

## ORDINANCE 07- 17

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

WHEREAS, 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 OF WESTFIELD, INDIANA:**

**SECTION 1.** The easement described in Exhibit "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.

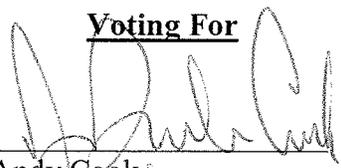
ALL OF WHICH IS ORDAINED this 13 day of Aug, 2007.

**WESTFIELD TOWN COUNCIL**

Voting For

Voting Against

Abstain

  
Andy Cook

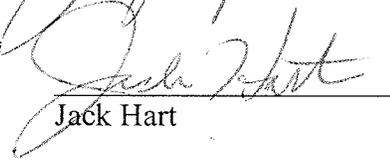
\_\_\_\_\_  
Andy Cook

\_\_\_\_\_  
Andy Cook

  
John Dippel

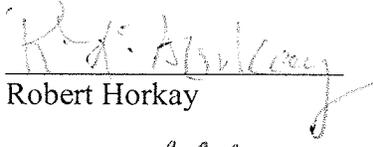
\_\_\_\_\_  
John Dippel

\_\_\_\_\_  
John Dippel

  
Jack Hart

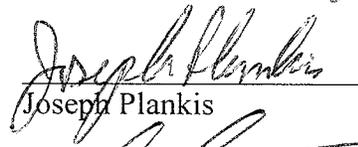
\_\_\_\_\_  
Jack Hart

\_\_\_\_\_  
Jack Hart

  
Robert Horkay

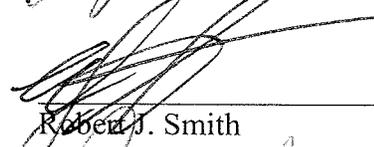
\_\_\_\_\_  
Robert Horkay

\_\_\_\_\_  
Robert Horkay

  
Joseph Plankis

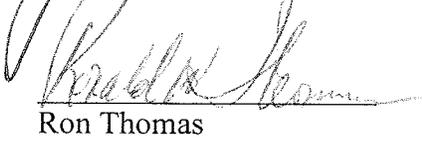
\_\_\_\_\_  
Joseph Plankis

\_\_\_\_\_  
Joseph Plankis

  
Robert J. Smith

\_\_\_\_\_  
Robert J. Smith

\_\_\_\_\_  
Robert J. Smith

  
Ron Thomas

\_\_\_\_\_  
Ron Thomas

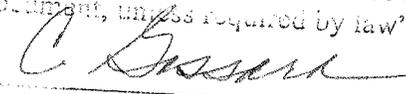
\_\_\_\_\_  
Ron Thomas

ATTEST:

  
Clerk-Treasurer, Cindy J. Gossard

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

"I affirm, under the penalties of perjury,  
that I have taken reasonable care to redact  
each Social Security Number in this  
document, unless required by law"

  
Signed

“EXHIBIT A”

"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."

(name) Shirley Golas

SANITARY SEWER EASEMENT, TELECOMMUNICATIONS EASEMENT, AND TEMPORARY CONSTRUCTION EASEMENT

Handwritten initials and scribbles in the left margin.

THIS INDENTURE, made this 8th day of August, 2006, by and between Leslie S. Wheeler, 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."

COPY

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, as well as a temporary construction easement 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 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.

Together with the right to the Grantee, its successor 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 aforesaid sanitary sewer lines and attached 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 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 Grantee's sanitary sewer lines and attached facilities, except that no building, structure or similar improvements shall be erected within said easement, nor shall the grade or ground cover over Grantee's 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

200600056251  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
09-22-2006 At 10:18 am.  
EASEMENTS 30.00

distance of two (2) feet shall be maintained between the pipes. All sewer pipes 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 sanitary sewer pipe lines and attached facilities.

