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TRUSTEE'S DEED  
RECORDED

Chicago Title Insurance Company

THIS INDENTURE WITNESSETH That LAKE MORTGAGE COMPANY, INC., f/k/a LAKE MORTGAGE COMPANY, an Indiana corporation, as Trustee ("Trustee"), under the provisions of that certain Trust Deed and Agreement dated August 25, 1952 ("Trust Agreement"), as modified by that certain Order on Petition for Reformation of Trust Deed and Agreement, of the Lake Superior Court, dated March 5, 1996, and entered in Cause No. 45D03-9601-TR-00001 (the "Reformation Order"), a certified copy of which is attached hereto and incorporated herein by this reference as Exhibit A, does hereby WARRANT and CONVEY to NORTHWEST INDIANA WATER COMPANY, an Indiana corporation ("Grantee") for the sum of Ten Dollars (\$10.00) and other good and valuable consideration the following described parcels of real estate in Lake County, Indiana (collectively, the "Real Estate"), to wit:

PARCEL 1

Document is  
NOT OFFICIAL!

Part of the North Half of the Southwest Quarter of the Southwest Quarter of Section 20, Township 35 North, Range 8 West of the 2nd Principal Meridian, commencing at the Southeast Corner of the North Half of the Southwest Quarter of the Southwest Quarter of Said Section, and running thence North along the East Line thereof 200 feet, thence West parallel with the South Line of the North Half of the Southwest Quarter of the Southwest Quarter of said Section 217.8 feet, thence South parallel with the East Line of the North Half of the Southwest Quarter of said Section 200 feet to the South Line thereof, thence East along the South Line of the North Half of the Southwest Quarter of the Southwest Quarter of said Section, 217.8 feet to the place of beginning, in Lake County, Indiana.

PARCEL 2

The South 25 feet of Lot 116, Independence Hill Third Addition, an Addition to the City of Crown Point, as shown in Plat Book 24, Page 69, in the Office of the Recorder of Lake County, Indiana.



8-15-119-53  
8-15-148-3

IN SUBJECT  
TRANSFER  
OFFICE  
SEP 30 1996

This deed is being given subject to:

1. Those certain covenants, easement and restrictions of record set forth on Exhibit B attached hereto and incorporated herein by this reference;
2. 1995 real estate taxes due and payable in 1996 and thereafter; and
3. 1995 Independence Hill Conservancy District Assessment for 1995 payable in 1996 and thereafter.

001726 3600  
SU  
CT

This Deed is executed pursuant to, and in the exercise of, the power and authority granted to and vested in the said Trustee by the terms of the Trust Agreement.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against LAKE MORTGAGE COMPANY, INC. on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

**This Document is the property of  
the Lake County Recorder!**

Nothing contained herein shall be construed as creating any liability on LAKE MORTGAGE COMPANY, INC., personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State, or local law, rule or regulation. LAKE MORTGAGE COMPANY, INC., personally is not a "Transferor or Transferee" under the Act and makes no representations concerning any possible environmental defects. In making any warranty herein the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument.

The information contained in this instrument has been furnished to the undersigned by the beneficiaries under aforesaid Trust and the statements made therein are made solely in reliance thereon and no responsibility is assumed by the undersigned, in its individual capacity for the truth or accuracy of the facts herein stated.

No Indiana Gross Income Tax is due as a result of this conveyance.

IN WITNESS WHEREOF, LAKE MORTGAGE COMPANY, INC., not personally but as Trustee, as aforesaid, has caused this instrument to be signed by its President and attested by its Secretary this 17 day of SEPTEMBER, 1996.

LAKE MORTGAGE COMPANY, INC.,  
as Trustee

Attest:

By:

Susan M. Bristow  
Susan M. Bristow, Secretary

By:

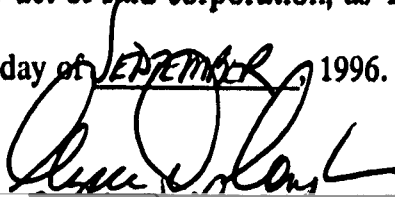
Peter S. Briggs, President



STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

Before me, the undersigned, a Notary Public in and for said County and State personally appeared the within named Peter S. Briggs, as President and Susan M. Bristow, as Secretary of the Lake Mortgage Company, Inc., who acknowledged the execution of the foregoing instrument as the free and voluntary act of said corporation, as Trustee.

