

ORDINANCE NO. 2008- 20

**AN ORDINANCE AMENDING THE RATES AND CHARGES FOR THE USE OF AND SERVICES RENDERED BY THE SEWAGE WORKS SYSTEM OF THE TOWN OF WHITESTOWN, INDIANA**

WHEREAS, the Town of Whitestown, Indiana (the "Town") has established, acquired, and financed its sewage works pursuant to Indiana Code 36-9-23 et. seq., as amended, and other applicable provisions of Indiana law (collectively, the "Act"), for the purpose of providing for the collection, treatment and disposal of sewage from inhabitants in and outside the Town; and

WHEREAS, the current schedule of rates and charges for the sewage works is set forth in Ordinance No. 2006-16, adopted by the Town Council of the Town (the "Council") on May 8, 2006 (the "Prior Ordinance"); and

WHEREAS, Reedy & Peters LLC, certified public accountants and financial advisor to the Town, has prepared a rate report concerning the rates and charges of the sewage works in connection with the proposed issuance of sewage works revenue bonds to refinance certain outstanding obligations of the sewage works (the "Report"); and

WHEREAS, based upon the Report, the Council finds that the current rates and charges for the use of and service rendered by the sewage works do not produce sufficient revenues to pay all the legal and necessary expenses incident to the operation of such sewage works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the sewage works, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and

WHEREAS, based upon the Report, the Council finds that the current rates and charges do not produce an income sufficient to maintain the sewage works property in a sound physical and financial condition to render adequate and efficient service; and

WHEREAS, the Council finds that the current rates and charges for the use of and service rendered by the sewage works must be increased in order to provide sufficient revenue to meet such requirements, including the requirements of the Act; and

WHEREAS, the Council finds that the rates and charges set forth herein are based upon the cost of providing service to the customers of the sewage works and will enable to the Town to meet its legal revenue requirements for the sewage works; and

WHEREAS, the Council finds that in addition to increasing the rates and charges of the sewage works, it is necessary to establish a customer deposit requirement for the sewage works and implement a summer sprinkling rate for the sewage works; and

WHEREAS, the Council has caused notice of a public hearing on the rates and charges set forth herein to be duly advertised, posted and mailed, and has held a public hearing thereon, all pursuant to the Act;

NOW THEREFORE, be it ordained by the Town Council of the Town of Whitestown, Indiana that:

Section 1. The schedule of sewer rates and charges set forth in Schedule A of the Prior Ordinance, as referenced in Section 4 of the Prior Ordinance (the "Prior Rates and Charges"), is hereby amended and restated in its entirety with the new schedule of rates and charges attached hereto as Exhibit A and incorporated herein by reference (collectively, the "Amended Rates and Charges"). The Amended Rates and Charges include increases in certain of the Prior Rates and Charges and the establishment of a summer sprinkling rate, sewer tracker and customer deposit requirement.<sup>1</sup> The Amended Rates and Charges shall replace and supercede the Prior Rates and Charges wherever referred to in the Prior Ordinance.

Section 2. Section 7 of the Prior Ordinance concerning the Reitz Subsequent Connector Fees (as defined in the Prior Ordinance) is hereby amended and restated in its entirety as follows:

**"Section 7. Reitz Properties LLC Subsequent Connector Fees.** In addition to the Town's other rates, charges and/or penalties, the following shall apply.

- a. Each development or other property within the Eastern Service Area, as the same is defined and set forth in the August 12, 2008, Addendum No. 1 To Subsequent Connector Recoupment Agreement (Sewer Facilities for Reitz Properties, LLC) between the Town and Reitz Properties LLC, and amendments thereto ("Reitz Agreement"), shall pay a subsequent connector fee of \$564.45 for each EDU (as defined in the Reitz Agreement) in the development which will receive service from the connection, plus carrying charges, or as is otherwise set forth in the Reitz Agreement ("Reitz Subsequent Connector Fee(s)"). A true and accurate copy of the Reitz Agreement is attached hereto as Schedule D. The Reitz Subsequent Connector Fees shall be imposed based upon the Eastern Service Area and respective properties as they existed at the time that the Reitz Agreement was executed and as is set forth therein.
- b. The Reitz Subsequent Connector Fees shall be assessed until July 20, 2014."

Section 3. The Reitz Agreement set forth in Schedule D of the Prior Ordinance (the "Prior Reitz Agreement"), as referenced in Section 7 of the Prior Ordinance, is hereby replaced

<sup>1</sup> Exhibit A hereto restates in its entirety the schedule of rates and charges set forth in Schedule A of the Prior Ordinance. Certain rates and charges set forth in Exhibit A are not being increased or otherwise adjusted pursuant to this ordinance; however, such rates and charges are included in Exhibit A for ease of reference.

and superceded with the Addendum No. 1 To Subsequent Connector Recoupment Agreement (Sewer Facilities for Reitz Properties, LLC), dated August 12, 2008, between the Town and Reitz Properties, attached hereto as Exhibit B and incorporated herein by reference (the "New Reitz Agreement").

Section 4. Aside from (a) the Prior Rates and Charges contained in Schedule A of the Prior Ordinance, as hereby amended and restated with the Amended Rates and Charges attached hereto as Exhibit A and incorporated herein by reference, (b) Section 7 of the Prior Ordinance as hereby amended and restated, and (c) the Prior Reitz Agreement contained in Schedule D of the Prior Ordinance, as hereby replaced and superceded with the New Reitz Agreement attached hereto as Exhibit B and incorporated herein by reference, all other provisions of the Prior Ordinance shall remain in full force and effect.

Section 5. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

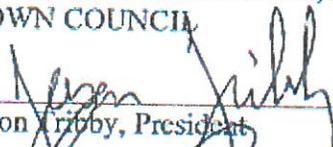
Section 6. The Prior Rates and Charges shall remain in effect until January 31, 2009. Beginning February 1, 2009, the Prior Rates and Charges shall no longer be in effect and the Amended Rates and Charges as hereby approved shall become effective for all use and services rendered by the sewage works of the Town.

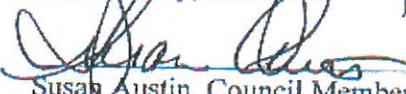
Section 7. The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance which shall be given effect without such invalid part or parts.

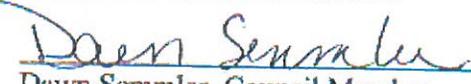
Section 8. This ordinance shall be in full force and effect from and after its passage.

9 Passed and adopted by the Town Council of the Town of Whitestown, Indiana on this day of December, 2008.

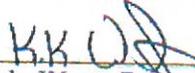
TOWN OF WHITESTOWN, INDIANA  
TOWN COUNCIL

  
Jason Tribby, President

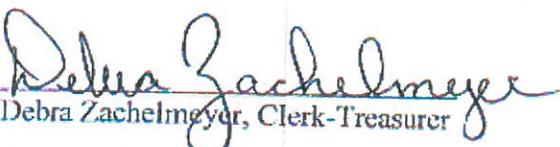
  
Susan Austin, Council Member

  
Dawn Semmler, Council Member

\_\_\_\_\_  
Kevin Russell, Council Member

  
Kyle West, Council Member

ATTEST:

  
Debra Zachelmeyer, Clerk-Treasurer

1st Read: 11-11-08

2nd Read: 12-2-08

3rd Read: 12-9-08

**EXHIBIT A**

**Rates and Charges for Sewer Service in the  
Town of Whitestown's Sanitary Sewer Service Territory**

**Section 1. Applicability**

This Schedule applies to all sewer service rendered by the Town in the Whitestown Sanitary Sewer Service Territory.

**Section 2. Meter Reading**

Metered accounts will be billed monthly. All meters will be read monthly. Customers will be billed on the basis of actual consumption for the total reading period.

**Section 3. Sewer Rates and Charges**

There shall be and there is hereby established for the use of and the service rendered within the Whitestown Sewer Territory, the following schedule of rates and charges.

