

11

STATE OF INDIANA  
**EASEMENT FOR ROADWAY (Parcel 2)**  
FILED FOR RECORD

2005 051732

CMA 620051964

MSL  
MSC TRIC

THIS EASEMENT FOR ROADWAY ("Agreement"), made this 17 day of May, 2005 by and between NORTHERN INDIANA PUBLIC SERVICE COMPANY, hereinafter referred to as "Grantor", and NORTHERN INDIANA MECHANICAL COMPANY, INC., hereinafter referred to as "Grantee".

**WITNESSETH:**

CHICAGO TITLE INSURANCE COMPANY

WHEREAS, Grantor has a real property interest in that certain property located in Lake County, Indiana, legally described on Exhibit "A" attached hereto (the "Premises"), which is generally used by Grantor, including without limitation, for the transmission and distribution of high voltage electricity and for the transportation of gas, and upon which there may be constructed and installed, under various rights, sewers, drains, and pipelines owned by various companies for the transportation of sewage, water, storm water, petroleum and petroleum products; and

WHEREAS, Grantee is desirous of constructing, operating and maintaining on a portion of the Premises a gravel private roadway, consistent with the engineering standards and other terms set forth herein ("the Roadway") for the use of Grantee and its customers and invitees;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the parties hereinafter expressed, it is hereby covenanted and agreed as follows:

- GRANT AND USE OF EASEMENT.** Grantor hereby gives, grants, bargains, sells and conveys unto Grantee, its successors and assigns, without any warranty or representation of any kind or nature and only to the extent Grantor's title permits and subject to the terms hereinafter set forth, a non-exclusive easement, right and authority, from time to time, in, upon, along and over that thirty (30) foot wide portion of the Premises legally described on Exhibit "B" attached hereto ("Easement Premises") to install, construct, maintain, operate, repair, alter, replace, renew and remove the Roadway. For purposes of this Agreement, non-exclusive shall mean that Grantor and others to whom Grantor has granted or will grant certain rights and privileges ("Third Parties") shall have the right to use the Easement Premises, provided such use or uses

**FILED**

JUN 22 2005

STEPHEN R. STIGLICH  
LAKE COUNTY AUDITOR

30  
CT  
RW  
**01805**

4

shall not materially adversely interfere with the maintenance or use of the Roadway by Grantee.

2. **INSTALLATION OF THE ROADWAY.** Prior to installing the Roadway, Grantee shall submit to Grantor for Grantor's approval its plans and specifications for the installation thereof, and shall furnish any additional information concerning the installation of the Roadway from time to time as may be required by Grantor. Grantee shall install, maintain and remove the Roadway in accordance with the engineering standards set forth on Exhibit "C" attached hereto and otherwise in accordance with good engineering practice and only on the Easement Premises. Grantee understands and agrees that Grantor's approval of Grantee's plans and specifications shall in no way make Grantor liable for any loss, cost, damage or expense incurred in connection with the installation, use, maintenance or removal of the Roadway, all of which liability shall exclusively be Grantee's. Grantee shall, at Grantee's expense, secure any permits or other consents required by law or ordinance of any municipality or other public body having jurisdiction over the use and maintenance of the Roadway and shall at all times comply with all laws and regulations, both local and general, which affect the maintenance, operation and use of the Roadway. In the case of the initial installation of the Roadway and, except in the case of emergency repairs, notice shall be given in writing by Grantee to Grantor at least seventy-two (72) hours in advance.

In the event the initial installation does not comply with the terms of this Agreement, including without limitation, the engineering standards set forth herein, Grantee shall have sixty (60) days from the date written notice is given by Grantor to Grantee to bring the Roadway into compliance with this Agreement. If the Roadway is not brought into compliance with this Agreement within said sixty (60) days, this Agreement, without any further act or instrument by either party shall automatically terminate. Notwithstanding the foregoing, if Grantor so desires, Grantee shall execute upon demand a written termination statement in recordable form.