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

**The temporary construction easement shall expire and terminate upon completion of the original construction.**

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. The Grantor hereby covenants that it 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 quiet 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 December 12, 1975, and recorded in the Office of the Recorder of Deeds of Hamilton County, Indiana, as Deed Record 285, Pages 676-679 dated the 12<sup>th</sup> day of December, 1975.
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.

\*\*\*\*\*  
Leslie S. Wheeler  
\*\*\*\*\*

Leslie S. Wheeler  
(Signature)

Leslie S. Wheeler  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

STATE OF INDIANA )  
 )SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Leslie S. Wheeler, who having been duly sworn upon his/her oath acknowledged their authority and the execution of the foregoing easement.

Witness my hand and Notarial Seal this 8th day of August, 2006.



(Signature)

Kimberlee M. Parker

(Printed Name)

Kimberlee M. Parker

Notary Public residing in

Johnson County

My Commission expires:

September 14, 2006

This instrument prepared by:

*Brian J. Zaiger, Attorney at Law*  
**KRIEG DEVAULT LLP**  
12800 North Meridian Street, Suite 300  
Carmel, Indiana 46032  
(317) 238-6266

KD\_IM-683481\_1.DOC



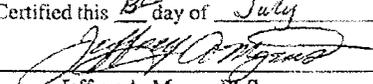
EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 2 of 2  
Parcel: 22 Permanent Easement for Sanitary Sewer  
and Telecommunications

South 45 degrees 44 minutes 15 seconds East 0.19 feet along the boundary of said Kinsey Avenue to point "856" designated on said parcel plat; thence South 75 degrees 04 minutes 50 seconds West 75.86 feet to point "854" designated on said parcel plat; thence South 86 degrees 47 minutes 05 seconds West 445.90 feet to point "852" designated on said parcel plat; thence South 84 degrees 11 minutes 55 seconds West 306.89 feet to point "850" designated on said parcel plat; thence South 89 degrees 26 minutes 40 seconds West 202.20 feet to point "875" designated on said parcel plat; thence North 45 degrees 33 minutes 20 seconds West 53.28 feet to point "874" designated on said parcel plat; thence South 89 degrees 27 minutes 03 seconds West 247.30 feet to point "848" designated on said parcel plat; thence North 45 degrees 03 minutes 51 seconds West 63.16 feet to Station 264+63.61, said Line "A"; thence continuing North 45 degrees 03 minutes 51 seconds West 38.94 feet to point "846" designated on said parcel plat; thence South 90 degrees 00 minutes 00 seconds West 1232.92 feet to the point of beginning and containing 1.770 acres, more or less.



Certified this 13<sup>th</sup> day of July, 2006

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

**EXHIBIT "A"**

Project: Westfield Westside Interceptor                      Sheet 1 of 1  
Parcel: 22A Temporary Easement for Sanitary Sewer Construction  
and Telecommunications

A part of the Southeast Quarter of the Northwest Quarter of Section 35, Township 19 North, Range 3 East, Hamilton County, Indiana, described as follows: Beginning on the west line of the East Half of the Northwest Quarter of said section North 0 degrees 05 minutes 54 seconds East 68.75 feet (along said west line) from Station 252+03.02, 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 0 degrees 05 minutes 54 seconds East 60.00 feet along said west line; thence North 90 degrees 00 minutes 00 seconds East 1185.04 feet; thence South 45 degrees 03 minutes 51 seconds East 84.95 feet; thence South 90 degrees 00 minutes 00 seconds West 1245.28 feet to the point of beginning and containing 1.674 acres, more or less.



