operational expenses of the Sewer Facilities. **OR:** The Sewer Facilities, except the individual service line(s), shall hereby become the property of the TOWN by the GRANTEE transferring the Sewer Facilities to the TOWN by the execution and delivery of the appropriate transfer documents, free of all liens incurred by the GRANTEE. Upon acceptance of the Sewer Facilities provided herein, the Town shall be responsible for all maintenance and operational expenses of the Sewer Facilities.

5. **CONNECTION CHARGES AND FEES:** The GRANTEE agrees to pay all charges and fees for the capacity and connection pursuant to applicable Town Ordinance, as amended from time to time, and all user rates prescribed therein, or as amended.

6. **PROFESSIONAL FEES:** In the event that the Utility Board of the TOWN, in its sole discretion, determines that an engineering review of the plans and specifications is required, or legal services required, the GRANTEE shall pay the direct costs and charges for such review by the TOWN Engineer, as well as any legal services rendered, using the schedule of rates and charges approved by the TOWN and/or Plan Commission of the TOWN of St. John for similar engineering and/or legal services.

7. **TAXES:** Pursuant to the provisions of I.C. § 36-4-3, *et seq.*, the real estate described in **Exhibit "A"**, attached hereto, and made a part hereof, shall become, upon recordation of this agreement in the Office of the Recorder of Lake County, Indiana, a part of the TOWN and St. John Sanitary District, and the GRANTEE hereby agrees to pay any and all ad valorem taxes imposed by the Town Sanitary District, and certified by the State Board of Tax Commissioners, or designated State Agency or Department, as the lawful tax rate for said District.

8. **STATUTORY WAIVER OF RIGHTS:** Pursuant to the provisions of I.C. § 36-4-3-9, as amended from time to time, GRANTEE hereby agrees for itself, and its successors and assigns, that it will:

- a. Neither object to nor file a remonstrance against the proposed annexation of the above-described parcel of real estate by either the TOWN or the District within the boundaries of the District;
- b. Not appeal from any order or judgment annexing the above-described real estate to the TOWN; and
- c. Not file a complaint or action against any annexation proceedings brought by either the TOWN or the District.

9. **TITLE:** The GRANTEE has provided current acceptable evidence of title to the real estate in the form of title insurance and/or the current tax records as held by the Lake County Auditor and/or a copy of the Warranty Deed for said property conveying the property to the GRANTEE. GRANTEE also certifies that GRANTEE has not executed, or permitted anyone on GRANTEE'S behalf to execute, any conveyance, or lease of the Real estate, which is now outstanding or enforceable against the real estate. GRANTEE has made no contract to sell all or part of the real estates to any person other than GRANTEE. GRANTEE has not given any person an option, which is presently exercisable, to purchase all or any part of the real estate. GRANTEE represents that the real estate is now in the possession of itself as owner and that no other person has a right to possession or claims possession of all or any part of the real estate at the time of entry into this Agreement.

10. **EFFECTIVE DATE:** The conditions, provisions and terms of the Agreement shall be null and void, and of no force and effect, unless the GRANTEE makes application to the appropriate authorities of the TOWN and connects to the sanitary sewer collection system, within twenty-four (24) months from the date of approval of this Agreement by the District and the TOWN. If the approval date of the TOWN is different, then the applicable date for these provisions is that which occurs later.

11. **NOTICES:** Notice under this Agreement shall be made in writing; sent via certified mail, return receipt requested, U.S. Mail or private express, or by facsimile according to the following address and contact information:

TOWN:

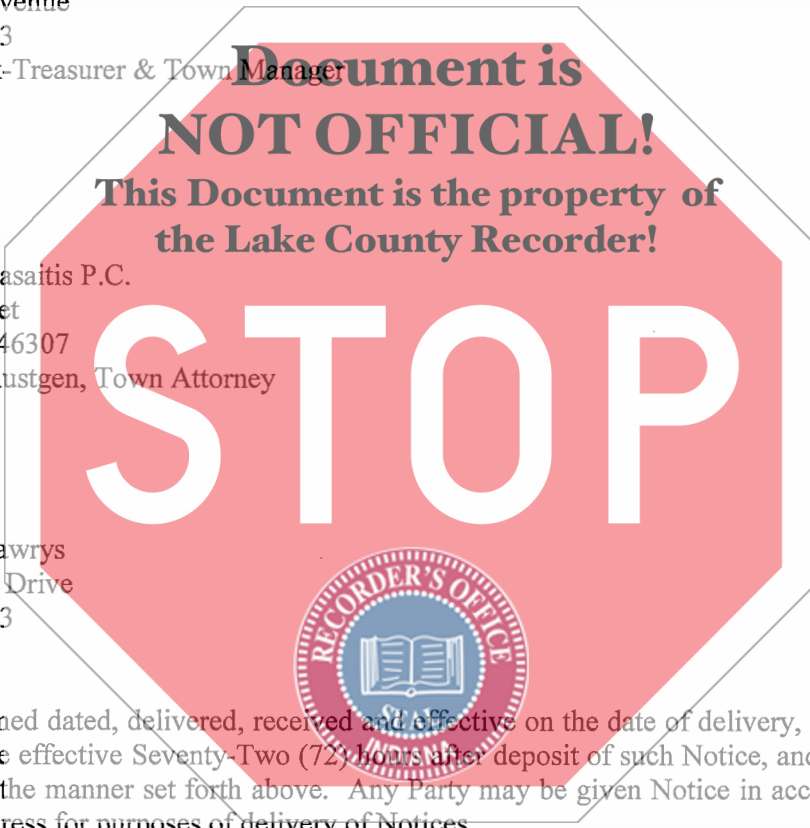
Town of St. John, Indiana
10955 W. 93rd Avenue
St. John, IN 46373
Attn: Town Clerk-Treasurer & Town Manager
P: 219.365.6465
F: 219.558.2158

