

2003 110335

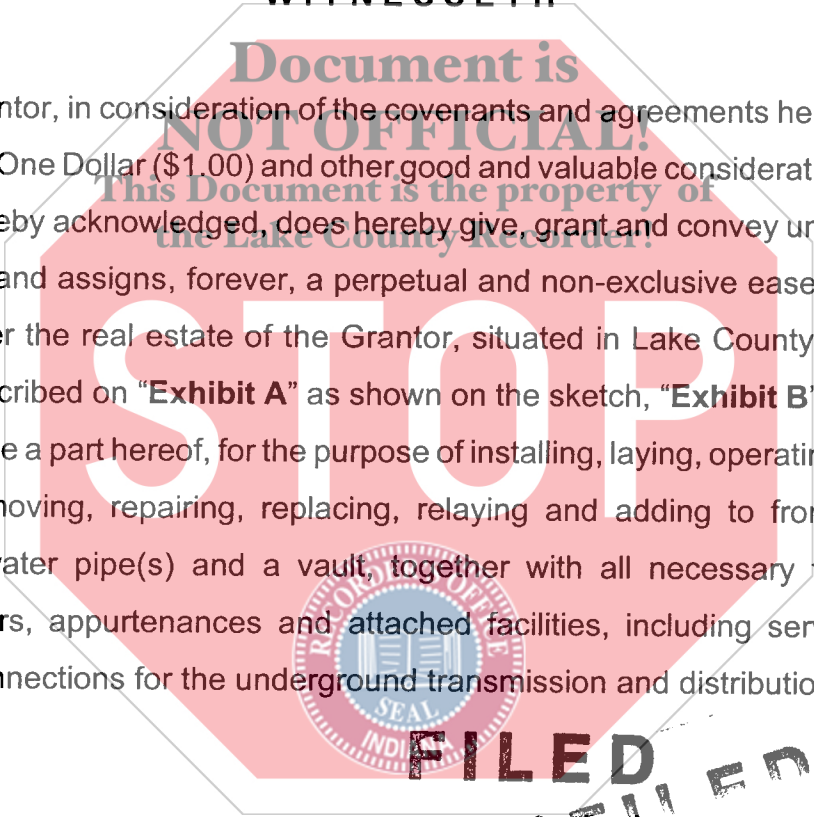
2003 110335

**UTILITY EASEMENT**

THIS INDENTURE, made this 29<sup>th</sup> day of September, 2003, by and between WEA SOUTHLAKE, LLC, a(n) Delaware limited liability company, hereinafter referred to as the "Grantor" and INDIANA-AMERICAN WATER COMPANY, INC., a corporation organized and existing under the laws of the State of Indiana, having an office for the transaction of business at 650 Madison Street, Gary, IN 46401, 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 considerations, the receipt of which, is hereby acknowledged, does hereby give, grant and convey unto the Grantee, its successors and assigns, forever, a perpetual and non-exclusive easement in, under, across and over the real estate of the Grantor, situated in Lake County, Indiana, more particularly described on "**Exhibit A**" as shown on the sketch, "**Exhibit B**", both attached hereto and made a part hereof, for the purpose of installing, laying, operating, maintaining, inspecting, removing, repairing, replacing, relaying and adding to from time to time underground water pipe(s) and a vault, together with all necessary fittings, valves, hydrants, meters, appurtenances and attached facilities, including service pipes and laterals and connections for the underground transmission and distribution of water.



**FILED**

OCT 30 2003

STEPHEN R. STIGLICH  
LAKE COUNTY AUDITOR

002472

2702  
1151

Together with the right of 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 aforesaid water pipe lines, vault 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 water pipe lines and attached facilities, except that no building or structure 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 other pipes or conduits shall be placed within ten (10) feet, measured horizontally, from the said water 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 the water pipes. No excavation or blasting shall be carried on which in any way endangers or might endanger the water pipe lines and attached facilities.

