

AGREEMENT TO INSTALL UTILITY INFRASTRUCTURE IN BEVERLY ESTATES UNIT II
BETWEEN THE TOWN OF LOWELL STORMWATER BOARD
AND LIFEHOUSE DEVELOPMENT, LLC

THIS AGREEMENT, entered into on the _____ day of _____ 2024 by and between the **TOWN OF LOWELL STORMWATER BOARD**, Lake County, Indiana 501 East Main St., P.O. Box 157, Lowell, Indiana 46356, a utility board (hereinafter the "Town") and **LIFEHOUSE DEVELOPMENT LLC, D/B/A LIFEHOUSE HOMES, LLC**, P.O. Box 352, Lowell, Lake County, Indiana 46356 (hereinafter "Developer") for the shared payment of costs incurred by the Developer for the installation of utility infrastructure, including any increased costs that result from any construction specifications that are required by the municipality and that specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the private developer.

WHEREAS, the Town has requested the installation of a stormwater main and other public improvements as a condition precedent to the approval of Developer's requests for final platting of Beverly Estates Unit II, Phase 2 and Beverly Estates Unit II, Phase 3, located at 18306 Clark Rd, Lowell, Lake County, Indiana, Parcel #45-19-25-276-001.000-008 (hereinafter "Beverly Estates"); and

WHEREAS, the Town finds that the public improvements to be installed by Developer will benefit Beverly Estates and other property adjacent to Beverly Estates and the owners thereof; and

WHEREAS, the Town further finds the public improvements are necessary for the protection of the public health and welfare of the inhabitants of the stormwater district and the safeguarding of the property within the district.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth herein, and pursuant to I.C. 8-1.5-5, et. seq., and I.C. 36-1-12-1, the parties now agree, as follows:

- 1) **LEGAL REQUIREMENT:** Pursuant to I.C. 36-1-12-1(g), the Town is authorized to contribute financially to the total construction costs for the extension or installation of utility infrastructure by a private developer of land if:
 - (a) the Town will acquire for the Town's municipally owned utility all of the utility infrastructure that is to be extended or installed,
 - (b) not more than 50% of the total construction costs for the utility infrastructure to be extended or installed, including any increased costs that result from any construction specifications that are required by the municipality and that specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the private developer, will be paid for out of a public fund; and,
 - (c) The private developer agrees to comply with all local ordinances and engineering standards applicable to the construction, extension, or installation of utility infrastructure.

Failure to comply with I.C. 36-1-12-1 will cause this Agreement to be void, require this public improvement project to comply with the Public Construction requirements of I.C. 36-1-12, and subject both parties to legal action.

- 2) PUBLIC IMPROVEMENT PROJECT: The Developer shall construct, or cause to be constructed, certain public improvements, namely: construction and installation of a stormwater main, and related infrastructure in accordance with the approved documents of the Town, on the northernmost boundary line of Beverly Estates Unit II, Phases 2 and 3, located at 18306 Clark Rd, Lowell, Lake County, Indiana, Parcel #45-19-25-276-001.000-008, and legally described as follows:

SE ¼ of NE ¼ of section 25, township 33N, range 9 west of 2nd principle meridian, Lake County, IN, excepting therefrom, the following described parcel (recorded as W.D. #311572). That part of the SE quarter of the NE quarter of section 25, township 33N, range 9 west of the 2nd principle meridian, commencing 250.00 feet north of the SE corner of said SE Quarter of the NE quarter on the East line of said section: thence north 125.00 feet on said East line. Thence West perpendicular to the East line of said section, a distance of 425.00 feet: thence south 125.00 feet parallel to said east line: thence east perpendicular to the east line of said section, a distance of 425.00 feet to the place of commencement.

(Hereinafter referred to as “the Project”).

- 3) COSTS: The total costs for the Project are set forth in the *North Side Storm Sewer Break Down*, attached hereto as Exhibit “A”, in 1 page, and are as follows:

- (a) *Phase 1 option (Existing East to YD # 3)* – applicable to Beverly Estates Unit II, Phase 2, only:

<i>Material Cost:</i>	\$ 45,633.00
<i>Labor Cost:</i>	\$ 42,317.00
<i>Total Cost:</i>	\$ 87,950.00

- (b) *Phase 2 option (YD # 3 to Existing West)* – applicable to Beverly Estates Unit II, Phase 3, only:

<i>Material Cost:</i>	\$ 48,930.00
<i>Labor Cost:</i>	\$ 52,570.00
<i>Total Cost:</i>	\$ 101,500.00

- 4) COST SHARING:

- (a) In accordance with I.C. 36-1-12-1, and paragraph 1 of this Agreement, under no circumstances shall the Town pay more than 50% of the total construction costs for the Project. Specifically, the Town shall be responsible for no more than \$ 43,975.00 of the total set forth in Paragraph 3(a) of this Agreement, and no more than \$ 50,750.00 of the total set forth in Paragraph 3(b) of this Agreement.