WITNESS my hand and seal this 17 day of SEPTEMBER, 1996.



Clyde D. Compton, Notary Public  
A Resident of Laurel County, Indiana

My Commission Expires:  
11/7/97



Send Tax Statements to: Northwest Indiana Water Company  
Attention: Controller  
650 Madison Street  
Post Office Box M-486  
Gary, Indiana 46401-0486

This instrument prepared by Donald E. Williams, Attorney-at-Law  
Barnes & Thornburg  
1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204

STATE OF INDIANA )  
 )SS: IN THE LAKE SUPERIOR COURT  
COUNTY OF LAKE ) ROOM NO. THREE  
 ) GARY, INDIANA

*Filed in Open Court*

IN THE MATTER OF INDEPENDENCE )  
HILL THIRD ADDITION WATER ) CAUSE NO. 45D03-9601-TR-00001  
WORKS, INC. TRUST )

MAR 05 1996

*James Penick*  
SUPERIOR COURT OF LAKE COUNTY  
CIVIL DIVISION, COURT ROOM 3

ORDER ON PETITION FOR REFORMATION  
OF TRUST DEED AND AGREEMENT

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**STOP**

This cause came to be heard on March 5, 1996, upon the Petition filed by VIRGINIA ZELLERS and WAYNE J. PITTMAN and JUDITH PITTMAN for reformation of the trust deed and agreement dated as of August 25, 1952, and recorded September 11, 1952 in Deed Record 571, page 123, as Document No. 632546 in the Office of the Recorder of Lake County, Indiana, (the "Trust Deed"), by and between Independence Hill Third Addition Water Works, Inc. ("IHTA"), a not-for-profit corporation, as Settlor, and Lake Mortgage Company, as Trustee (the "Trustee"). On January 19, 1996, the Petitioners caused a copy of the petition filed herein along with a notice of the hearing to be served upon all the persons named in Appendix C to the petition by United States Certified Mail, return receipt requested. The certificate of the Clerk evidencing said service is now filed with the Court and reads as follows: (H. I.). Subsequent to said mailing, the Petitioners requested an Alias Notice to be sent to beneficiaries, which Alias Notice was again sent by United States Certified Mail, return receipt requested, on January 30, 1996, certificate of the Clerk evidencing said service is now filed

with the Court and reads as follows: (H. I.). Nine of the individuals mailed copies of the petition and notice by certified mail refused the mailing and those individuals were again served a copy of the petition and notice by regular United States Mail on February 26, 1996. The certificate of the attorney for the Petitioners evidencing said mailing reads as follows: (H. I.)

The Petitioners further file Acknowledgment, Waiver of Notice, Approval and Consent (Consents) of the owners of 80 lots evidencing their approval of the request made by the Petitioners herein. Said Consents read as follows: (H. I.)

The Court thereupon examined the Petition and the documents attached to the Petition as Appendix A through C and the evidence in support of the Petition submitted by the Petitioners. Being duly advised in the premises, the Court finds that:

1. This matter concerns a trust created by the Trust Deed (the "IHTA Trust"). The principal place of administration of the IHTA Trust is Lake County, Indiana, and the situs of the IHTA Trust is in Lake County, Indiana.

2. This Court has jurisdiction over the IHTA Trust and the subject matter of the Petition, and Lake County, Indiana, is the proper venue for these proceedings.

#### Findings and Conclusions

Having examined and considered the Petition (including the Appendices thereto) and the evidence submitted at the hearing, the Court now finds that:

1. The IHTA Trust should be docketed for the limited purpose of allowing reformation of the Trust Deed.

2. All interested persons have either joined in the Petition, waived notice of any hearing to be held on the Petition and consented to the requested relief, intervened in support of the Petition or failed to appear and raise objection to the Petition after having received notice thereof.

3. The Trust Deed conveyed title to certain water utility properties used by IHTA to supply water utility service to certain identified lots in the Subdivision (the "IHTA System") to the Trustee in trust for the benefit of the present and future owners of the identified lots in the Subdivision. Paragraph 1 of the Trust Deed provides that:

Trustee shall hold the title to the property granted by this indenture until either (a) the said water plant and the water system connected therewith are taken over by a Governmental authority for maintenance and operation, or (b) other adequate water supply system is provided by a Governmental authority through means other than the operation of the well, plant, and facilities now transferred to the Trustee herein, and upon the happening of either of these conditions this indenture shall be of no further effect and Trustee shall thereupon immediately reconvey the property to the Grantor, its successors or assigns.

