ORDINANCE 07-29

AN ORDINANCE VACATING AN EASEMENT WITHIN THE TOWN OF WESTFIELD, INDIANA

WHERAS, the Town is in possession of easements across property for the purpose of providing access across a property for the purpose of constructing, operating, maintaining, repairing, replacing sanitary sewer and telecommunication lines.; and,

WHEREAS, there no longer remains any public need or necessity for the below describes easement due to an alternate being proposed; and,

WHEREAS, upon due consideration, the Town Council of the Town of Westfield has determined that the vacation of said easement will not hinder the growth or orderly development of the area; will not deny or deprive access to adjacent lands; will not hinder public access to public facilities and will not hinder or prevent the use of any public way; and,

WHEREAS, the vacation of this easement shall be conditioned upon the execution of an alternate easement for the purpose of constructing, operating, maintaining, repairing, replacing sanitary sewer and telecommunication lines.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OFESTFIELD, INDIANA:

SECTION 1. The easement described in Attachment "A" attached hereto and made a part hereof is hereby vacated.

SECTION 2. The Clerk-Treasurer is directed to record a copy of this Ordinance in the office of the Recorder of Hamilton County, Indiana.

SECTION 3. This Ordinance shall become effective upon its adoption and proper publication in accordance with Indiana law.

ALL OF WHICH IS ORDAINED this _____ day of _____, 2007.

WESTFIELD TOWN COUNCIL

Voting For	**Voting Against**	**Abstain**
_____	_____	_____
Andy Cook	Andy Cook	Andy Cook
_____	_____	_____
John Dippel	John Dippel	John Dippel
_____	_____	_____
Jack Hart	Jack Hart	Jack Hart
_____	_____	_____
Robert Horkay	Robert Horkay	Robert Horkay
_____	_____	_____
Joseph Plankis	Joseph Plankis	Joseph Plankis
_____	_____	_____
Robert J. Smith	Robert J. Smith	Robert J. Smith
_____	_____	_____
Ron Thomas	Ron Thomas	Ron Thomas

ATTEST:

_____

Clerk-Treasurer, Cindy J. Gossard

This Ordinance prepared by:
Brian J. Zaiger
Krieg DeVault, LLP

Attachment A

220 (4) 100 none

SANITARY SEWER AND TELECOMMUNICATIONS EASEMENT

THIS INDENTURE, made this 10 day of October, 2005, by and between the **Lena Catharine Moore** hereinafter referred to as the "Grantor" and **THE TOWN OF WESTFIELD**, Indiana, having an office for the transaction of business at 130 Penn Street, Westfield, IN, 46074, hereinafter referred to as the "Grantee."

WITNESSETH

The Grantor, in consideration of the covenants and agreements hereinafter recited and the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby give, grant and convey unto the Grantee, its successors and assigns, forever, a perpetual easement and right of way in, under, across and over the real estate of the Grantor, situated in Hamilton County, Indiana, more particularly described on Exhibit A and as shown on the sketch, Exhibit B, both attached hereto and made a part hereof, for the purpose of constructing, operating, maintaining, repairing, replacing, or removing and adding to from time to time (i) sanitary sewer lines together with all necessary manholes, air release structures and appurtenances and attached facilities, including service laterals and connections for the collection and conveyance of wastewater (the "Sewer Facilities"), and (ii) telephone lines, including but not limited to fiber optic cables, together with all attached and associated facilities and systems, for the conveyance and transmission of telecommunications services, including but not limited to voice, data and video traffic (the "Telecom Facilities") (the Sewer Facilities and the Telecom Facilities, together the "Utility Facilities").

Together with the right to the Grantee, its successors and assigns, to (i) enter in and upon the real estate described above with men and machinery, vehicles and material at any and all times for the purpose of maintaining, repairing, renewing or adding to the Utility Facilities, (ii) remove trees, bushes, undergrowth and other obstructions interfering with the activities authorized herein, and (iii) for doing anything necessary, useful or convenient for the enjoyment of the easement herein granted.