**A. Base Charge for Metered Users**

Each metered user shall pay a minimum monthly service charge according to the following schedule:

<b><u>Metered User Category</u></b>	<b><u>Base Charge</u></b>
5/8" - 3/4" Meter	\$ 37.04
1" Meter	116.32
1-1/2" Meter	331.17
2" Meter	463.05
3" Meter	581.59
4" Meter	697.66
6" Meter	926.10
8" Meter	1,163.18

**B. Additional Commodity Charge for Metered Users**

In addition to the minimum service charge set forth in Paragraph A, all metered users shall pay a commodity charge based upon the users actual monthly usage, in the amount of \$4.01 for every incremental One Thousand (1,000) gallons of monthly consumption. By way of example, a user with between 4,001 and 5,000 gallons of monthly consumption will pay an additional commodity charge in the amount of \$20.05.

**C. Summer Sprinkling Relief**

In order that domestic and residential Customers of sewage service shall not be penalized for sprinkling lawns during the months of April through October, the billing for sewage service for residences or domestic Customers for said months of April through October, shall be based on the average water usage for the previous months of December, January and February. In the event the average water usage for said previous months of December, January and February is greater than the water usage for any of the months of April through October, then the billing for sewage service shall be computed on the actual water used in the month for which the sewage service bill is rendered. Domestic or residential sewage service, as applicable to the sprinkling rate, shall apply to each lot, parcel of real estate, or building which is occupied and used as a residence. Said sprinkling rate shall not apply to any premises which are partially or wholly used for industrial or commercial purposes. In the event a portion of such premises shall be used for commercial or industrial purposes, the owner shall have the privilege of separating the water service so that the residential portion of the premises is served through a separate meter, and in such case, the water usage as registered by the water meter serving such portion of the premises used for residential purpose would qualify under the sprinkling rate.

**D. Monthly Rates for Non-Metered Users**

All non-metered users shall pay monthly rates based upon the total estimated equivalent flows of that user. Each user shall pay \$61.12 per month for each Equivalent Dwelling Unit ("EDU") of anticipated wastewater flow. For example, a user who produces an estimated three (3) EDU's of wastewater shall incur a monthly consumption charge of \$183.36. Single-family dwellings shall pay a monthly user rate based upon an anticipated wastewater flow of one (1) EDU. In no event shall any single connection be judged to use less than one (1) EDU.

The estimated flow for all users other than single-family dwellings shall be calculated in accordance with 327 IAC 3-6-11 and equated to EDUs by dividing the estimated daily flow by 310 g.p.d. If there is no appropriate estimated flow factors listed in 327 IAC 3-6-11(b), then the Town shall determine the estimated flows based upon good engineering judgment and reasonable information. The estimated flows include domestic type wasteload estimates only and do not include processed water used in industrial or commercial operations. The Town shall have the right to reevaluate wasteloads at any time and take corrective action to assess for actual usage levels.

E. Excessive Strength Sewage Surcharge

In order that the rates and charges may be justly and equitably adjusted to the service rendered to Customers, the Town shall base its charges not only on the volume, but also on strength and character of the stronger-than-normal domestic sewage and wastes for which it is required to treat and dispose. The Town shall require the Customer, at the Customer's expense, to determine the strength and content of all sewage and wastes discharged, either directly or indirectly, into the sanitary sewage system, in such manner, by such method, and at such times as the Town may deem practicable in light of the conditions and attending circumstances of the case, in order to determine the proper charge. The Customer shall furnish a central sampling point available to the Town at all times.

1. Normal sewage waste strength should not have biochemical oxygen demand in excess of 240 milligrams per liter of fluid; suspended solids in excess of 250 milligrams per liter of fluid; ammonia in excess of 30 milligrams per liter of fluid; phosphorus in excess of 4 milligrams per liter of fluid; and fats, wax, grease, or oils, collectively, whether emulsified or not, in excess of 100 milligrams per liter of fluid. Additional charges for treating stronger-than-normal sewage shall be made on the following basis:
  - (a) Rate Surcharge Based Upon Suspended Solids  
There shall be an additional charge of 50 cents per pound of suspended solids for suspended solids received in excess of 250 milligrams per liter of fluid.
  - (b) Rate Surcharge Based Upon BOD  
There shall be an additional charge of 50 cents per pound of biochemical oxygen demand for BOD received in excess of 240 milligrams per liter of fluid.
  - (c) Rate Surcharge Based Upon Ammonia  
There shall be an additional charge of 60 cents per pound of ammonia for ammonia received in excess of 30 milligrams per liter of fluid.
  - (d) Rate Surcharge Based Upon Phosphorus  
There shall be an additional charge \$1.50 per pound of phosphorus received in excess of 4 milligrams per liter fluid.
  - (e) Rate Surcharge Based Upon Oils and Grease  
There shall be an additional charge of 25 cents per pound of fats, wax, grease, or oils, collectively, whether emulsified or not, received in excess of 100 milligrams per liter of fluid.

2. The determination of suspended solids, biochemical oxygen demand, ammonia, phosphorus, and fats, wax, grease, or oils, whether emulsified or not, contained in the waste shall be in accordance with the latest copy of "Standard Methods for the Elimination of Water, Sewage and Industrial Wastes," as written by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, and in accordance with "Guidelines Establishing Test Procedures for Analysis of Pollutants," 40 CFR Part 136, as hereinafter amended, supplemented, or replaced.

**F. Credit for Lawn Meter**

Commencing February 1, 2009, lawn meter sewer credits shall no longer be available for Customers of the utility who have previously purchased a lawn meter from the utility. All such Customers shall be subject to summer sprinkling relief under Section 3C and credits for lawn meters shall no longer apply. Any Customer who has purchased a lawn meter from the utility is entitled to a one-time credit of \$37.50 on future bills if such Customer returns the lawn meter to the utility in good working order by January 30, 2009.

**G. Indianapolis Sewer Rate Tracker**

For so long as the Town shall contract with the Consolidated City of Indianapolis, Indiana ("Indianapolis") for wholesale treatment and disposal services in connection with the Town's sewage works system, the Town shall be entitled to recover or refund through its rates and charges increases or decreases, respectively, in costs associated with a change in the costs to the Town for the wholesale services provided by Indianapolis through a sewer rate tracker. Within thirty (30) days of such change in costs to the Town, the commodity charge set forth under Section 3B shall be automatically adjusted upward or downward to reflect the change in such costs. The Town shall maintain on file at all times cost justification reflecting such changes in costs and the allocation of such costs to the commodity charge. Any change in the commodity charge under Section 3G pursuant to this provision shall be acknowledged by ordinance of the Town Council of the Town without the need for an additional public hearing.

**Section 4. Tap and Capacity Fees**

**A. Tap Fee**

1. The tap fee reflects the costs associated with connecting or tapping each Customer to the Town's system. Where a single Customer shall make multiple connections, an appropriate multiple of the single tap fee shall be charged.

2. A single tap fee for each Customer connecting to any portion of the system shall be \$750, exclusive of excavation, for the installation of a 5/8 or 3/4 inch residential meter service. All other services shall be installed at the Town's actual cost, but not less than \$750.

**B. Capacity Fee**

1. The capacity fee reflects the cost of the capacity in the Town's treatment plant and transmission lines which must be permanently allocated to real estate producing wastewater and connecting to the system.
2. A capacity fee for each equivalent dwelling unit ("EDU") or single residential unit connecting to the system shall be \$3,100.
3. The capacity fees will be determined on the basis of total number of EDUs with a residential unit considered one (1) EDU. All other parcels of land not used for residential dwelling units shall be converted to EDUs on the basis of the anticipated sewage from such real estate as compared to the anticipated sewage for residential dwelling units. Residential units have been determined by the Town to produce 310 gallons of wastewater per day. For no reason shall any waste-producing structure connecting to the System (including, but not limited to, mobile homes, apartments, and condominiums) be treated as less than one (1) EDU for purposes of any of the Town's rates and charges. When calculations of EDUs result in a fraction, the result shall be rounded up to the next whole number. For example, an EDU calculation of 3.3 for a property will be rounded up to 4 EDUs for purposes of calculating the capacity fee for such property.
4. Capacity fees may, at the Town's discretion, be excluded for parcels zoned agricultural or platted for use as cemeteries, golf courses, or parks or other non-wastewater producing real estate.