With a copy to:

Austgen Kuiper Jasaitis P.C.
130 N. Main Street
Crown Point, IN 46307
Attn: David M. Austgen, Town Attorney
P: 219.663.5600
F: 219.662.3519

GRANTEE

Ms. Arlene M. Gawrys
8616 Christopher Drive
St. John, IN 46373
P: 219.765.8616



Any Notice shall be deemed dated, delivered, received and effective on the date of delivery, if personally delivered. If mailed, delivery will be effective Seventy-Two (72) hours after deposit of such Notice, and all required copies, in the United State Mail in the manner set forth above. Any Party may be given Notice in accordance with the terms hereof and change its address for purposes of delivery of Notices.

12. **INTERPRETATION, GOVERNING LAW.** This Agreement shall be construed as if prepared by all Parties. This Agreement shall be construed, interpreted and governed by the Laws of the State of Indiana.

13. **FURTHER ASSURANCES.** Each Party will, whenever, and as often as it shall be requested to do so by the other Party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all further conveyances, assignments, approvals, consents, and any and all other documents, and do any and all other acts as may be necessary to carry out the intent and purposes of this Agreement.

14. **ENTIRE AGREEMENT, AMENDMENTS.** This Agreement represents the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior understanding between the Parties, whether oral or written. Any amendments to this Agreement shall be writing and shall be signed by all Parties hereto.

15. **SEVERABILITY.** If any term, provision, condition or covenant of this Agreement, or the application thereof, to any party or circumstance shall to any extent be held invalid or unenforceable the remaining terms, provisions, conditions or covenants of this Agreement shall not be affected thereby, and this Agreement, in each term, covenant and condition of this Agreement shall otherwise be valid and enforceable to the fullest extent permitted by applicable Law.

16. **NO WAIVER.** A waiver by either Party hereto of a breach of any of the covenants or agreements hereof to be performed by any other Party shall not be construed as a waiver or any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

17. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective Heirs, Personal Representatives, Successors and Assigns.

18. **HEADINGS.** The headings and captions in this Agreement are for convenience and ease of reference only, and shall not be issued to construe, interpret, expand, or limit the terms of this Water Reimbursement Agreement.

19. **CORPORATE/ENTITY AUTHORIZATION:** The undersigned Person or Persons executing this Agreement on behalf of any Corporate Parties or other legal Entities to this Agreement, represent and certify that they are duly elected or appointed Officers or Representatives of said corporation or entities, and are fully empowered to execute and deliver this Agreement, and that all necessary corporate action for the making of this Operating Agreement has been taken and done.

20. **PUBLIC ACTION:** It is expressly acknowledged and stated that this Agreement is entered into by the Town of St. John, Lake County, Indiana, after action at a duly noticed public meeting of the St. John Utility Board on the 28 day of April, 2016, wherein by a vote of 5 in favor, and 0 opposed, approval action was taken, and whereby the President of the Utility Board and the Town Clerk-Treasurer, respectively, were directed to execute and attest the same, and deliver this Agreement herein.

[SIGNATURES ON NEXT PAGE]



EXHIBIT A

Legal Description

All of Lot 15 in Marydale Subdivision as per plat thereof recorded in Book 34, pages 71A and 71B in the Office of the Recorder, Lake County, Indiana.

Commonly known as: 8616 Christopher Drive, St. John, IN 46373
PIN: 45-11-27-101-019.000-032



EXHIBIT B

SEWER FACILITIES

[TO BE PROVIDED BY TOWN AND/OR GRANTEE]



F:\DATA\St. John\0297\A Gawrys 8616 Christopher Dr\A Gawrys Sewer Agreement.docx