Grantor reserves the right to construct streets, sidewalks, curbs and utilities across, but not along the easement, except as otherwise provided herein. Grantor must notify Grantee in writing at least thirty (30) days in advance of any such construction. Said

advance written notice shall include engineering plans for such construction. Grantee reserves the right to review said engineering plans and request reasonable modifications to them reasonably necessary to protect the integrity of the underground pipeline, vault and appurtenant facilities, as determined by Grantee in its reasonable professional determination. Grantee's review of said engineering plans shall be completed in a timely manner and Grantee's approval for such construction shall not be unreasonably withheld, conditioned or delayed. In the event Grantee fails to advise Grantor of any modification to said engineering plans within thirty (30) calendar days following Grantor's submission of said plans to Grantee, the engineering plans shall be deemed approved by Grantee as submitted. Grantee represents that the pipeline will be constructed at a sufficient depth to permit the construction of streets, sidewalks, curbs and utilities described in this paragraph; however, such construction by Grantor shall not reduce the depth of cover over the pipeline or vault without Grantee's consent.

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, whether for construction, maintenance, repair, or reconstruction, 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. Any improved surfaces damaged or removed upon entry shall be restored at the expense of the Grantee. Grantee shall use its best efforts to avoid removing or damaging any trees on the easement at the time of construction, maintenance, repair or reconstruction; however, if any tree is removed or damages so that it must be removed, Grantee shall pay to Grantor the sum of Two Hundred (\$200.00) Dollars per tree.

Grantee shall defend, indemnify and hold Grantor harmless from and against any and all loss, cost, damage, expense (including without limitation, reasonable attorney's fees and costs), claims of liabilities arising from or related to the exercise of easement rights granted herein unless such loss, damage, injuries or death results from the negligence or wilful misconduct of Grantor. Such losses shall include but not be limited to: environmental problems due or arising from installation, construction, maintenance, repair, relocation, reconstruction, modification or removal of the improvements or any part thereof, or the presence, operation or use of the improvements or contents escaping therefrom. Loss includes loss, damage, claims, demands, actions, causes of action, penalties, costs, including court costs and reasonable attorney's fees, which may result from, (1) injury to or death of persons whomsoever (including the Grantor's officers, agents, and employees, the Grantee's officers, agents, and employees, as well as any other person), and (b) damage to or loss or destruction of property or the appurtenances to the property at, near, or on the property.

In the event Grantee permanently abandons its use of this easement, Grantee's rights granted herein shall cease and terminate, whereupon all such rights hereunder shall revert to Grantor or its successors or assigns.

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 hereby subjected to said easement and has good title to convey the same. In accordance with Indiana Code 32-23-2-5 Grantor acquired said real estate from Indiana-American Water Company, Inc. by Quit-Claim Deed dated MAY 27<sup>TH</sup>, 2003 and recorded in the Office of the Recorder of Lake County, Indiana, as Document No. 2003 116 337, on the 30<sup>TH</sup> day of OCTOBER, 2003.
2. That the Grantee shall quietly enjoy the said easement.
3. That all corporate action has been taken to authorize this transaction and the officers/members signing this Utility Easement have been duly authorized by the Grantor to do so.
4. That the real estate hereby subjected to said easement is subject to no mortgages except: No exceptions.

The terms and conditions of this Utility Easement shall inure to the benefit of and be binding on the successors in interest and assigns of the Grantor and Grantee.

The undersigned person executing this Utility Easement on behalf of the Grantor represents and certifies that he/she is the Agent of Grantor and has been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this Utility Easement; that Grantor has full corporate capacity to convey the easement over real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

The undersigned person executing this Deed on behalf of the Grantee represents and certifies that he is Vice President and Manager of Grantee and has been fully empowered, by proper resolution of the Board of Directors of Grantee, to execute and deliver this Utility Easement; that Grantee has full corporate capacity to perform its obligations described herein; and that all necessary corporate action to effectuate the same has been taken and done.