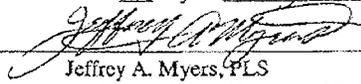
Certified this 13<sup>th</sup> day of July, 2006  
  
Jeffrey A. Myers, PLS  
Professional Land Surveyor No. 29300001  
State of Indiana

EXHIBIT "A"

Project: Westfield Westside Interceptor                      Sheet 1 of 2  
Parcel: 22B Temporary Easement for Sanitary Sewer Construction  
and Telecommunications

A part of the Southeast Quarter of the Northwest Quarter, a part of the Northeast Quarter of the Southwest Quarter, and a part of the Northwest Quarter of the Southeast Quarter of Section 35, Township 19 North, Range 3 East, Hamilton County, Indiana, described as follows: Beginning at Station 264+63.61, 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 45 degrees 03 minutes 51 seconds East 63.16 feet; thence North 89 degrees 27 minutes 03 seconds East 247.30 feet; thence South 45 degrees 33 minutes 20 seconds East 53.28 feet; thence North 89 degrees 26 minutes 40 seconds East 202.20 feet; thence North 84 degrees 11 minutes 55 seconds East 306.89 feet; thence North 86 degrees 47 minutes 05 seconds East 445.90 feet; thence North 75 degrees 04 minutes 50 seconds East 75.86 feet to the southwestern boundary of Kinsey Avenue; thence South 45 degrees 44 minutes 15 seconds East 3.91 feet along the boundary of said Kinsey Avenue to the west boundary of Dartown Road; thence South 0 degrees 08 minutes 25 seconds East 58.62 feet along the boundary of said Dartown Road; thence South 75 degrees 07 minutes 02 seconds West 69.08 feet; thence South 86 degrees 47 minutes 05 seconds West 450.67 feet; thence South 84 degrees 11 minutes 55 seconds West 308.29 feet; thence South 89 degrees 26 minutes 40 seconds West 229.80 feet; thence North 45 degrees 33 minutes 20 seconds West 53.29 feet; thence South 89 degrees 27 minutes 03 seconds West 247.60 feet; thence North 45 degrees 03 minutes 51 seconds West 147.38 feet to Station 263+79.41,

Rev 7-12-06

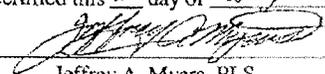
**EXHIBIT "A"**

Project: Westfield Westside Interceptor                      Sheet 2 of 2  
Parcel: 22B Temporary Easement for Sanitary Sewer Construction  
and Telecommunications

said Line "A"; thence continuing North 45 degrees 03 minutes 51  
seconds West 40.00 feet; thence North 90 degrees 00 minutes 00  
seconds East 84.95 feet; thence South 45 degrees 03 minutes 51  
seconds East 38.94 feet the point of beginning and containing  
2.054 acres, more or less.



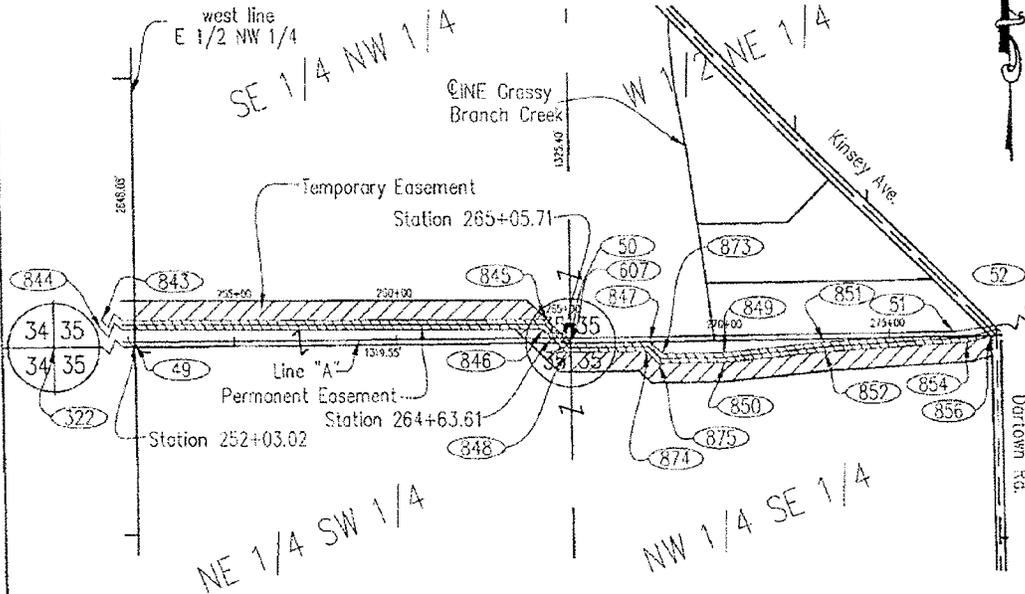
Certified this 13<sup>th</sup> day of July, 2006