Paragraph 5 of the Trust Deed provides that the Trustee shall have no power to execute a conveyance of the IHTA System except to IHTA under the provisions of Paragraph 1 or a governmental authority empowered to take over and operate the system.

4. The stated purpose of the IHTA Trust is to allow the IHTA System to be used and operated to provide an adequate supply of water for each of the dwellings located on the identified lots in the Subdivision, regardless of the ownership of the individual properties and to properly maintain an adequate water supply for domestic consumption for the occupants of the dwellings and to assure the continuance of the operation and maintenance of the water supply system for the benefit of the present and future owners of the individual properties.

5. The purpose of the IHTA Trust cannot adequately be served under the present arrangement under which the IHTA System is operated by IHTA and owned by the Trustee. IHTA is a not-for-profit corporation made up of about 91 members owning lots in the Subdivision. Due to its small size and limited resources IHTA cannot adequately finance the cost of improvements necessary to maintain the IHTA System and the cost of complying with current and future environmental regulations applicable to water utilities (including extensive testing and reporting requirements). Second, the individuals who have been responsible for operating the system in the past desire to step down from this responsibility and it will be difficult for IHTA to find adequate replacements.

6. The Trust Deed clearly contemplated that the water system would one day be taken over by another utility. However, there is no governmentally-owned utility in the area capable of doing so. The Town of Merrillville, within which the Subdivision is located, is served by Northwest pursuant to an indeterminate permit. Northwest currently has a 16-inch water main in State Road 55



running south from U.S. 30. Northwest's main abuts the Subdivision to the east. In fact, Northwest currently has an 8-inch main running from its 16-inch main in State Road 55 westerly into the Subdivision from which Northwest serves seven lots in the Subdivision. Therefore, it would be relatively easy for Northwest to acquire the IHTA System and provide water service to the residents of the Subdivision currently served by IHTA. Northwest has adequate and reliable water supply to serve the Subdivision. Northwest's water supply meets all state and federal drinking water standards. Northwest is capable and willing to acquire the IHTA System provided the Trust Deed is reformed to make a transfer to Northwest possible and provided all other legal requirements are satisfied, including approval by the Indiana Utility Regulatory Commission ("IURC").

7. Northwest is an investor-owned water utility with its corporate office at 650 Madison Avenue, P.O. Box M-486, Gary, Indiana 46401-0486. Northwest provides water utility service to over 57,600 customers in Lake and Porter Counties, including the communities of Burns Harbor, Chesterton, Gary, Hobart, Merrillville, Portage and Porter, and areas adjacent thereto. Northwest also provides wholesale water service to a number of utilities in Lake and Porter Counties. For the twelve months ended October 31, 1995 Northwest's revenues exceeded \$19,700,000. At October 31, 1995 its total capitalization amounted to \$36,763,983. Northwest is regulated by the IURC as to matters of rates and service.

8. The purpose of the trust can best be served by reforming the Trust Deed to allow the Trustee to convey the water system to

Northwest. Northwest has the financial resources to operate the system, in conjunction with its existing operations, in an economical manner. The rates paid by the residents of the Subdivision are likely to be substantially less than would be the case if IHTA continues to independently operate the system, particularly given the need for IHTA to raise revenue from the residents to provide for increasing operating and capital costs. Moreover, Northwest has greater management and technical expertise than IHTA due to its greater size and economies of scale. Therefore, Northwest is better prepared to deal with increasingly stringent environmental requirements. Northwest would also install at its expense meters for each of the homes so that the rates paid by the residents would be based on the amount of water actually consumed which as a more appropriate form of pricing than the unmetered arrangement currently in effect.

9. Approximately 68% of the members of IHTA have signed a petition in favor of Northwest acquiring the IHTA System. At least 80 of the lot owners have executed Consents by which they have approved the request made by Petitioners herein. Such Consents are hereby submitted by Petitioners to the Court. Northwest has also received letters from representatives of the Town of Merrillville and Ross Township Fire Service, Inc. urging Northwest to acquire the system. The Town Council of Merrillville has adopted a resolution supporting the acquisition. This further demonstrates that the acquisition effectuates the trust purposes since the Town of Merrillville is a governmental authority with an interest in the provision of water service to its residents, including those located in the Subdivision and since Northwest presently serves within the

Town pursuant to a franchise from the Town which has been converted by operation of law into an indeterminate permit. See Ind. Code § 8-1-2-92.