3. **NO INTERFERENCE.** In exercising the rights herein granted, Grantee shall not interfere with the road, towers, electrical transmission lines, gas mains, pipes, equipment and/or facilities of Grantor constructed or to be constructed in, over, upon or under the Easement Premises, or the Premises. It is understood and agreed by the parties

hereto that Grantor may have, prior to the execution hereof, granted to Third Parties certain rights and privileges in the Easement Premises or the Premises, including without limitation the right to operate and maintain pipelines in the Easement Premises or the Premises, and this Agreement is made subject and subordinate to such rights and privileges as granted. It is also understood and agreed that Grantor may grant other rights and privileges in the future to Third Parties, and Grantee hereby consents to such future rights of Third Parties for the use of the Easement Premises or the Premises by other persons or corporations, provided such use shall not materially adversely interfere with the maintenance or use of the Roadway by Grantee. Notwithstanding the foregoing consent by Grantee, if Grantor so desires, Grantee shall execute upon demand such consents as Grantor may deem necessary or appropriate.

4. **NO OTHER IMPROVEMENTS.** No structures or other improvements shall be constructed or otherwise placed on the Easement Premises by Grantee. Grantee shall permit no holes, obstructions or any other condition, including without limitation the release of any hazardous materials or hazardous substances, on the Easement Premises which could create a hazard of any kind. Grantee shall not allow the parking of vehicles on the Easement Premises. Grantee shall keep and maintain the Easement Premises in a clean and orderly condition at all times, and shall maintain the Easement Premises in a good and safe condition and shall not interfere with the physical integrity of the existing land surface in any way other than the roadbed surface. Grantee shall not install a gate across the Easement Premises without the prior written approval of Grantor, which approval shall be in Grantor's sole discretion.

5. **SAFEGUARDS.** Grantee shall provide and maintain to the satisfaction of Grantor adequate barriers and safeguards for and in respect to all poles, towers, pipes, blow-off valves, risers and any other structures of Grantor or any other Third Parties located near enough to the Roadway to be endangered by the installation of the Roadway. Grantee shall promptly reimburse Grantor for any reasonable costs or expenses incurred by Grantor in the protection, alteration, or relocation of its utility facilities located on or near the Easement Premises or the Premises which must, in the judgment of Grantor, be relocated altered or protected because of the installation and use of the Roadway by Grantee. In the event that it becomes necessary, in the reasonable discretion of Grantor,

to encase any pipelines or other facilities of Grantor adjacent to the Roadway because of the installation of the Roadway by Grantee, Grantee shall bear the cost of encasing said pipelines or facilities. Notwithstanding the foregoing, Grantor shall not require any pipelines or facilities adjacent to the Roadway to be encased unless it is reasonably necessary to insure the safe operation of said pipelines or facilities.

6. **TEMPORARY RIGHTS.** Grantor further grants the right and authority to use such space on the Premises which may be reasonably necessary during the initial installation of the Roadway as indicated on Exhibit "A" provided all due caution is exercised in protecting and no interference adversely affects Grantor's property and facilities. Grantor reserves the right to make a claim for any damages for any acts or omissions of Grantee occurring outside of the Easement Premises.

7. **GRANTOR REPRESENTATIVE.** Grantor may have a representative present at any or all times when Grantee is installing, maintaining or removing the Roadway for the purpose of assuring that any such work will not interfere with Grantor's operation of its facilities and that the work is being done in accordance with the terms of this Agreement. It is mutually agreed that the presence of a representative shall not relieve Grantee from any liability, claim, or obligation hereunder. Grantee shall reimburse Grantor for the expense of protecting its facilities occasioned by the installation, maintenance or removal of the Roadway upon receipt of billing therefor from Grantor.

8. **TAXES.** Grantee shall pay or reimburse Grantor for any and all general property taxes or special assessments which may result from the use of the Easement Premises or any a portion of the Premises by Grantee under the terms of this Agreement.

9. **WAIVER.** Grantee as a part of the consideration for this Agreement (i) releases and waives any and all right to recover any and all losses, claims, expenses or damages for personal injuries, property damages, loss of life or property from Grantor for or on account of any loss of any kind or nature suffered by Grantee arising out of the use, maintenance, repair or presence of the Roadway as permitted by this Agreement and (ii) assumes all risks of injuries or damage to its officials, employees, contractors, servants, agents, tenants and invites and their property while on the Easement Premises or the Premises and hereby releases and discharges Grantor from any and all liability therefor.

