WEST CENTRAL CONSERVANCY DISTRICT RESOLUTION NO. 2012-0220-1

RESOLUTION OF THE WEST CENTRAL CONSERVANCY DISTRICT
AUTHORIZING THE ISSUANCE OF A NOTE MATURING IN NOT MORE
THAN TWO (2) YEARS FOR THE PURPOSE OF PROVIDING FUNDS
TO BE APPLIED TO THE ACQUISITION, CONSTRUCTION, MAINTENANCE,
REPAIR, EQUIPPING AND DEVELOPMENT OF SEWER FACILITIES
AND RELATED IMPROVEMENTS, AND INCIDENTAL EXPENSES
IN CONNECTION THEREWITH AND ON ACCOUNT OF THE
ISSUANCE OF THE NOTE

WHEREAS, the Board of Directors (the "Board") of the West Central Conservancy District (the "District"), has considered the issuance of note maturing in not more than two (2) years to pay all or a portion of the costs of acquisition, construction, maintenance, repair and equipping of District sewer facilities, and related and incidental expenses to be incurred in connection therewith and on account of the issuance of note therefor (the "Project"), all as more particularly described on Schedule I attached hereto and made a part hereof; and

WHEREAS, in anticipation of moneys to be received from the Revenues (as hereinafter defined) the Board has determined it would be in the best interests of the District to pay the costs of the Project and incidental expenses in connection therewith and on account of the issuance of a note therefor, such note to be issued as negotiable note of the District in accordance with Indiana Code § 14-33-7-14; and

WHEREAS, the Board deems it advisable to issue the note authorized by this Resolution as the West Central Conservancy District 2012 Note (the "2012 Note"), in an original aggregate principal amount not to exceed Six Million Dollars (\$6,000,000) for the purpose of providing for the payment or reimbursement of (i) all or any portion of the costs of the Project, (ii) preliminary expenses related thereto and all incidental expenses incurred in connection therewith, including necessary engineering, design, and related activities (all of which are deemed to be a part of the Project), and (iii) the costs of issuing the 2012 Note (items (i), (ii) and (iii) collectively, "Project Costs"); and

WHEREAS, First Merchants Bank, N.A. (the "Bank") is a bank licensed to do business in the State of Indiana; and

WHEREAS, the Bank has negotiated with the District to purchase the 2012 Note of the District in an amount not to exceed Six Million Dollars (\$6,000,000) due to mature in not more than two (2) years; and

WHEREAS, the District desires to designate the 2012 Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the District currently has outstanding its West Central Conservancy District Sewage Works Revenue Bonds of 2002 (the "Outstanding District Bonds") issued pursuant to

Resolution 2002-02-04 adopted by the District on March 11, 2002, as amended by Resolution No. 2002-02-05, adopted by the District on March 20, 2002 (the "Outstanding District Resolution"), which were purchased and are currently held by the Indiana Bond Bank; and

WHEREAS, the Board now finds that all conditions precedent to the adoption of a Resolution authorizing the issuance of the 2012 Note have been complied with in accordance with Indiana Code § 14-33-7-14, and other applicable provisions of the Indiana Code (collectively, the "Act").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF WEST CENTRAL CONSERVANCY DISTRICT AS FOLLOWS:

SECTION 1. <u>Authorization for Note</u>. In order to provide financing for the Project and incidental expenses in connection therewith and on account of the issuance of the 2012 Note, the District shall borrow money and issue the 2012 Note as herein authorized.

SECTION 2. General Terms of Note. In order to procure said loan for such purposes, the Financial Clerk of the District (the "Financial Clerk") is hereby authorized and directed to have prepared and to issue a negotiable note of the District, in the aggregate principal amount not to exceed Six Million Dollars (\$6,000,000), to be designated "West Central Conservancy District 2012 Note," for the purpose of providing financing for the Project and incidental expenses, such expenses to include without limitation all expenses of every kind incurred preliminarily to the funding of the Project, and costs of issuing the 2012 Note. Such 2012 Note shall be signed in the name of the District by the manual or facsimile signatures of the Chairman of the District (the "Chairman") or the Vice Chairman of the District (the "Vice Chairman") and attested by the manual or facsimile signature of the Secretary of the District. (the "Secretary"). In case any officer whose signature or facsimile signature appears on the 2012 Note shall cease to be such officer before the delivery of the 2012 Note, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery thereof. The 2012 Note shall be a fully negotiable instrument under the laws of the State of Indiana.

The 2012 Note is, as to all the principal thereof and interest due thereon, a special and limited obligation of the District, payable solely from (i) exceptional benefits assessments made to real property within the District, in accordance with Ind. Code 14-33 (the "Exceptional Benefits Revenue"), and (ii) subject to the terms of the Outstanding District Bonds, a second or junior right to the Net Revenues (as defined in the Outstanding District Resolution as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the District (except for Facility Utilization Fees, Interceptor Fees and "exceptional benefits assessments") (the "District Revenues") (items (i) and (ii) collectively, the "Revenues"). The District hereby irrevocably pledges the Exceptional Benefits Revenues to the 2012 Note pursuant to Ind. Code § 5-1-14-4, and this pledge shall be binding from the time this Resolution is adopted. The Exceptional Benefits Revenues received by the District are immediately subject to the lien of this pledge without any further act. The District hereby irrevocably pledges the District Revenues, subject to the prior payment of the Outstanding District Bonds, to the 2012 Note pursuant to Ind. Code § 5-1-14-4, and this pledge shall be binding from the time this Resolution is adopted.