10. Indiana law permits reformation of a trust instrument for equitable cause and in order to effectuate the purpose of the trust. See Colbo v. Buyer (1956), 235 Ind. 518, 134 N.E.2d 45, 50; Ind. Code § 30-4-3-26. Equitable cause exists for reformation of the Trust Deed so as to permit a conveyance to Northwest for the reasons described above. In addition, the Trust Deed, as presently constituted, creates certain contingent interests and restraints on alienation which do not vest and, hence, would likely violate the rule against perpetuities. Solving this problem with the Trust Deed by the reformation requested herein is in the interest of the trust beneficiaries who are currently solely dependent on IHTA for water service.

11. There are no mortgages on the IHTA System. Therefore, there are no mortgagees having an interest in this matter.

12. Pursuant to Trial Rule 54(B), there is no just reason to delay the entry of a final judgment on the matters adjudicated herein and the entry of final judgment as to those matters should be directed.

### DECREE

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that:

1. The Clerk is directed to docket the IHTA Trust for the limited purpose ordered herein.

2. Reformation of the Trust Deed is hereby ordered in the following manner: The Trust Deed is hereby reformed and modified to permit the Trustee to convey the IHTA System to Northwest, free and clear of all obligations, burdens and requirements of the Trust Deed and any provisions of the Trust Deed inconsistent therewith are hereby declared to be inoperative and of no effect.

3. The Trustee is ordered, upon satisfaction of all requirements, conditions and contingencies required by law or agreed to by Northwest, IHTA and the Trustee, to convey by appropriate instruments the IHTA System to Northwest.

4. The Court hereby enters, and directs the entry of, a final judgment on the matter adjudicated in this order.

5. The Clerk is hereby directed to remove the IHTA Trust from the Court's docket.

ALL OF WHICH IS FOUND AND RECOMMENDED THIS 5 DAY OF MARCH, 1996.



*[Signature]*  
Probate Commissioner  
Lake Superior Court, Room Three

ALL OF WHICH IS SO ORDERED AND APPROVED THIS 5 DAY OF MARCH, 1996.

*[Signature]*  
JUDGE, Lake Superior Court  
Room Three

# The United States of America



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STATE OF INDIANA, COUNTY OF LAKE, ss:

I, the undersigned, Clerk of the Lake SUPERIOR PROBATE Court of Lake County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify, that the above and foregoing is a full, true, correct and complete copy of the Order of Court dated MARCH 5, 1996 in Case No. 45-D03-9601-TR-00001 entitled \_\_\_\_\_ as fully as the same appears of record in my office as such Clerk.

IN THE MATTER OF INDEPENDENCE  
HILL THIRD ADDITION WATER WORKS,  
INC. TRUST



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at my office in GARY, INDIANA in the said County, this 12th day of SEPTEMBER, A.D., 19 96.

*Anna N. Antone*

Clerk Lake SUPERIOR Court,

By *Jacqueline Martin*  
Deputy



**EXHIBIT B**

**EXCEPTIONS**

1. Rights of way for drainage tiles, ditches, feeders and laterals, if any.
2. Rights of way for any roads, highways, streets or alleys.
3. A 30 foot building line affecting the east side of the Real Estate as shown on the plat of subdivision. (Affects Parcel 2 only).
4. Easements for public utilities and for drainage, over the west 10 feet of the Real Estate as shown and granted on the Plat of Independence Hill, Third Addition to the City of Crown Point, as shown in Plat Book 24, Page 69, in the Office of the Recorder of Lake County, Indiana. (Affects Parcel 2 only).
5. Terms and provisions of an easement for gas mains to Northern Indiana Public Service Company, an Indiana corporation, dated September 10, 1959 and recorded September 25, 1959, as Document No. 206712. (Affects Parcel 2 only).
6. Restrictions on the Plat of Independence Hill, Third Addition to the City of Crown Point, as shown in Plat Book 24, Page 69, in the Office of the Recorder of Lake County, Indiana. (Affects Parcel 2 only).
7. Amended Restriction recorded November 14, 1940 in Miscellaneous Record 325, Page 584. (Affects Parcel 2 only)
8. Amended Restriction recorded November 14, 1940 in Miscellaneous Record 326, Page 194. (Affects Parcel 2 only).