**C. Miscellaneous**

1. The Town shall not allow final and permanent connection or connections to the Town's sewage facilities of any real estate producing wastewater until a permit is obtained and payment has been made to the Town for the appropriate tap and capacity fees.
2. Any developer of real estate applying for service shall pay the applicable fees by platted sections before the sections are submitted for approval and recording or otherwise enter into an acceptable developer's agreement which shall provide for the future payment of the tap and capacity fees prior to final and permanent connection.
3. Tap and capacity fees shall be non-refundable.

**Section 5. Non-Recurring Charges and Service Charges**

- A. Establishing an account and installing a meter:**
- |   |                                  |
|---|----------------------------------|
| 5/8 or 3/4" meter:  | \$ 86.00 plus actual meter costs |
| 1" meter:   | \$ 86.00 plus actual meter costs |
| 1-1/2" meter:   | \$ 86.00 plus actual meter costs |
| 2" meter:   | \$ 86.00 plus actual meter costs |
| 3" meter:   | \$ 86.00 plus actual meter costs |
| 4" meter:   | \$ 86.00 plus actual meter costs |
| 6" meter:   | \$ 86.00 plus actual meter costs |
| 8" meter:   | \$ 86.00 plus actual meter costs |
| Visit to the premises regarding past due account (left on):   | \$25.00                          |
| Penalty charge for tampering with a meter or any of the Town's regulating or measuring equipment, or for access and use of the Town's sewage works without a meter: | \$175.00                         |
| Service call (including special meter reading and other service calls)  | \$75.00 per hour                 |
- B. Subsequent test of meter at Customer's request to the Town within 36 months of the First Test:**
- Actual Cost of Test (including time & materials)
- C. Charge, in addition to cost of excavation, for reconnection of service after disconnection of the same Customer:**
- \$100.00 per Equivalent Dwelling Unit
- D. Reprocessing of Customer account due to check not being honored (matter shall also be referred for prosecution to prosecuting attorney of county within 90 days):**
- Greater of \$27.50 or 5% of amount due, but not more than \$250
- E. Aggregate billing for Customer with multiple accounts:**
- \$10.00 monthly

- |    |  |             |
|----|--|-------------|
| F. | Special reading of meter at Customer's request (only billed if original meter reading was accurate): | \$66.00     |
| G. | Subsequent test of meter at Customer's request within 36 months of previous test (all meters):       | Actual Cost |
| H. | Repair or replacement of damaged meter (all meters):   | Actual Cost |

**Section 6. Inspection Fees**

- |  |   |
|--|---|
| Inspection fee for a lateral to be connected to the System from the point of connection to the structure (per trip): | \$50.00 (residential)<br>\$100.00 (non-residential) |
|--|---|

**Section 7. Collection and Payment Policies, Charges and Disconnection**

**A. Late Payment Charges**

Bills for sewer service will be rendered monthly. Bills which remain unpaid for a period of more than seventeen (17) days following the mailing of the bill by the utility shall be delinquent, and a late payment charge in the amount of ten percent (10%) of the first \$3.00 and three percent (3%) of the excess of \$3.00 shall be added to the bill and owed by the Customer.

**B. Over Payment**

Over payments by the Customer will be applied to the Customer's account as a credit towards future rates, charges, and fees, until such credits are fully depleted. Upon termination of the Customer's account, any credits remaining after satisfaction of all applicable rates, charges, and fees shall be refunded to the Customer.

**C. Partial Payment**

In the event that the Customer tenders only partial payment or any amount less than the total amount of all rates, charges, and fees outstanding, payments from the Customer shall be applied in the following manner:

1. First, payments shall be applied against any and all fees and other non-recurring charges (i.e., late payment charges, capacity fees, subsequent connector fees, reconnection fees, etc.), in a manner and order solely

within the Town's discretion, until all such fees and charges are fully satisfied.

2. Second, payments remaining after full satisfaction of rates, charges, and fees due and owing under Paragraph 1 shall be applied to that portion of the Customer's account owed for rates and charges from water services (i.e., monthly water rates, etc.).
3. Third, payments remaining after full satisfaction of rates, charges, and fees due and owing under Paragraphs 1 and 2 shall be applied to the remaining portion of the Customer's account owed for rates and charges from sewer services (i.e., monthly sewer rates, etc.).

In the event of a dispute as to the classification of a fee, rate, charge, or otherwise under this subsection, all determinations by the Town as to the ultimate allocation of specific payments shall be final.

**D. Collection Policies**

The Town reserves the right at all times, notwithstanding any waiver, whether express or implied, to pursue any and all available actions it deems necessary, as permitted by law, to collect outstanding or delinquent rates, fees, and charges, including, but not limited to, filing legal actions in a court of competent jurisdiction and/or filing liens against the Customer's property, and recover its costs, including, but not limited to, its attorneys' fees.

**E. Disconnection of Service**

The Town reserves the right to disconnect a Customer for nonpayment of service to the Customer's property. However, water service may not be discontinued to a Customer until the charges have been due and unpaid for at least thirty (30) days. Prior to discontinuance of service, the Town shall provide the Customer, by mail, with at least ten (10) days prior written notice of its determination to discontinue service if the unpaid charges are not paid before a date specified in the notice.

**Section 8. Customer Deposits**

Customers of the sewage works who have had their sewage works service disconnected and reconnected three (3) times or more within a three (3) year period shall be required to pay a deposit to the Town in an amount equal to the estimated average payment due from the property served by the sewage works for a three (3) month period (as determined by the Town). The deposit shall be obtained to ensure payment of sewer fees and may be applied to delinquent sewer fees of the Customer at any time by the Town. If all or a portion of the deposit is applied to delinquent sewer fees, the Customer shall be required to replenish the required deposit amount within thirty (30) days of prior written notice of the Town to do so. If a Customer fails to fully

replenish such deposit, the Town reserves the right to disconnect service to the Customer in accordance with Section 7E.

Any Customer deposits received shall be maintained by the Town in a separate fund. The deposit, less any outstanding penalties and service fees, shall be refunded to the Customer after a notarized statement from the Customer that as of a date certain the property being served (a) has been conveyed to another person; or (b) no longer uses or is connected with any part of the sewage system. A statement under (a) above must include the name and address of the person to whom the property is conveyed or transferred. If a Customer fails to satisfy costs and fees within sixty (60) days after the termination of his/her use or ownership of the property served, the Customer forfeits the deposit and all accrued interest and the forfeited amount shall be applied to the outstanding fees. Any other matters concerning deposits hereunder shall be governed by Indiana Code § 36-9-23-28.

**EXHIBIT B**

**New Reitz Agreement**

Original Document  
*2nd set*

**ADDENDUM NO. 1  
TO SUBSEQUENT CONNECTOR RECOUPMENT AGREEMENT  
(Sewer Facilities for Reitz Properties, LLC)**

This Addendum No. 1 ("Addendum") is made and entered into this 12<sup>th</sup> day of August, 2008, by and between the Town of Whitestown, a political subdivision of the State of Indiana (the "Town"), and Reitz Properties, LLC, an Indiana limited liability company ("Reitz"), with the intention of all parties to be bound by the content hereof.