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



GRANTOR:

WEA SOUTHLAKE, LLC  
a(n) DELAWARE Limited Liability Company

By: [Signature]

Attest: [Signature]

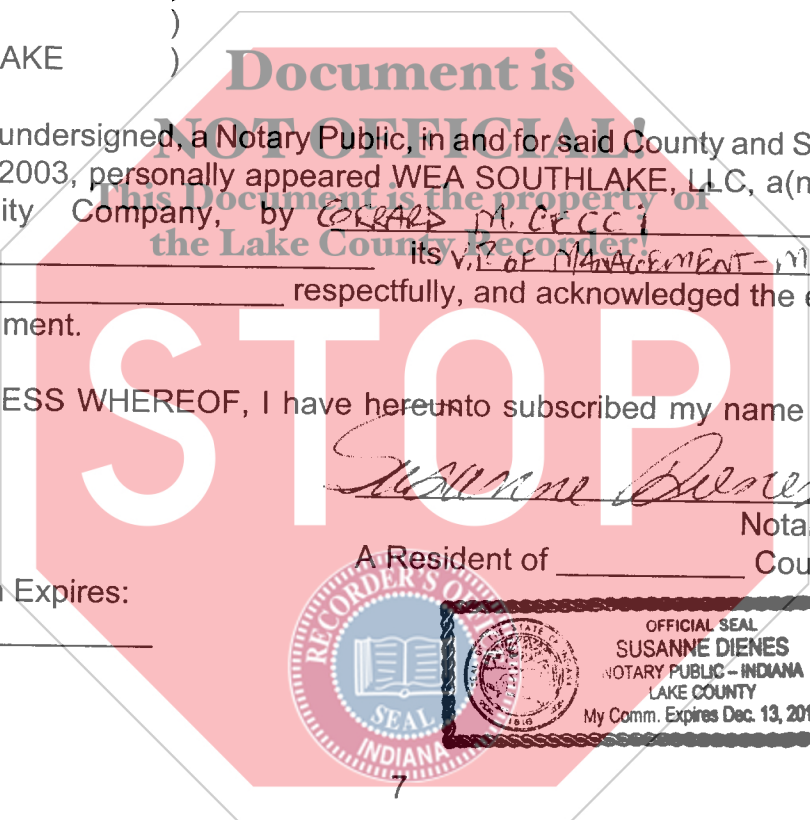
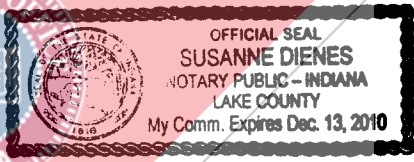
STATE OF INDIANA )  
COUNTY OF LAKE )

Before me, the undersigned, a Notary Public, in and for said County and State, this 29 day of Sept, 2003, personally appeared WEA SOUTHLAKE, LLC, a(n) Delaware Limited Liability Company, by COFFARD M. CECCO and [Signature] its V.P. OF MANAGEMENT-MIDWEST and [Signature] respectfully, and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

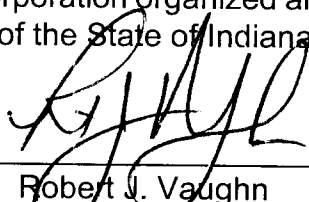
[Signature]  
Notary Public  
A Resident of \_\_\_\_\_ County

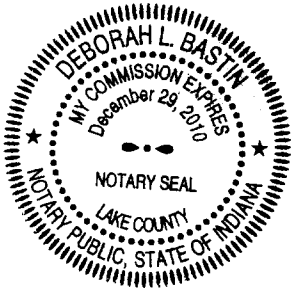
My Commission Expires:  
\_\_\_\_\_



GRANTEE:

INDIANA-AMERICAN WATER COMPANY, INC.  
an corporation organized and existing under the  
laws of the State of Indiana


By:   
Robert J. Vaughn  
Vice President & Manager



STATE OF INDIANA     )  
  )  
COUNTY OF LAKE     )

Before me, the undersigned, a Notary Public, in and for said County and State, this 27 day of May, 2003, personally appeared Indiana-American Water Company, Inc., a corporation organized and existing under the laws of the State of Indiana, by Robert J. Vaughn, its Vice President & Manager, and acknowledged the execution of the foregoing instrument.