The Grantor also does hereby give, grant and convey unto the Grantee, a temporary construction easement in, under, across and over the real estate of the Grantor, more particularly described on Exhibit A and as shown on Exhibit B, for any and all activities necessary, incidental or related to the construction of the Utility Facilities. The temporary construction easement shall expire and terminate upon completion of the original construction.

200500076028
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
11-22-2005 At 10:57 am.
EASEMENTS 22.00

Page 1 of 3

The right of the Grantor to freely use and enjoy its interest in the real estate is reserved to Grantor, its successors and assigns insofar as the exercise thereof does not endanger or interfere with the construction, operation, and maintenance of the Utility Facilities, except that no building, structure or similar improvements shall be erected within said easement, nor shall the grade or ground cover over the Utility Facilities be substantially altered, without the consent of the Grantee. Notwithstanding the foregoing, no potable water pipes or conduits shall be placed within ten (10) feet, measured horizontally, from the said sanitary sewer pipes except pipes crossing same at right angles, in which latter case, a minimum distance of two (2) feet shall be maintained between the pipes. All sewer pipe shall be laid below any potable water pipes. No excavation or blasting shall be carried on which in any way endangers or might endanger the Utility Facilities.

TO HAVE AND TO HOLD the above granted easement unto the same Grantee, its successors and assigns forever.

The Grantee agrees, by the acceptance of this easement that, upon any opening made in connection with any of the purposes of this easement, said opening shall be backfilled and resurfaced to as nearly as possible the same condition as existed when said opening was made, provided that Grantee shall not be obligated to restore landscaping, other than reseeding any grass which was removed upon entry, all such work to be done at the expense of the Grantee.

And the said Grantor does covenant with the said Grantee as follows:

1. That the Grantor is the owner in fee simple of the real estate, is lawfully seized thereof, and has authority to grant and convey the foregoing easement, and guarantees the quite possession thereof, and that Grantor will warrant and defend the Grantee's title to the easement hereby granted against all claims. In accordance with Ind. Code 32-23-2-5(a), Grantor acquired said real estate by deed dated **February 19th, 1998**, and recorded in the Office of the Recorder of **Hamilton** County, Indiana, in Deed Book N/A, Page N/A, or as Instrument No. **9809808029**, on the **20th** day of **February, 1998**.
2. That the Grantee shall quietly enjoy the said easement.
3. That the real estate hereby subjected to said easement is subject to no mortgages except No exceptions. (If none, state "No Exceptions.")

IN WITNESS WHEREOF, the Grantor has duly executed this INDENTURE, all as of the day and year first above written.

****
Lena Catharine Moore.
****

Lena C. Moore
(Signature)

Lena Catharine Moore
(Printed Name)

(Signature)

(Printed Name)

STATE OF Indiana)
) SS:
COUNTY OF Tipton)

Before me, a Notary Public in and for said County and State, personally appeared Lena C. Moore, who having been duly sworn upon his/her oath acknowledged the execution of the foregoing easement.

Witness my hand and Notarial Seal this 30th day of October, 2005.

(Signature) Marla D. Wallace

(Printed Name) Marla D. Wallace

Notary Public residing in Tipton County, Tipton

My Commission Expires: July 07, 2009

This instrument prepared by:

Brian J. Zaiger, Attorney at Law
CHURCH, CHURCH, HITTLE & ANTRIM
938 Conner Street, P. O. Box 10
Noblesville, IN 46060
(317) 773-2190

EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 1 of 1
Parcel: 7 Permanent Easement for Sanitary Sewer and Telecommunications