**WITNESSETH:**

WHEREAS, Boone County Utilities, LLC ("Utility") and Reitz entered into that Subsequent Connector Recoupment Agreement, dated July 16, 2002 (the "Original Agreement"), a copy of which is attached hereto as Exhibit A,

WHEREAS, on September 9, 2003, the Utility filed a petition under Chapter 11 of the United States Bankruptcy Code as Case No. 03-16707-AJM-11 (the "Case");

WHEREAS, as of July 21, 2004 (the "Acquisition Date"), the Town purchased substantially all the assets of the Utility and in conjunction therewith assumed all of the rights and obligations of the Utility under the Original Agreement;

WHEREAS, in connection with that assumption and the claim filed by Reitz in the Case, the Utility agreed to pay and Reitz agreed to accept the sum of Twenty-Five Thousand Dollars (\$25,000) with respect to its claim in the case and reduce the Excess Construction Costs owed under the Original Agreement, which sum has been paid as of the date hereof;

WHEREAS, Section 1.4 of the Original Agreement contains a preliminary formula for calculating the cost per EDU and Excess Construction Costs for purposes of determining the Area-Wide Subsequent Connector Fee set forth in Section 1.6 of the Original Agreement; and

WHEREAS, the parties now desire to enter into this Addendum to amend the Original Agreement and recalculate the Excess Construction Costs to reflect the payment by the Utility, amend the Eastern Service Areas from which contributions will be collected as well as the corresponding total number of Developable Units outside the Development, and agree to the future collection and payment of the Area-Wide Subsequent Connector Fee by the Town.

NOW, THEREFORE, the parties, in consideration of the mutual promises, covenants and agreements to be kept and performed hereunder, including the aforesaid

recitals which shall be incorporated herein by reference and construed as terms of this Addendum with full force and effect equal to the following terms, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, do hereby agree as follows:

1. Definitions. Except as otherwise defined herein, all terms used in this Addendum shall have the same meaning as ascribed to such term in the Original Agreement, and the applicable definitions in the Original Agreement are incorporated by reference herein.

2. Incorporation of Recitals. The above recitals are hereby incorporated into and shall form a part of this Addendum.

3. Assumption. Effective as of the Acquisition Date, the Town assumed the Original Agreement, subject to the modifications herein. As a result of that assumption, the Town hereby agrees that it is bound by the Original Agreement, except as modified herein, as if it was originally a party thereto and shall perform all of the obligations of the Utility under the Original Agreement, except as modified herein. Reitz hereby agrees to the assumption of the Original Agreement subject to the terms and conditions set forth herein and the payment by the Utility, which payment has been made.

4. Eastern Service Area. The Eastern Service Area (i.e., the area from which an Area-Wide Subsequent Connector Fee may be collected) is amended as depicted on Exhibit B attached hereto. Consistent therewith, the parties agree to reduce the number of EDUs outside the Development by sixty-three (63).

5. Excess Construct Costs to be Recouped. The Excess Construction Costs set forth in Section 1.4 of the Original Agreement shall be modified as computed below:

(a)	Total estimated Construction Costs paid initially by Reitz (See Exhibit C of the Original Agreement) .....	\$687,815.00
(b)	Total Developable Units ("EDUs")(including area within the Development) .....	1,327
(c)	Estimated Cost per Unit [(a) divided by (b)] .....	\$518.32
(d)	Number of EDUs within the Development .....	556
(e)	Portion of Construction Costs allocated to the Development [(d) times (c)] .....	\$ 288,185.92
(f)	Total estimated Excess Construction Costs [(a) minus (e)] .....	\$ 399,629.08

(g)	Payment by Utility to Reitz.....	\$ (25,000.00)
(h)	Excess Construction Costs to be recouped from subsequent connectors (i.e., aggregate cap on Area-Wide Subsequent Connector Fee).....	\$374,629.08
(i)	Number of EDUs outside the Development [(b) minus (d) minus 63].....	708
(j)	Base Area-Wide Subsequent Connector Fee (prior to carrying charges) to be collected prospectively by the Town .....	\$564.45

6. Period for Reamortment. The ten (10) year period referenced in Section 1.6 of the Original Agreement shall be extended and continue through and until July 20, 2014.

7. Carrying Charges. On a going forward basis, the carrying charge shall be calculated at a flat rate of \$31.04 per EDU (i.e., 5.5% of the Base Area-Wide Subsequent Connector Fee set forth above) per year since January 1, 2003. For example, the carrying charge for a single EDU collected on January 1, 2009, shall be \$186.24 (\$31.04 x 6 years). The carrying charges shall be prorated based on the date of collection.

8. Construction Completion, Conditions Subsequent and Interim Collection of Fees. Sections 1.5, 6 and 7 of the Original Agreement are hereby deleted in their entirety effective as of the date of this Addendum. Accordingly, notwithstanding the conditions subsequent set forth in Section 6 of the Original Agreement, the Town agrees to collect the Area-Wide Subsequent Connector Fee, as amended herein, from any future Area-Wide Subsequent Connector in the Eastern Service Area, as amended herein. However, the Town consents to any Area-Wide Subsequent Connector Fees that have already been paid.

9. Waiver of Annexation. In exchange for the benefits bestowed upon the Development (as defined in the Original Agreement) by the Town's provision of the desired service, Reitz hereby releases and waives all rights to remonstrate against the Town's pending annexation and any future annexation(s) of the unsold portions of the Development. For ease of reference, Reitz agrees to execute a separate waiver (a copy of which is attached hereto as Exhibit C) that will be binding upon Reitz as well as its successors and assigns.

10. Additional Easements. Further in exchange for the benefits bestowed upon the Development by the Town's provision of the desired service, Reitz (and its successors and assigns) agrees to provide additional water and/or sewer easements (in, over and across the Development) without additional compensation to facilitate the provision of sewer and water service to future users in and around the Development. The exact location of the easements will be determined at a future date by the parties.

11. Notice. All notices or other communications required to be given hereunder or under the Original Agreement shall be given in writing and shall be deemed to have been fully given on the date delivered, if delivered personally, or on the date mailed, if mailed by first-class United States Postage, postage prepaid, to the following addresses:

**Reitz:**  
Reitz Properties, LLC  
6250 Stonegate Lane  
Zionsville, IN 46077  
Attn: Dr. Larry Reitz

**Town:**  
3 South Main Street  
PO Box 325  
Whitestown, IN 46075-0025  
Attn: Town Council President

*Copy to:*

*Copy to:*

Michael Cook  
Wooden & McLaughlin LLP  
One Indiana Square, Suite 1800  
Indianapolis IN 46204

J. Christopher Janak  
Bose McKinney & Evans LLP  
2700 First Indiana Plaza  
135 North Pennsylvania  
Indianapolis, IN 46204

12. Due Authorization. Each of the parties represents and warrants to the other party that it has been duly authorized by all corporate action to enter into this Addendum and has all power and authority to perform its respective obligations under this Addendum. Each of the individuals signing on behalf of each party further represents and warrants that he or she is properly authorized and empowered to sign this Addendum on behalf of the party for which he or she is signing.

13. Affirmation of Original Agreement. Except as specifically provided herein, nothing in this Addendum shall modify, amend, or supercede any of the provisions of the Original Agreement, and said Original Agreement shall remain in full force and effect in each and every other respect; provided, however, that as of the Acquisition Date, the Utility shall have no obligations hereunder. Nothing herein shall constitute a waiver or estoppel by the Town or Reitz with regard to any of the Town's or Reitz's rights or remedies under the Original Agreement.

14. Governing Law. This Addendum shall be governed by, subject to, and construed under the laws of the State of Indiana, its rules, regulations, and any court order.

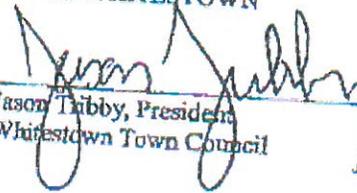
[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed, or have caused their duly authorized representatives to execute, this Agreement as of the date first written above.