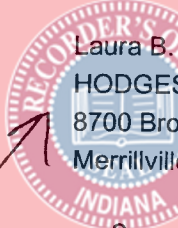
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

  
DEBORAH L. BASTIN Notary Public  
A Resident of Lake County

My Commission Expires:  
12/29/2010

This Instrument Prepared by:  
35598.1

Laura B. Frost, Attorney at Law  
HODGES & DAVIS, P.C.  
8700 Broadway  
Merrillville, IN 46410

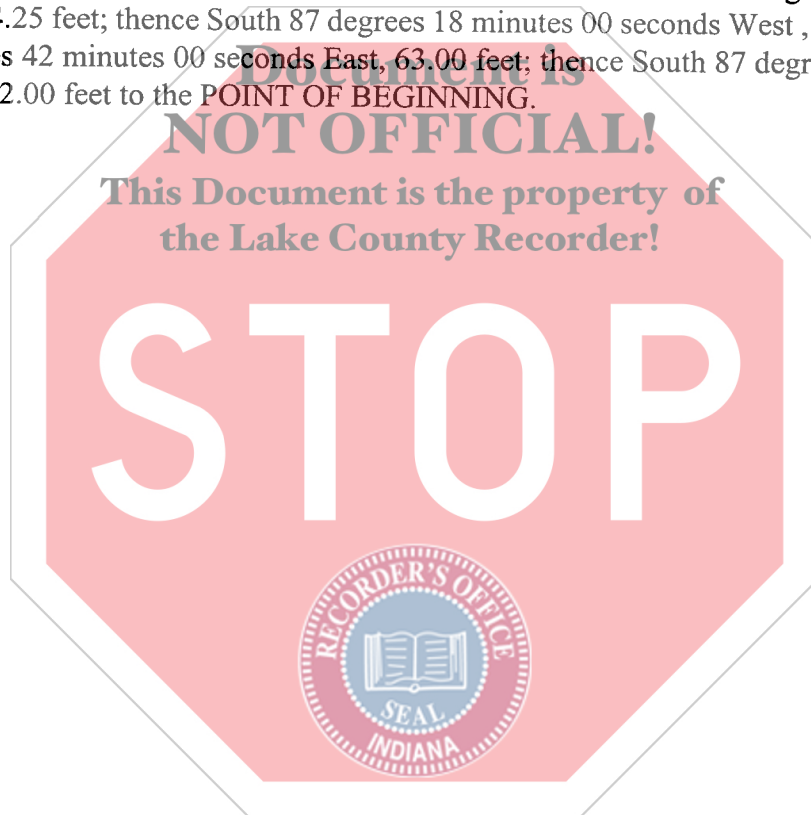




**EXHIBIT A**

**LEGAL DESCRIPTION OF EASEMENT**

That part of the Northwest 1/4 of the Southwest 1/4 of Section 23, Township 35 North, Range 8 West, of the 2<sup>nd</sup> Principal Meridian, in Lake County, Indiana, being more particularly described as: Commencing at the Southwest corner of said Section 23; thence North 87 degrees 54 minutes 24seconds East, along the South line of the Southwest 1/4 of said Section 23, 40.00 feet to the East right-of-way line of Mississippi Street; thence North 02 degrees 42 minutes 00 seconds West, along the East right-of-way line of Mississippi Street, being parallel to the West line of the Southwest 1/4 of said Section 23, 1589.81 feet to the POINT OF BEGINNING; thence continuing North 02 degrees 42 minutes 00 seconds West along the East right-of-way line of Mississippi Street, 87.25 feet; thence North 87 degrees 18minutes 00 seconds East, 90.00 feet; thence South 02 degrees 42 minutes 00 seconds East, 24.25 feet; thence South 87 degrees 18 minutes 00 seconds West , 38.00 feet; thence South 02 degrees 42 minutes 00 seconds East, 63.00 feet; thence South 87 degrees 18 minutes 00 seconds West, 52.00 feet to the POINT OF BEGINNING.



# PLAT OF SURVEY

FOUND MONUMENT  
NORTHWEST CORNER  
W1/2, SW1/4  
SEC. 23, TWP 35N, R8W

**LEGAL DESCRIPTION:**

Part of the NW 1/4 of the SW 1/4 of Section 23, T35N, R8W, of the Second Principal Meridian in Ross Township, Lake County, Indiana bounded and described as follows: Commencing at the southwest corner of said Section 23; thence North 87 degrees 54 minutes 24 seconds East, 40.00 feet to the easterly right of way of Mississippi Street; thence North 2 degrees 42 minutes 00 seconds West along the easterly right of way line of Mississippi Street 1499.07 feet to the point of beginning of this description; thence continuing North 2 degrees 42 minutes 00 seconds West, 177.99 feet; thence North 87 degrees 18 minutes 00 seconds East, 189.98 feet; thence South 44 degrees 10 minutes 00 seconds West, 260.33 feet to the point of beginning. Parcel contains 0.388 acres.