**10. INDEMNITY AND INSURANCE.** Grantee agrees to indemnify, defend and save Grantor harmless from any and all liabilities, losses, claims, expenses or damages for business losses, personal injuries, property damages, loss of life or property of any kind or character which may be brought against Grantor by any person or party directly or indirectly resulting from or arising out of, wholly or in part, the installation, operation, maintenance, repair, presence or removal of the Roadway as permitted by this Agreement. The Grantee, at Grantee's expense, shall obtain and keep in force during the term of this Agreement, general liability insurance (with contractual liability) in an amount not less than Two Million Dollars (\$2,000,000.00) (to be increased from time to time as reasonably determined by Grantor) with a company and in a form satisfactory to Grantor fully covering Grantor with respect to all matters arising by, through or under this Agreement; and Grantee shall deliver and maintain with Grantor at all times a current certificate of insurance evidencing said coverage and also, upon request of Grantor, deliver the original policy. Grantor shall be named as an additional named insured in said insurance policy. In the event of failure of Grantee to obtain or keep in force such insurance policy, Grantor may either (i) terminate this Agreement at which time Grantee shall have sixty (60) days to remove the Roadway or be deemed without further act or instrument by either party to have sold the Roadway to Grantor or (ii) obtain the same and Grantee shall pay the premium therefor and also reimburse Grantor for any expenditure for obtaining such insurance upon Grantor's rendering a bill therefore. It is understood and agreed by Grantee that at all times during the term of this Agreement, including the installation, maintenance and repair of the Roadway, that the electric lines of Grantor are energized and the gas lines are pressurized and thereby create a danger to people working in the vicinity of said electric and gas lines should they come in contact with such electric or gas lines. Grantee specifically agrees to indemnify, defend and save Grantor harmless from any claims of Grantee arising from Grantee, its agents, servants, employees, invites or contractors coming in contact with the electric and/or gas lines of Grantor during the term of this Agreement, including the operation, use and/or maintenance of the Roadway. It is further understood and agreed by Grantee that Grantor shall under no circumstances be liable or responsible for any injuries or damages

sustained in relation to the Roadway of Grantee which may result directly or indirectly from the operation, use or maintenance of Grantor's facilities.

11. **RESERVED RIGHTS.** The use of the Easement Premises by Grantee under this Agreement is subject and subordinate to possession and use of the Easement Premises and the Premises by Grantor for the construction, maintenance, operation and repair of gas and electrical transmission or distribution lines, generating facilities, road and any other facility now or hereafter placed upon, over or under the Easement Premises and the Premises. Grantor reserves full possession for its uses and purposes and the right to enter upon the Easement Premises and the Premises at any and all times to repair, replace, renew, erect or complete the erection of any existing or future gas or electrical transmission or distribution lines, road or other facilities over, under and across said Easement Premises and the Premises as it desires. Grantor reserves the right to make replacements, inspections, alterations, extensions, or repairs to its poles, towers, foundations, lines, wires or gas pipes or mains or authorized others to perform such work with as little injury as possible to the Roadway and without any liability therefore.

12. **NO LIENS.** Grantee further covenants and agrees that no mechanic's or other lien shall be permitted to accrue or be filed against the Easement Premises or the Premises for or on account of any action, matter or thing required or permitted to be done by Grantee under this Agreement and in the event that any such mechanic's or other lien does accrue or is filed against the Easement Premises or the Premises, Grantor may take such steps and make such payments as are necessary to extinguish said mechanic's or other lien and Grantee shall pay Grantor, upon being billed therefor, the amount that Grantor was required to pay and expend in order to extinguish said lien. If Grantee does not so reimburse Grantor or, in the event Grantor does not elect to pay-off the mechanic's or other lien, if any such lien remains on the Easement Premises or Premises for more than thirty (30) days, this Agreement shall automatically terminate without any further act or instrument by either party.

13. **NOTICES.** All notices or demands hereunder may be served on Grantor by certified mail addressed to Northern Indiana Public Service Company, Attention: Real Estate Services, 801 East 86th Avenue, Merrillville, Indiana 46410, and such notices and demands hereunder may be served on Grantee by certified mail

addressed to \_\_\_\_\_. The mailing of such notices or demands by certified mail shall be sufficient service thereof.

14. **SUCCESSIONS AND ASSIGNS.** The rights and responsibilities set forth in this Agreement shall be perpetual and shall run with the land. This Agreement and its privileges shall further be binding upon and inure to the benefit of the parties hereto, and to their respective successors and assigns.