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

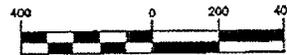
Rev. 4/12/05  
Rev. 7/12/06

### EXHIBIT "B" EASEMENT PARCEL PLAT

SHEET 1 OF 2



#### GRAPHIC SCALE



( IN FEET )  
1 inch = 400 ft.

 HATCHED AREA IS THE APPROXIMATE TAKING

OWNER: *WHEELER, LESLIE S.*  
 PARCEL: *22*  
 CODE: *36753*  
 TOWN: *WESTFIELD*  
 COUNTY: *HAMILTON*  
 PROJECT: *WESTSIDE INTERCEPTOR*  
 SECTION: *35*  
 TOWNSHIP: *19N*  
 RANGE: *3E*

DRAWN BY: *NATHAN A. GOINS 05/14/04*  
 CHECKED BY: *JEFFREY A. MYERS 05/15/04*

INSTRUMENT NO. *9609637025* , DATED *08/30/96*  
 INSTRUMENT NO. *9609637027* , DATED *08/30/96*  
 DEED RECORD *285* , PAGE *676* , DATED *12/12/75*

Dimensions shown are from the above listed Record Documents.

**EXHIBIT "B"**  
**RIGHT-OF-WAY PARCEL PLAT**

PARCEL COORDINATE CHART			
NUMBER	LINE	STATION	OFFSET
607	Line "A"	265+20.48	15.00 Rt.
843	Line "A"	231+61.50	65.79 Lt.
844	Line "A"	231+73.60	35.66 Lt.
845	Line "A"	264+48.97	57.63 Lt.
846	Line "A"	264+36.29	27.75 Lt.
847	Line "A"	267+67.61	15.03 Rt.
848	Line "A"	265+07.92	45.01 Rt.
849	Line "A"	269+93.69	52.70 Rt.
850	Line "A"	269+95.06	82.70 Rt.
851	Line "A"	272+98.60	24.71 Rt.
852	Line "A"	273+00.67	54.64 Rt.
854	Line "A"	277+41.53	39.02 Rt.
856	Line "A"	278+16.79	29.49 Rt.
873	Line "A"	268+05.29	52.70 Rt.
874	Line "A"	267+55.19	45.03 Rt.
875	Line "A"	267+92.86	82.70 Rt.

See Location Control Route Survey Plat for Points:  
49, 50, 51, 52, & 322

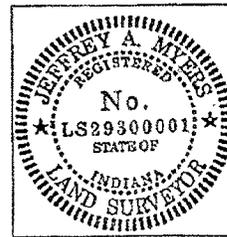
**SURVEYOR'S STATEMENT**

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).



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

*Jeffrey A. Myers*  
JEFFREY A. MYERS



7/13/2005

OWNER: WHEELER, LESLIE S.  
PARCEL: 22  
CODE: 36753  
TOWN: WESTFIELD  
COUNTY: HAMILTON  
PROJECT: WESTSIDE INTERCEPTOR  
SECTION: 35  
TOWNSHIP: 19N  
RANGE: 3E

DRAWN BY: NATHAN A. GOINS 05/14/04  
CHECKED BY: JEFFREY A. MYERS 05/15/04

INSTRUMENT NO. 9609637025 , DATED 08/30/96  
DEED RECORD 285 , PAGE 676 , DATED 12/12/75