**INDIANA AMERICAN WATER COMPANY  
INGRESS/EGRESS AND UTILITY EASEMENT**

That part of the NW 1/4 of the SW 1/4 of Section 23, Township 35 North, Range 8 West, of the Second Principal Meridian in Lake County, Indiana, being particularly described as: COMMENCING at the Southwest corner of said Section 23; thence N.87°54'24"E., along the South line of the SW 1/4 of said Section 23, 40.00 ft. to the East right of way line of Mississippi Street; thence N.02°42'00"W., along the East right of way line of Mississippi Street, being parallel to the West line of the SW 1/4 of said Section 23, 1589.81 ft. to the POINT OF BEGINNING; thence continuing N.02°42'00"W., along the East right of way line of Mississippi Street, 87.25 ft.; thence N.87°18'00"E., 90.00 ft.; thence S.02°42'00"E., 24.25 ft.; thence S.87°18'00"W., 38.00 ft.; thence S.02°42'00"E., 63.00 ft.; thence S.87°18'00"W., 52.00 ft. to the POINT OF BEGINNING.

**SURVEYOR'S REPORT**

**AVAILABILITY AND CONDITION OF REFERENCE MONUMENTS**  
Recovered monuments, in good condition, at the Southwest corner and the Northwest corner of the SW 1/4 of Section 23.

**OCCUPATION OR POSSESSION LINES**  
None present at time of survey.

**CLARITY OR AMBIGUITY OF THE RECORD DESCRIPTION**  
The legal description of record is clear and concise.

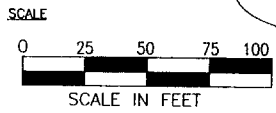
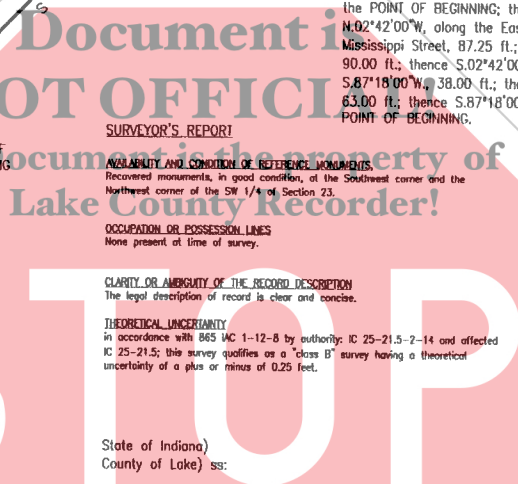
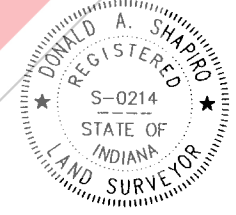
**THEORETICAL UNCERTAINTY**  
in accordance with 865 IAC 1-12-8 by authority: IC 25-21.5-2-14 and affected IC 25-21.5; this survey qualifies as a "class B" survey having a theoretical uncertainty of a plus or minus of 0.25 feet.

State of Indiana)  
County of Lake) ss:

This is to certify that this survey was performed in part by subordinate employees under the direction of a registered land surveyor, and to the best of my knowledge and belief was executed according to the survey requirements of Title 865 IAC 1-1-12-13.

Given under my hand and seal this 29th day of July 2003.

*Donald A. Shapiro*  
Donald A. Shapiro, Registered Land Surveyor, State of Indiana, No. S-0214



LEGEND	<b>GREAT LAKES ENGINEERING, Inc.</b> ENGINEERS and SURVEYORS	2588 Portage Mall P.O. Box 1036 Portage, IN 48368 219.762.3559	DRAWING FILE	PLAT OF SURVEY INDIANA AMERICAN WATER MERRILLVILLE, IN	SHEET
			CALCS SURVEY BOOK 00.00/ 00.00		1 of 1 PROJECT IWD2.1 SCALE 1" = 50'