REITZ PROPERTIES, LLC

By:   
Printed: Lawrence A. Reiter  
Is: Managing Member

TOWN OF WHITESTOWN

By:   
Jason Tabby, President  
Whitestown Town Council

564664 v1/15385-5



Aug. 15. 2008 8:44AM

No. 1247 P. 7

**EXHIBIT A**  
(Original Agreement)

**BOONE COUNTY UTILITIES, LLC**  
An Indiana Public Utility

**SUBSEQUENT CONNECTOR RECOUPMENT AGREEMENT**  
(For Sewer Facilities)  
[Area-wide Recoupment Procedures]

THIS SUBSEQUENT CONNECTOR AND AREA-WIDE RECOUPMENT AGREEMENT ("Agreement") entered into this 16<sup>th</sup> day of July, 2002, by and among BOONE COUNTY UTILITIES, LLC ("Utility"), an Indiana public utility and Indiana limited liability company, and REITZ PROPERTIES, LLC ("REITZ"), an Indiana limited liability company.

WITNESSETH:

WHEREAS, REITZ plans to prepare for development of certain real estate situated in Boone County, Indiana, a description of which is attached hereto as Exhibit A (the "Development"); and

WHEREAS, Utility holds a certificate of territorial authority issued by the Indiana Utility Regulatory Commission ("IURC") to provide sewer service in the rural area in which the Development is situated; and

WHEREAS, Utility and Developer are parties to a Special Contract for Partial Extension of Sewer Mains and Facilities dated July 16, 2002 ("Special Contract"), whereby, among other things, Utility has agreed to provide for the extension of sewer mains and facilities to the vicinity of the Development, subject to Reitz's agreement to pay for and construct an extension of Utility's existing sewer lines and facilities to reach the Development ("Off-Site Sewer Line") and a lift station to be located adjacent to SR 334 ("SR 334 Regional Lift Station"); and

WHEREAS, the extension of a portion of the Off-Site Sewer Line from its current end point to the Development and the construction of the SR 334 Regional Lift Station will require extraordinary construction costs, well beyond those normally incurred; and

WHEREAS, given this extraordinary cost, economical and efficient business practice requires that portion of the SR 334 Regional Lift Station and the Off-Site Sewer Line between its current end point along SR 334 and the Development be of sufficient capacity to serve the anticipated demands of present and future developments located in the vicinity of the Development so that parallel and/or duplicative line extensions and additional lift stations are not necessary in the near future; and

WHEREAS, the SR 334 Regional Lift Station and the Off-Site Sewer Line will directly benefit sites in the vicinity of the Development as depicted on Exhibit B attached hereto and incorporated herein by reference ("Eastern Service Area"), which are in the

process of being developed or are reasonably likely to be developed within the near future; and

WHEREAS, given the topography of the area and the distance from Utility's existing sewer main to the Development, the size of the facilities necessary to adequately extend service to the Development, including the SR 334 Regional Lift Station, will also provide sufficient capacity to serve the anticipated demands of the Eastern Service Area, and

WHEREAS, fairness dictates that such developers and landowners in the Eastern Service Area share in the payment of the cost of the SR 334 Regional Lift Station and the Off-Site Sewer Line prior to receiving service therefrom; and

WHEREAS, Utility has requested Reitz to initially fund the cost of the SR 334 Regional Lift Station and the Off-Site Sewer Line; and

WHEREAS, Reitz is willing to agree to initially pay the cost of the SR 334 Regional Lift Station and the Off-Site Sewer Line, provided Utility agrees to collect a portion of the construction costs from the other developers and landowners in the Eastern Service Area at the time service is made available to such developers and landowners and remit such amounts to Reitz.

NOW, THEREFORE, the parties, in consideration of the mutual promises, covenants and agreements to be kept and performed hereunder, including the aforesaid recitals which shall be incorporated herein by reference and construed as terms of this Agreement with full force and effect equal to the following terms, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, do hereby agree as follows:

Section 1.1. Eastern Service Area. The Eastern Service Area is the area identified on Exhibit B.

Section 1.2. Developable Units. For the areas within the Development and the Eastern Service Area, the number of developable units ("Developable Units") located within each property for which service is requested shall be equivalent to the greater of (a) the number of acres in the property or (b) the number of Equivalent Dwelling Units (as that term is defined and measured in the Boone County Utilities, LLC Rate Schedules for Sewer Service) planned for the area for which service is requested. The total number of Developable Units within the Development and the Eastern Service Area to be used for purposes of calculating Reitz's portion of the Construction Costs and the Area-Wide Subsequent Connector Fee (as defined in Section 1.6) shall be 1327 which amount shall remain fixed throughout the ten (10) year recoupment period described in Section 1.6.

Section 1.3. Construction Costs. The estimated Construction Costs subject to recoupment by Reitz under this Agreement are set forth on Exhibit C. For area-wide

recoupment, the parties agree to allocate the Construction Costs between Reitz and the Eastern Service Area based on the number of Developable Units.

Section 1.4. Cost Per Developable Unit. The Construction Costs per Developable Unit ("Cost Per Unit"), the portion of the Construction Costs allocated to Reitz, and the portion of the Construction Costs allocated to the Eastern Service Area ("Excess Construction Costs") shall be computed as follows:

- (a) The total estimated Construction Costs to be paid initially by Reitz (See itemization set forth in Exhibit C).....\$687,815.00
- (b) The total number of Developable Units, including the area within the Reitz Development is..... 1327.00
- (c) The estimated Cost Per Unit [(a) divided by (b)] is..... \$518.32
- (d) The number of Developable Units contained within the Reitz Development is..... 556.00
- (e) The portion of Construction Costs allocated to Reitz [(d) times (c)] is..... \$288,185.92
- (f) The total estimated Excess Construction Costs [(a) minus (e)] is.....\$399,629.08

Section 1.5. Construction Completion. Upon completion of the construction of the SR 334 Regional Lift Station and the Off-Site Sewer Line and acceptance thereof by the Utility, the Cost Per Unit, as set forth in Section 1.4(c) of this Agreement, shall be recalculated to reflect the total actual Construction Costs associated with that portion of the Off-Site Sewer Line, and such recalculated amount shall be used thereafter as the basis for determining the area-wide contribution to be made by Area-Wide Subsequent Connectors referred to in Section 1.6 of this Agreement and the amount of the Construction Cost to be allocated to Reitz. Provided, however, that if, at any time following the execution of this Agreement and prior to conveyance of the SR 334 Regional Lift Station and/or the Off-Site Sewer Line by Reitz to Utility, legislation is enacted to impose a tax on contributions of such facilities to Utility, and such tax will be imposed, and paid or reimbursed by Reitz, on the Construction Costs associated with the SR 334 Regional Lift Station and/or the Off-Site Sewer Line to be contributed by Reitz to Utility, the Cost Per Unit shall be recalculated to reflect the application of the tax, grossed-up, to be paid by Reitz to Utility as an additional contribution to Utility, and such recalculated amount shall be used thereafter as the basis for determining the Area-Wide Subsequent Connector Fee. To the extent following any such recalculation, the parties determine that a prior Area-Wide Subsequent Connector (hereafter defined) paid a higher Cost Per Unit than that resulting from the recalculation, the parties agree to make appropriate and equitable adjustments to the amount paid by such Area-Wide Subsequent Connector, it being expressly understood that any partial refund to be paid to such Area-

Wide Subsequent Connector shall be paid by Reitz to the extent the Area-Wide Subsequent Connector Fee (as defined in Section 1.6) collected by Utility from such Area-Wide Subsequent Connector has been paid over to Reitz, and, to the extent such Area-Wide Subsequent Connector Fee has not been delivered to Reitz, Utility may pay such refund amount to the Area-Wide Subsequent Connector subject to the prior written consent of Reitz, which consent shall not be unreasonably withheld.