A part of the Northwest Quarter of Section 4, Township 18 North, Range 3 East, Hamilton County, Indiana and being that part of the grantor's land lying within the permanent easement lines depicted on the attached Easement Parcel Plat, marked "EXHIBIT B", described as follows: Beginning on the north line of the grantor's land at Station 114+18.46, Line "A" on the Location Control Route Survey Plat recorded as Instrument No. 200400036801 in the Office of the Recorder of said county; thence North 89 degrees 31 minutes 40 seconds East 18.92 feet along said north line; thence South 47 degrees 11 minutes 46 seconds West 41.38 feet to point "582" designated on said parcel plat; thence South 20 degrees 52 minutes 25 seconds West 299.09 feet to point "581" designated on said parcel plat; thence South 42 degrees 18 minutes 44 seconds West 187.01 feet to the south line of the grantor's land; thence North 90 degrees 00 minutes 00 seconds West 17.32 feet along said south line to Station 108+92.14, said Line "A"; thence continuing North 90 degrees 00 minutes 00 seconds West 23.25 feet along said south line; thence North 42 degrees 18 minutes 44 seconds East 208.64 feet to point "525" designated on said parcel plat; thence North 20 degrees 52 minutes 25 seconds East 300.42 feet to point "526" designated on said parcel plat; thence North 47 degrees 11 minutes 46 seconds East 15.46 feet to the north line of the grantor's land; thence North 89 degrees 31 minutes 40 seconds East 25.63 feet along said north line to the point of beginning and containing 0.362 acres, more or less.

JEFFREY A. MYERS REGISTERED No. LS29300001 STATE OF INDIANA LAND SURVEYOR

Certified this 8th day of June, 2004

Jeffrey A. Myers, PLS
Professional Land Surveyor No. 29300001
State of Indiana

EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 1 of 1
Parcel: 7A Temporary Easement for Sanitary Sewer Construction and Telecommunications

A part of the Northwest Quarter of Section 4, Township 18 North, Range 3 East, Hamilton County, Indiana, described as follows: Beginning on the north line of the grantor's land South 89 degrees 31 minutes 40 seconds West 25.63 feet from Station 114+18.46, Line "A" on the Location Control Route Survey Plat recorded as Instrument No. 200400036801 in the Office of the Recorder of said county; thence South 47 degrees 11 minutes 46 seconds West 15.46 feet; thence South 20 degrees 52 minutes 25 seconds West 300.42 feet; thence South 42 degrees 18 minutes 44 seconds West 208.64 feet to the south line of the grantor's land; thence North 90 degrees 00 minutes 00 seconds West 40.57 feet along said south line; thence North 42 degrees 18 minutes 44 seconds East 230.27 feet; thence North 20 degrees 52 minutes 25 seconds East 294.20 feet to the north line of the grantor's land; thence North 89 degrees 31 minutes 40 seconds East 39.57 feet along said north line to the point of beginning and containing 0.361 acres, more or less.

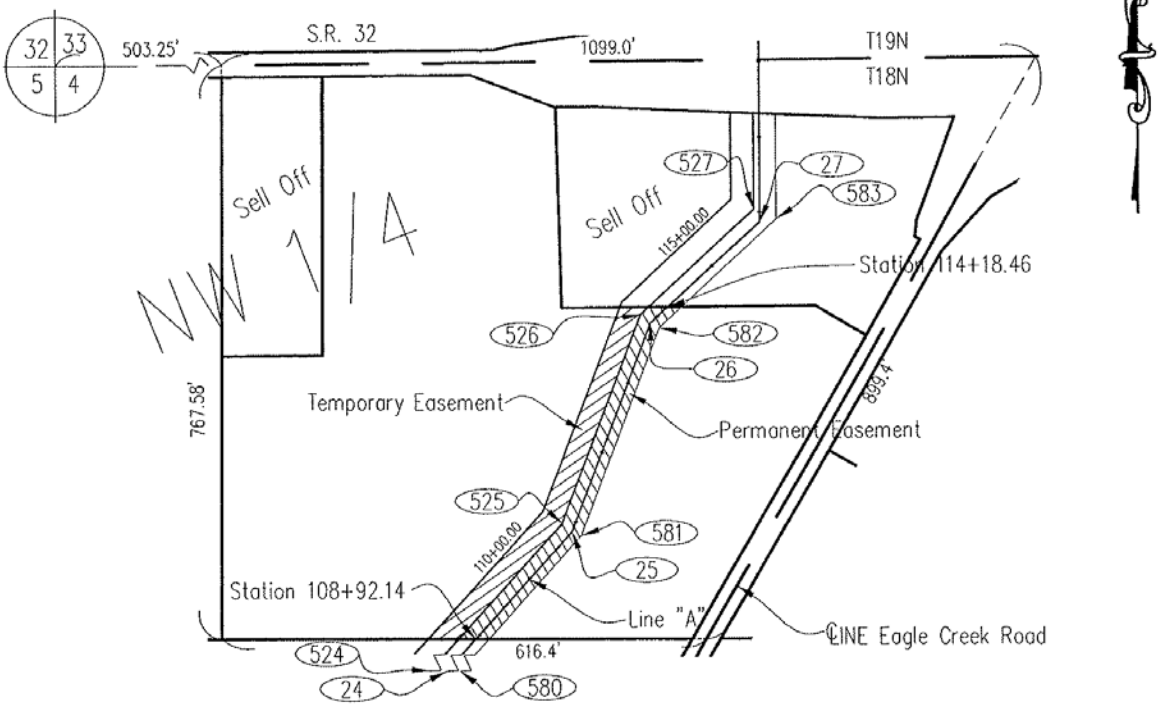
JEFFREY A. MYERS REGISTERED No. LS29300001 STATE OF INDIANA LAND SURVEYOR