- (i) Any change order proposed by developer’s contractor to Developer must be approved by the Town at a public meeting of the Board;

- (ii) Under no circumstances shall the Town pay more than 50% of any change order approved by the Town and the Developer.

 - (b) The Town shall pay the Developer directly for the Town's 50% share of the construction cost for the applicable phases of the Project, as set forth in Paragraph 3 of this Agreement, within 30 days of the following:
 - (i) completion of work in the applicable phase;
 - (ii) passage of all Town inspections in the applicable phase; and,
 - (iii) presentation to the Town of a request for payment and final invoice showing all costs for the Project for the applicable phase.

 - (c) The Developer shall be responsible for all payments to the contractor for the Project. The Developer shall defend and hold harmless the Town, its successors, assigns, agents, representatives, employees, and independent contractors against any and all claims, actions, liabilities, judgments, debts, demands, or damages, arising out of the Developer's non-payment to the contractor for any reason.
- 5) LIEN RIGHTS: The Developer reserves the right to delay payment of its 50% share of the cost of the Project applicable to Beverly Estates Unit II, Phase 3, only, until the time of final platting of Unit II, Phase 3, instead of paying its 50% share at the time that the Project in Unit II, Phase 3 is completed. As a result, upon completion of the Project in Unit II, Phase 3 in accordance with this Agreement, and upon the Developer's execution of a lien to the Town in the amount equal to Developer's 50% share of the Project cost in Unit II, Phase 3, and recording of the lien with the Office of the Lake County Recorder, the Town shall advance the cost of Developer's 50% share owed to the Contractor. (The Town shall make payment on the Developer's behalf in accordance with paragraph 4(b)(i)-(iii) of this Agreement.) The lien in favor of the Town on Beverly Estates Unit II, Phase 3 shall be a priority lien over all other liens, and the Developer agrees to execute any documentation required to effectuate the same. The Town shall not approve a final plat, in full or in part, for Beverly Estates Unit II, Phase 3, nor shall the Town release the lien until the Developer has made reimbursement in full to the Town.
- 6) DEVELOPER GUARANTEE/BOND: The Developer agrees to timely begin and complete construction of the Project in a workmanlike manner pursuant to the plans and specifications approved by the Town. At the time of the final plat approvals for Unit II, Phase 2 and Unit II, Phase 3, respectively, of Beverly Estates, the Developer agrees to and shall post applicable bonds for Phase 2 and Phase 3, respectively, in amounts and forms approved by the Town. The Town and Developer agree that the Developer's bond amounts for each Phase shall be calculated based only on the Developer's 50% share of the cost of the Project under this Agreement and shall not include the Town's 50% obligation in calculating the bond total.
- 7) OTHER FEES and CHARGES: All building or permit fees, water tap-on fees, sewer connection fees, and/or any or all other fees required to be paid by the owner of any other property pursuant to the ordinances of the Town of Lowell, other local regulations, and/or the

statutes of the State of Indiana and any fee so collected shall remain the sole and separate property of the Town.

- 8) RECORDING: This Agreement shall be executed by the parties in triplicate, and one such original copy shall be filed with the Office of the Recorder of Lake County, Indiana to serve as additional notice to persons interested in Beverly Estates Unit II, Phase 3 with notice of the terms and conditions of this Agreement.
- 9) HOLD HARMLESS: The Developer shall reimburse the Town for all damages, costs and legal fees paid by it in conjunction with or in any way arising out of the public improvements provided for under this Agreement until the date that the Town accepts the improvements and releases the bonds, and hereafter shall defend and hold harmless the Town, its successors, assigns, agents, representatives, employees, and independent contractors against any and all claims, actions, liabilities, judgments, debts, demands, or damages, arising out of or in connection with Developer's negligence, or the negligence of its subcontractors or employees.
- 10) AUTHORITY AND COUNTERPARTS: The Developer and the Town do hereby certify they have full authority to enter into this Agreement, that they are not barred from entering into this Agreement as a result of the violation of any federal or state statute, law, rule or regulation and that all signatories for the Developer and the Town to this Agreement have full and unconditional authority to bind themselves and their principals to the terms and conditions contained herein. This Agreement may be executed in counterparts, which constitute one documents. The parties intend each countersigned original to have identical legal affect.
- 11) GOVERNING LAW INVALIDITY AND SEVERABILITY. This Agreement shall be governed and enforced by the Laws of the State of Indiana, and it is agreed that Indiana Courts shall have exclusive jurisdiction of any dispute under this Agreement. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law or, if invalid under such law, said provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all of the terms and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner or adverse to any party hereto.
- 12) PUBLIC ACTION. It is expressly acknowledged and stated that this Agreement is entered into by the Town after action at a Public Meeting of the Stormwater Board of the Town on the 20th day of August 2024, by a vote of ____in favor and ____against, and whereby the President of the Stormwater Board and the Secretary of the Stormwater Board, respectively, were directed to execute and attest the same, and deliver the Agreement herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be made and their respective officials have signed and affixed their seals as follows:

TOWN OF LOWELL STORMWATER BOARD

By: _____
Philip Kuiper, Its President

_____ Dated

ATTESTED BY:

Rich Oman, Secretary

**LIFEHOUSE DEVELOPMENT, LLC
D/B/A LIFEHOUSE HOMES, LLC**

By: _____
Todd Harbrecht, President

_____ Dated

STATE OF INDIANA)
) SS.
COUNTY OF _____)

In witness whereof, on this ___ day of _____, 2024, before me, a Notary Public in and for said county and state aforesaid, personally appeared **Todd Harbrecht**, who acknowledged the execution of the foregoing *Agreement to Install Utility Infrastructure in Beverly Estates Unit II between the Town of Lowell Stormwater Board and Lifehouse Development, LLC*, and who, having been duly sworn, stated that any representations contained herein are true.

Notary Signature _____

(SEAL)

Notary Printed Name _____

My Commission Expires _____

My Commission No.: _____

A Resident of _____ County, Indiana

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. /s/ Nicole A. Bennett

This instrument prepared by: Nicole A. Bennett, Esq. (#20538-45); Westland & Bennett P.C.
2929 Carlson Dr. Suite 300, Hammond, IN 46323; Phone: 219.440.7550



ZIESE & SONS EXCAVATING, INC.

6929 W. 109th Avenue
Crown Point, IN 46307-8843
(219) 663-2625 Office
(219) 663-1620 Fax

PROPOSAL (PH-3)

North Side Storm Sewer Break Down:

- (1) 8 hour day allowance to run sewer camera down existing storm line to check for any sewer tie-ins/services.
- (1) 8 hour day of sewer crew to tie-in any existing storm sewer stubs into the new main. \$ 5,920.00 for labor and \$ 1,000.00 for material. If not needed, a credit can be applied.
- Tie-in to (2) existing storm manholes.
- Install 1,237 linear feet of 24" RCP for storm sewer drainage.
- Install (7) 4' diameter storm yard drain structures with 6489N ditch grates. (No Sumps)
- Pipe will be bedded with IN #8 limestone.
- Backfill all trenches with existing spoils.
- Install (7) silt baskets for structures.
- Price based on all excess spoils will be hauled off site to Belshaw Road Town Dumpsite.
- Grade for rear yard drainage easements where storm sewer is installed.
- Per Section 402.5 of Lowell Specs -Labor to clean and televise all stormwater infrastructure prior to acceptance.
- Per Section 402.5 of Lowell Specs -Provide a digital copy of the inspection to Lowell Public Works.
- No permits or permit fees included.
- No fine grade, seeding or netting included. By General Contractor or Town.

Total for Phase 1 Option (Existing East to YD # 3): \$ 87,950.00

Phase 1 Material Cost: \$ 45,633.00

Phase 1 Labor Cost: \$ 42,317.00

Total for Phase 2 Option (YD # 3 to Existing West): \$ 101,500.00

Phase 2 Material Cost: \$ 48,930.00

Phase 2 Labor Cost: \$ 52,570.00

Note: Existing storm sewer line will be abandoned in place. No removals, flowable fill or manhole abandonment included.

Note: Price based on yard drain # 66 having a rim grade of +/-680.00 and not 687.80 as shown on plan. 687.80 does not work with grading plan, assuming it's a typo.

Note: No tree removal included. By General Contractor or Town.

Note: If phase 1 option chosen, temp HDPE pipe tie/connection will be made into YD # 3 until future phase is done.

Exhibit "A"