Section 1.6. Contributions by Area-Wide Subsequent Connectors. Within ten (10) years following completion of construction and installation of the SR 334 Regional Lift Station and the Off-Site Sewer Line and acceptance thereof by Utility, and except as otherwise provided in Section 5 hereof, Utility shall not (a) make a sewer-line extension that will connect to or utilize the SR 334 Regional Lift Station or the Off-Site Sewer Line to serve a development or other property within the Eastern Service Area or (b) connect a new development in the Eastern Service Area to a then existing sewer line (whether or not connected to or utilizing the SR 334 Regional Lift Station or the Off-Site Sewer Line) without first collecting from the developer or owner requesting the sewer line extension or connection (m "Area-Wide Subsequent Connector") a cash contribution equal to the Cost Per Unit, as computed under Section 1.4(c) and 1.5 of this Agreement, multiplied by the number of Developable Units in the development which will receive service from the main extension or connection, plus carrying charges ("Area-Wide Subsequent Connector Fee"). The carrying charges shall be calculated for each year (or portion thereof) from the year in which the SR 334 Regional Lift Station and the Off-Site Sewer Line is completed and accepted by Utility to the year in which the Area-Wide Subsequent Connector Fee is paid at a rate equal to the national prime rate percentage first reported in the Wall Street Journal in each such year (or portion thereof) plus 50 basis points. However, Utility shall not require any Area-Wide Subsequent Connectors to contribute an amount hereunder which, when aggregated with all previously paid Area-Wide Subsequent Connector Fees and Reitz's allocable share of the Construction Costs would exceed the sum of Construction Costs and carrying charges. Utility shall have no obligation to collect Area-Wide Subsequent Connector Fees from Subsequent Connectors requesting sewer line extensions following such ten (10) year period.

Section 2. Refunds on Basis of Subsequent Connections. Subject to Section 7 of this Agreement, Utility shall refund to Reitz moneys collected by Utility pursuant to Section 1.6 of this Agreement, including the carrying costs collected pursuant to Section 1.6; provided, however, that no refunds shall be required to be made by Utility if an Event of Default (as defined in the Special Contract) has occurred under Section 20 of the Special Contract.

Section 3. Disposition of Unfunded Contributions. It is agreed that, at the expiration of ten (10) years from the date of completion of construction of the SR 334 Regional Lift Station and the Off-Site Sewer Line, any Area-Wide Subsequent Connector Fees collected by the Utility pursuant to Section 1.6, which cannot be refunded to Reitz through reasonable diligence of Utility shall, subject to applicable law, become the property of Utility and shall be permanently retained by Utility thereafter.

Section 4. Time of Refund Payment. Subject to Section 7 of this Agreement, any refunds payable under this Agreement shall be paid by Utility within thirty (30) days of the date the Utility collects the Area-Wide Subsequent Connector Fee from the Subsequent Connector.

Section 5. Support Before Governmental Agencies or Courts. Reitz and Utility, each at its own expense, agree to a mutual obligation of good faith effort to support, defend and cooperate with the other in connection with any challenge or opposition to this Agreement or the requirements hereof before any regulatory agency or court of first impression with jurisdiction over the subject matter of this Agreement.

Section 6. Conditions Subsequent. While the parties generally desire to enter into this Agreement at present so as not to delay Reitz's Development, the parties acknowledge that there are certain contingencies and uncertainties pending which, depending on the resolution of certain issues, could result in a situation wherein this Agreement does not accurately reflect the parties' bargain as of the date of execution of this Agreement. Specifically, there are contingencies and uncertainties relating to recoupment agreements of a substantially similar form and type at issue in that certain matter pending before the Indiana Utility Regulatory Commission under Cause No. 42131 and styled *Verified Petition of the Board of Commissioners of Boone County, Indiana to Revoke the Certificate of Territorial Authority Issued to Boone County Utilities, LLC* ("Cause No. 42131"). Therefore, the parties hereby agree that this Agreement shall be subject to the following conditions subsequent:

- (a) The final order in Cause No. 42131 shall not in any material manner prohibit or interfere with Utility's ability to collect area-wide subsequent connector fees in the manner contemplated by Section 1.6 of the Area-Wide Recoupment Agreement.
- (b) The final order in Cause No. 42131 shall not require Utility to pay any portion of area-wide subsequent connector fees out of the Utility's standard contribution fee or any other utility proceeds (other than a separate area-wide subsequent connector fee) or otherwise materially affect the amount and source of payment of area-wide subsequent connector fees.
- (c) In the event of any appeal of one or more issues identified in the above Sections 6(a) and 6(b) above, such appeal shall be finally and conclusively resolved in a manner consistent with Sections 6(a) and 6(b) above.

Section 7. Interim Collection of Fees. In the event that any connections are made to Utility's system pursuant Section 1.6 of this Agreement prior to a final order in Cause No. 42131, and the exhaustion of any appeals thereof, Utility shall proceed to collect the area-wide subsequent connector fees and shall hold such fees in escrow until the earliest of the following events:

- (a) The satisfaction of all conditions subsequent set forth in Section 6 of this Agreement, in which event any Area-Wide Subsequent Connector Fees held in escrow shall be promptly remitted to Reitz; or
- (b) after all appeals of the final order in Cause No. 42131 have been exhausted or the time for appeal has otherwise run, it becomes apparent that one or more of the conditions specified in Section 6 of this Agreement will not be satisfied, in which event, Utility shall have no further obligation to hold such Area-Wide Subsequent Connector Fees in escrow.

Section 8.1. Notice. All notices or other communications required to be given hereunder shall be given in writing and shall be deemed to have been fully given on the date delivered, if delivered personally, or on the date mailed, if mailed by first-class United States Postage, postage prepaid, to the following address:

Utility:

Boone County Utilities, LLC  
 Attn: James B. Harmon  
 P.O. Box 667  
 6999 Lexington Circle  
 Zionsville, IN 46077-0667

Reitz:

Reitz Properties, LLC  
 6250 Stonegate Lane  
 Zionsville, Indiana 46077

or such other address as the parties may by written notice specify.

Section 8.2. Successors. Each and all of the covenants, promises and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns in the interest of each of the parties hereto.

Section 8.3. Compliance with Commission Rules and Regulations. This Agreement is entered into by the Utility and Reitz subject to the rules, regulations, orders and determinations of the IURC as such may occur or change from time to time throughout the term of this Agreement, and the laws of the State of Indiana. All remedies at law, or in equity, by statute or otherwise, shall be cumulative, however, Reitz specifically and unconditionally releases the Utility from any liability or damages accruing as a result of or in connection with: (1) any change or modification in any rules, regulations, orders and determinations of the IURC, and (2) any order, determination, entry, or finding of any court of competent jurisdiction, except an order, determination, entry or finding by a court of competent jurisdiction in any proceeding brought by Reitz against Utility to compel payment under Section 2 and in which Reitz wholly prevails against Utility.

Section 8.4. Assignment. Unless expressly provided in this Agreement, the parties shall not have the right to alienate or assign any of their respective rights under this Agreement without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld, provided, however, that the parties hereto

agree and acknowledge that (1) Reitz shall have the right to assign its rights hereunder to another entity of which a majority of the capital stock, membership interests, partnership interests, or other equity ownership interests are owned by persons who are currently members of Reitz and further (2) Reitz shall have the right to receive payments of money only hereunder; provided, however, in the event of any such assignment, the parties likewise agree and acknowledge that Utility shall have no liability to any third party in the event that Utility inadvertently or mistakenly makes payment to Reitz instead of such third party.

**Section 8.5. Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, or extend the scope or intent of this Agreement or any of its provisions.

**Section 8.6. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. This Agreement may contain more than one counterpart of the signature page and may be executed by the affixing of the signatures of each of the parties hereto to one of the counterpart signature pages. All such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

**Section 8.7. Severability.** In case any one or more provisions (or any portion thereof) of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or provisions (or portion thereof) had never been contained herein.

**Section 8.9. Modification.** No change or modification of this Agreement shall be valid unless the same is in writing and duly executed by all parties hereto, or their duly authorized successors and assigns.

**Section 8.10. No Waiver.** Any waiver of any provision of this Agreement must be in writing and signed by all parties to have effect. No waiver of any provision of this Agreement will constitute a waiver of any other provision hereof (whether or not similar) or a continuing waiver. The performance by any of the parties hereto of any act not required of it under the terms and conditions of this Agreement will not constitute a waiver of the parameters for and limitations on its obligations under this Agreement, and no such performance shall stop such party from asserting such parameters or limitations as to any further or future performance of its obligations.