15. **ABANDONMENT.** The parties hereto agree that should the Roadway be abandoned, or not used for a period of two (2) years, or not installed within two (2) years from the date hereof, or in the event the Grantee is in default under this Agreement in any material respect and fails to cure such default within (30) days after written notice from Grantor, this Agreement shall automatically terminate without any further act or instrument by either party, but Grantee shall, if requested by Grantor, release the same of public record and remove said Roadway.

16. **GOVERNING LAW; COMPLETE AGREEMENT.** This Agreement shall be construed and governed in all respects under the laws of the State of Indiana. This instrument sets forth the entire agreement of the parties with respect to the subject matter hereof.

17. **AMENDMENT.** This Agreement may be amended only by written agreement of Grantor and Grantee.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**GRANTOR:**

Northern Indiana Public Service Company

By: Gail W. Harowski  
Gail W. Harowski

Its: Vice President

**GRANTEE:**

Northern Indiana Mechanical Company, Inc.

By: T. D. C.

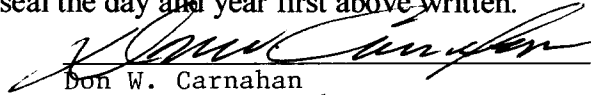
Its: PRESIDENT

**ACKNOWLEDGEMENTS**

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

BE IT REMEMBERED that on this 17 day of May, 2005 before me, a notary public in and for the County and State aforesaid, personally appeared \_\_\_\_\_  
Gail W. Harowski , as \_\_\_\_\_ Vice President of Northern Indiana Public Service Company, and acknowledged the execution of the above and foregoing instrument on behalf of said corporation as the voluntary act and deed of said corporation and of said official for said corporation for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year first above written.

  
Don W. Carnahan  
Resident of \_\_\_\_\_ Lake \_\_\_\_\_ County, IN

My Commission Expires:


September 9, 2010

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

**Document is NOT OFFICIAL!**  
**This Document is the property of the Lake County Recorder!**

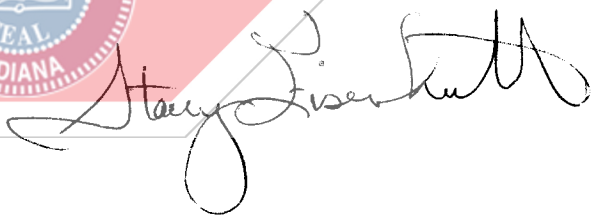
BE IT REMEMBERED that on this 17<sup>th</sup> day of May, 2005, before me, a notary public in and for the County and State aforesaid, personally appeared Terence Kiest , as President of Northern Indiana Mechanical Company, Inc., and acknowledged the execution of the above and foregoing instrument on behalf of said corporation as the voluntary act and deed of said corporation and of said official for said corporation for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year first above written.

  
Resident of Lake \_\_\_\_\_ County, IN

My Commission Expires:

1-15-08





**EXHIBIT A**

**Premises Legal Description**

**The North 180 feet of the East 258.03 feet of the West 896.41 feet of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section 12, Township 36 North, Range 8 West of the Second Principal Meridian in Lake County, Indiana.**



**EXHIBIT B**

**Easement Premises Legal Description**

Part of the Northwest Quarter of the Southwest Quarter of Section 12, Township 36 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana described as follows:

Commencing at the Northwest corner of the Southwest Quarter of said Section 12; thence on an assumed bearing of North 90 degrees 00 minutes East along the North line of the Southwest Quarter of Said Section 12 a distance of 866.41 feet to the place of beginning of this description; thence South 00 degrees 39 minutes East parallel with the West line of the Southwest Quarter of Said Section 12 a distance of 180.01 feet to a point which is 180 feet South of the North line of the Southwest Quarter of said Section 12; thence North 90 degrees 00 minutes East parallel with the North line of the Southwest Quarter of said Section 12 a distance of 30 feet to a point; thence North 00 degrees 39 minutes West a distance of 180.01 feet to a point on the North line of the Southwest Quarter of Said Section 12; thence South 90 degrees 00 minutes West along the North line of the Southwest Quarter of said Section 12 a distance of 30 feet to the place of beginning of this description.



**EXHIBIT C**

**Engineering Standards**

CHI\4249048.1 04.26.05 04: 40