Certified this 8th day of June, 2004

Jeffrey A. Myers, PLS
Professional Land Surveyor No. 29300001
State of Indiana

EXHIBIT "B"
EASEMENT PARCEL PLAT

SHEET 1 OF 2



GRAPHIC SCALE

200 0 100 200

(IN FEET)
1 inch = 200 ft.

HATCHED AREA IS THE APPROXIMATE TAKING

OWNER:	MOORE, LENA CATHARINE	DRAWN BY:	NATHAN A. GOINS 05/15/04
PARCEL:	7	CHECKED BY:	JEFFERY A. MYERS 05/18/04
CODE:	36753		
TOWN:	WESTFIELD	INSTRUMENT NO. 9809808029 , DATED 02/19/98	
COUNTY:	HAMILTON	INSTRUMENT NO. 200000051693 , DATED 09/26/00	
PROJECT:	WESTSIDE INTERCEPTOR		
SECTION:	4		
TOWNSHIP:	18N		
RANGE:	3E		

Dimensions shown are from the above listed Record Documents.

EXHIBIT "B"
EASEMENT PARCEL PLAT

PARCEL COORDINATE CHART			
NUMBER	LINE	STATION	OFFSET
524	Line "A"	107+87.26	17.19 Lt.
525	Line "A"	110+91.51	16.52 Lt.
526	Line "A"	113+91.94 Bt	16.52 Rt.
527	Line "A"	116+03.50	7.59 Lt.
580	Line "A"	107+87.16 Bt	12.79 Rt.
581	Line "A"	110+90.81 Bt	12.81 Rt.
582	Line "A"	113+91.09	12.79 Rt.
583	Line "A"	116+05.69 Bt	12.37 Rt.
See Location Control Route Survey Plat for Points: 24, 25, 26, & 27			

SURVEYOR'S STATEMENT

To the best of my knowledge and belief, this plat, together with the "Location Control Route Survey Plat" recorded as Instrument No. 200400036801 in the Office of the Recorder of Hamilton County, Indiana, (incorporated herein and made a part hereof by reference) comprise a Route Survey executed in accordance with Indiana Administrative Code 865 IAC 1-12 (Rule 12).

HNTB
111 Monument Circle, Suite 1200
Indianapolis, IN 46204
(317) 636-4682
FAX (317) 917-5211

JEFFREY A. MYERS

JEFFREY A. MYERS REGISTERED No. LS29300001 STATE OF INDIANA LAND SURVEYOR

6/08/2004

OWNER:	MOORE, LENA CATHARINE	DRAWN BY:	NATHAN A. GOINS 05/15/04
PARCEL:	7	CHECKED BY:	JEFFERY A. MYERS 05/18/04
CODE:	36753		
TOWN:	WESTFIELD		
COUNTY:	HAMILTON		
PROJECT:	WESTSIDE INTERCEPTOR		
SECTION:	4		
TOWNSHIP:	18N		
RANGE:	3E		

INSTRUMENT NO. 9809808029 , DATED 02/19/98
INSTRUMENT NO. 200000051693 , DATED 09/26/00

Dimensions shown are from the above listed Record Documents.