**Section 8.11. Further Assurances.** The parties hereto agree that they will cooperate with each other and will execute and deliver, or cause to be executed and delivered, all such other documents and instruments, and will take all such other actions, as the other party hereto may reasonably request from time to time to effectuate the provisions and purposes of this Agreement.

Section 8.12. Governing Law The terms and conditions of this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. All remedies at law, or in equity, by statute or otherwise, shall be cumulative.

Section 8.13. Authority The parties hereto do hereby represent and warrant to each other that they have full power and authority to enter into this Agreement and to carry out the terms hereof and that the same has been duly authorized and that the person executing the same on behalf of each party has been duly authorized to act in the name and on behalf of such party

IN WITNESS WHEREOF, the parties hereto have executed, or have caused their duly authorized representatives to execute, this Agreement as of the date first written above.

**"UTILITY"**  
BOONE COUNTY UTILITIES, LLC

By: EcoHoldings, LLC  
Its Managing Member

  
\_\_\_\_\_  
James B. Flaherty, Managing Member  
EcoHoldings, LLC

**"RETIZ"**  
RETIZ PROPERTIES, LLC

By:   
\_\_\_\_\_  
Craig Ritz, Secretary

**LAND DESCRIPTION**

A part of the South Half of Section 32, Township 18 North, Range 2 East and a part of the North Half of Section 5, Township 17 North, Range 2 East of the Second Principal Meridian in Eagle Township, Boone County, Indiana being more particularly described as follows:

**BEGINNING** at the Northwest corner of the Southeast Quarter of said Section 32; thence South 00 degrees 00 minutes 48 seconds West (basis of bearings) on and along the West line of said Southeast Quarter 636.00 feet; thence South 82 degrees 24 minutes 05 seconds East 498.12 feet; thence North 00 degrees 00 minutes 48 seconds East parallel with the West line of said Southeast Quarter 384.50 feet; thence North 36 degrees 20 minutes 51 seconds East 141.70 feet; thence North 00 degrees 00 minutes 48 seconds East parallel with the West line of said Southeast Quarter 218.95 feet to a point on the North line of said Southeast Quarter; thence North 88 degrees 44 minutes 22 seconds East on and along the North line of said Southeast Quarter 761.30 feet to the Northeast corner of the West Half of said Southeast Quarter; thence South 00 degrees 00 minutes 52 seconds West on and along the East line of the West Half of said Southeast Quarter 2639.74 feet to the Southeast corner of the West Half of said Southeast Quarter; thence South 88 degrees 40 minutes 18 seconds West on and along the South line of said Southeast Quarter 369.24 feet to the Northeast corner of the land of Reitz as described in Deed Record 719, Page 312 on file in the Office of the Recorder of Boone County, Indiana; thence on and along the perimeter of the land of said Reitz by the following six (6) courses: 1) South 00 degrees 00 minutes 00 seconds East 1365.54 feet; thence 2) South 89 degrees 23 minutes 51 seconds West parallel with the South line of the North Half of the Northeast Quarter of said Section 5 a distance of 278.53 feet; thence 3) South 00 degrees 09 minutes 02 seconds East 249.59 feet to a point on the South line of the North Half of said Northeast Quarter; thence 4) South 89 degrees 23 minutes 51 seconds West on and along the South line of the North Half of said Northeast Quarter 261.43 feet; thence 5) North 00 degrees 09 minutes 06 seconds West parallel with the West line of said Northeast Quarter 250.00 feet; thence South 89 degrees 23 minutes 51 seconds West parallel with the South line of the North Half of said Northeast Quarter 190.00 feet to a point on the West line of said Northeast Quarter; thence South 00 degrees 09 minutes 06 seconds East on and along the West line of said Northeast Quarter 250.00 feet to the Southeast corner of the North Half of the Northwest Quarter of said Section 5; thence South 89 degrees 23 minutes 51 seconds West on and along the South line of the North Half of said Northwest Quarter 402.70 feet; thence North 00 degrees 09 minutes 06 seconds West parallel with the East line of said Northwest Quarter 250.00 feet; thence North 89 degrees 23 minutes 51 seconds East parallel with the South line of the North Half of said Northwest Quarter 25.00 feet; thence North 00 degrees 09 minutes 06 seconds West parallel with the East line of said Northwest Quarter 150.00 feet; thence South 89 degrees 23 minutes 51 seconds West parallel with the South line of the North Half of said Northwest Quarter 195.00 feet; thence North 00 degrees 09 minutes 06 seconds West parallel with the East line of said Northwest Quarter 308.42 feet; thence South 89 degrees 23 minutes 51 seconds West parallel with the South line of the North Half of said Northwest Quarter 218.97 feet; thence North 00 degrees 01 minutes 52 seconds West 888.60 feet to a point on the North line of said Northwest Quarter; thence South 88 degrees 47 minutes 48 seconds West on and along the North line of said Northwest Quarter 535.97 feet to the Northeast corner of the Northwest Quarter of said Northwest Quarter; thence South 00 degrees 13 minutes 19 seconds East on and along the East line of the Northwest Quarter of said Northwest Quarter 1591.37 feet to the Southeast corner of the Northwest Quarter of said Northwest Quarter; thence South 89 degrees 23 minutes 51 seconds West on and along the South line of the North Half of said Northwest Quarter 548.37 feet; thence North 00 degrees 13 minutes 19 seconds West parallel with the East line of the Northwest Quarter of said Northwest Quarter 1585.62 feet to a point on the North line of said Northwest Quarter; thence South 88 degrees 47 minutes 48 seconds West on and along the South line of the Southwest Quarter of said Section 32 a distance of 783.05 feet to the Northwest corner of the Northwest Quarter of Section 5, Township 17 North, Range 2 East; thence North 01 degrees 12 minutes 00 seconds West 16.00 feet; thence North 88 degrees 47 minutes 48 seconds East parallel with the South line of said Southwest Quarter 1073.35 feet to a point on the West line of the East Half of said Southwest Quarter; thence North 00 degrees 06 minutes 47 seconds East on and along the West line of the East Half of said Southwest Quarter 1304.07 feet to the Southwest corner of the Northeast Quarter of said Southwest Quarter; thence North 88 degrees 45 minutes 25 seconds East on and along the South line of the Northeast Quarter of said Southwest Quarter 670.36 feet to the Southwest corner of the East Half of the Northeast Quarter of said Southwest Quarter; thence North 00 degrees 03 minutes 48 seconds East on and along the West line of the East Half of the Northeast Quarter of said Southwest Quarter 1320.19 feet to the Northwest corner of the East Half of the Northeast Quarter of said Southwest Quarter;

**EXHIBIT A**

Aug. 15. 2000 8:49AM

No. 1247 P. 17

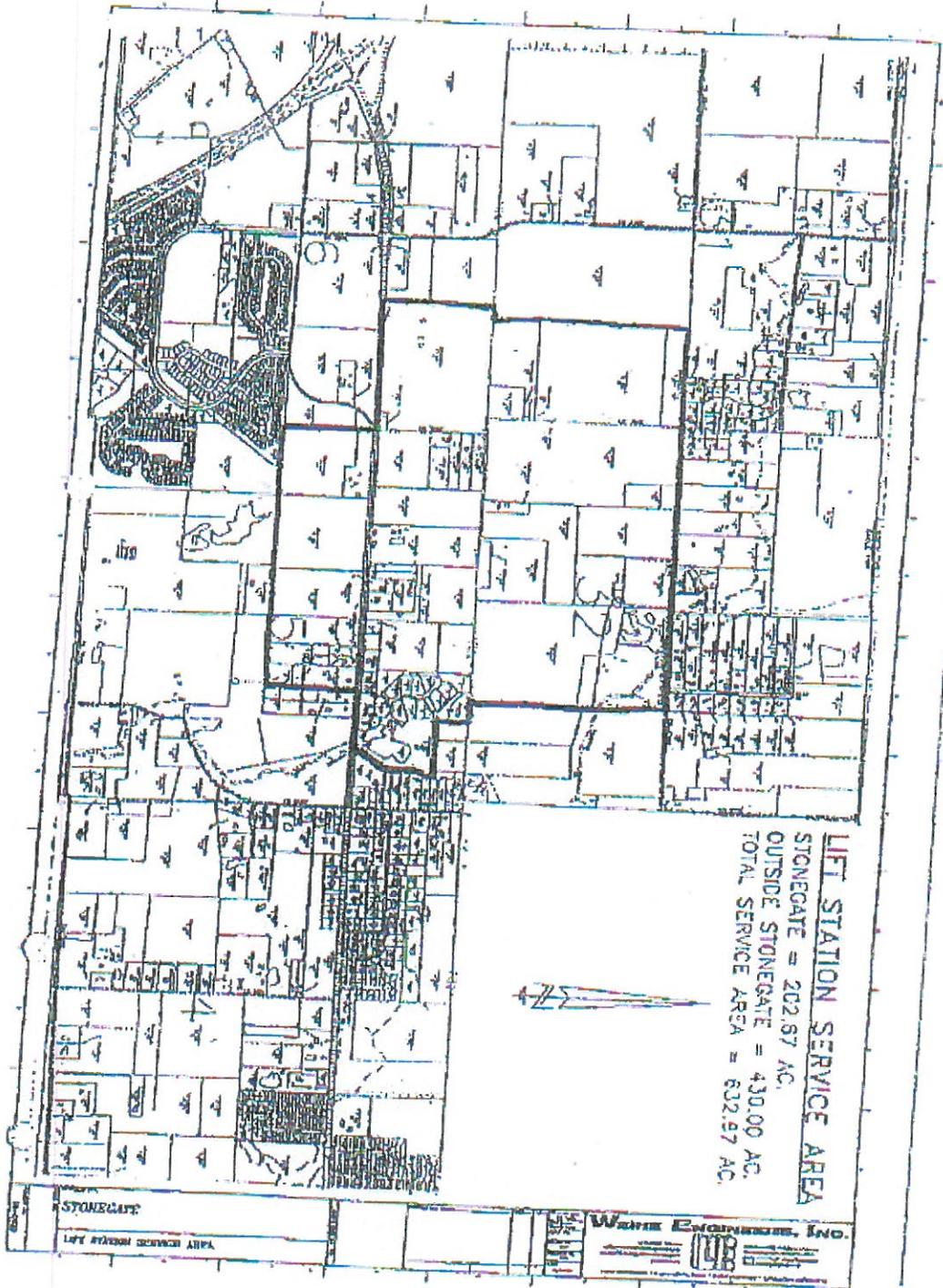
thence North 88 degrees 44 minutes 22 seconds East on and along the North line of said Southwest Quarter  
669.71 feet to the POINT OF BEGINNING, containing 202.57 acres, more or less.

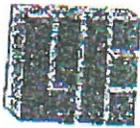
Revised January 16, 2002

Revised January 25, 2002

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EXHIBIT B





# **WEIHE ENGINEERS, INC.**

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

## Stonagate Lift Station Exhibit C

Construction Cost .....	\$650,000.00
Engineering .....	\$ 25,000.00
IDEM Approval .....	\$ 2,200.00
INDOT Approval .....	\$ 4,615.00
Topo/Route Survey .....	\$ 3,500.00
Staking and As-builts .....	\$ 2,500.00
<b>Total .....</b>	<b>\$687,815.00</b>

### EXHIBIT C

ALLAN H. WEIHE, P.E., L.S. - PRESIDENT

10505 NORTH COLLEGE AVENUE INDIANAPOLIS, INDIANA 46280 (317) 846-6611 (800) 452-6408 FAX: (317) 843-0546

Aug. 15. 2000 8:50AM

No. 1247 P. 20

**EXHIBIT B**  
**(Eastern Service Area)**



Aug. 15. 2008 8:51AM

No. 1247 P. 22

**EXHIBIT C**  
**(Waiver of Remonstrance)**

Aug. 15. 2008 8:51AM

AUG:07.2008 11:41

No. 1247 P. 23

42892 P.002 /003

### WAIVER OF REMONSTRANCE TO ANNEXATION

This WAIVER OF REMONSTRANCE TO ANNEXATION ("Waiver") is tendered to the TOWN OF WHITESTOWN ("Town") by REITZ PROPERTIES, LLC ("Customer") this 7<sup>th</sup> day of August 2008, with respect to certain property owned by Customer and located in Boone County, Indiana, and more particularly described in the attached Exhibit I (the "Property").

#### RECITALS:

A. Customer desires wastewater collection and treatment service for the Property from the Town.

B. Subject to the conditions in this Waiver and the Sanitary Sewer Service Agreement ("Agreement") executed simultaneously herewith, the Town is willing to set aside sufficient capacity for, and make sanitary sewer service available to, the Property.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Provision of Sanitary Sewer Service. Consistent with and in consideration for this Waiver, the Town agrees to provide adequate sanitary sewer and wastewater treatment service (the "Service") to the Property.

2. Waiver of Annexation. In exchange for the benefits bestowed upon the Property by the Town's provision of the Service, Customer hereby releases and waives all right to remonstrate against and, in any way, oppose either directly or indirectly the annexation of the Property into the Town provided that the Town fulfills its commitments under, and provides Service in accordance with, the Agreement.

3. Binding on Successors and Assigns. The Parties agree that the provision of the Service touches and concerns the land and the Parties desire that this Waiver run with the land. Accordingly, to the extent permitted by law, Customer and its successors and assigns, including, but not limited to, any future residents, homeowners, businesses and/or tenants, are and will be bound by this Waiver consistent with the terms hereof.

4. Authority. Customer represents and warrants that (i) it has her full power and authority to enter into this Waiver and to carry out the terms hereof; (ii) this Waiver has been duly authorized; (iii) it is the fee simple owner of the Property; and (iv) the person executing this Waiver on behalf of Customer has been duly authorized to act in the name and on behalf of Customer.

IN WITNESS WHEREOF, Customer has caused this Waiver of Remonstrance to Annexation to be executed as of the day and year first above written.

Aug. 15. 2008 8:52AM

No. 1247 P. 24

AUG-07-2008 11:41

#1892 P.003 /005

Tracy L. Cook  
Notary Public Seal State of Indiana  
Hendricks County  
My Commission Expires 02/20/2013

REITZ PROPERTIES, LLC

By: Lawrence A. Reitz  
Printed: Lawrence A. Reitz  
Its: Managing Member

STATE OF INDIANA )  
COUNTY OF Hendricks ) SS:

Before me, a Notary Public in and for said County and State, appeared Lawrence A. Reitz by me known to be an authorized officer of REITZ PROPERTIES, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Waiver of Remonstrance to Annexation for and on behalf of such company.

WITNESS my hand and Notarial Seal this 7 day of August, 2008.

02-20-2013  
My Commission Expires  
Hendricks  
My County of Residence

Tracy L. Cook  
Notary Public  
Tracy L. Cook  
(Printed Signature)

This instrument prepared by J. Christopher Janak, Attorney at Law, Bose McKinney & Evans, LLP, 135 N. Pennsylvania Street, Suite 2700, Indianapolis, Indiana 46204.

**EXHIBIT 1**

**Legal Description**

Aug. 15. 2000 8:53AM

No. 1247 P. 27

thence North 88 degrees 44 minutes 22 seconds East on and along the North line of said Southwest Quarter  
669.21 feet to the POINT OF BEGINNING, containing 202.5/ acres, more or less.

Revised January 16, 2002  
Revised January 25, 2002

H:\99\990720\survey\doc\SFH Dec 1-10-02.doc