The 2012 Note shall be issued as of the date of issuance as determined by the Financial Clerk. The 2012 Note shall bear interest on the amount drawn thereon payable monthly in full on the first business day of the month following the first draw on the 2012 Note at a variable rate equal to LIBOR + 1.75%, which rate shall adjust monthly, on the first business day of each calendar month. LIBOR as used herein shall mean the rate per annum (rounded upwards, if necessary, to the next higher one hundred thousandth of a percentage point) for deposits in U.S. Dollars for a one month interest period which appears on the LIBOR 01 Page as of 11:00 a.m. (London, England time) as of the first business day of each calendar month. Interest shall be calculated on the number of actual days elapsed based upon a 360 day year. The 2012 Note shall mature two years from the date of issuance (the "Maturity Date") and may, upon request by the District and in the sole discretion of the holder thereof be renewed for an additional period of not to exceed two years. The 2012 Note shall be issued in the form of a draw-down loan pursuant to which the principal amount of the 2012 Note is advanced to the District from time to time; provided that once drawn, such amounts may not thereafter be repaid and redrawn.

All payments of interest on the 2012 Note shall be paid: (i) by check mailed two business days prior to the first business day of the calendar month in which interest is payable at the addresses of the Bank or by wire transfer of immediately available funds to the Bank, or (ii) by ACH transfer, if authorized by the District and agreed to by Bank; if payment is made by ACH Transfer, such payment shall be initiated in advance of each interest payment date, in enough time for payment to post on or prior to such interest payment date. All principal payments on the 2012 Note shall be made: (i) by a check mailed two business days prior to the Maturity Date at the addresses of the Bank or by wire transfer of immediately available funds to the Bank, or (ii) by ACH transfer, if authorized by the District and agreed to by Bank; if payment is made by ACH Transfer, such payment shall be initiated in advance of the Maturity Date, in enough time for payment to post on or prior to the Maturity Date.

SECTION 3. Terms of Prepayment. Principal outstanding on the 2012 Note is prepayable at any time during the term of the 2012 Note on any business day, on not less than seven days written notice to the Bank. Amounts pre-paid on the 2012 Note may not be re-borrowed.

SECTION 4. Form of Note. (a) The form and tenor of the 2012 Note, shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

R-_ UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF HENDRICKS

WEST CENTRAL CONSERVANCY DISTRICT 2012 NOTE,

			Authentication	
Interest Rate	Maturity Date	Original Date	<u>Date</u>	<u>CUSIP</u>
Variable	, 2014	, 2012	, 2012	N/A

REGISTERED OWNER: First Merchants Bank, N.A.

PRINCIPAL SUM: Six Million Dollars

DOLLARS (\$6,000,000.00)

The West Central Conservancy District (the "District"), acting through its Board of Directors, for value received, hereby promises to pay to the First Merchants Bank, N.A. ("Bank"), solely from the Revenues (as defined in the hereinafter defined Resolution), the Principal Sum set forth above or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the Bank, or its assigns, and to pay interest thereon until the Principal Sum shall be fully paid, at a variable rate of LIBOR + 1.75%, which rate shall adjust monthly, on the first business day of each calendar month. LIBOR as used herein shall mean the rate per annum (rounded upwards, if necessary, to the next higher one hundred thousandth of a percentage point) for deposits in U.S. Dollars for a one month interest period which appears on the LIBOR 01 Page as of 11:00 a.m. (London, England time) as of the first business day of each calendar month. Interest shall be calculated on the number of actual days elapsed based upon a 360 day year.

The principal amount of this note shall be advanced from time to time by Bank upon the order of the Financial Clerk of the District (the "Financial Clerk") upon receipt and approval by the Bank of an advance request, substantially in the form attached hereto as Exhibit A (an "Advance Request"). Advance requests shall only be made for Project Costs (as defined in the hereinafter defined Resolution).

Each Advance Request shall increase the principal amount outstanding under this note by an amount equal to the amount of such Advance Request. The unpaid principal amount of this note shall be the total amounts advanced by the Bank, from time to time, pursuant to Advance Requests, less the principal amount paid to the Bank from time to time, or at maturity.

All payments of interest on this note shall be paid (i) by check mailed two business days prior to the first business day of the calendar month in which interest is payable at the address of the Bank or at such other address as is provided to the District in writing by the Bank or by wire transfer of immediately available funds to the Bank; or (ii) by ACH transfer, if authorized by the District and agreed to by the Bank; if payment is made by ACH Transfer, such payment shall be initiated in advance of each interest payment date, in enough time for payment to post on or prior to such interest payment date. All principal payments on this note shall be made: (i) by a check mailed two business days prior to the Maturity Date at the address of the Bank or at such other address as is provided to the District in writing by the Bank or by wire transfer of immediately available funds to the Bank, or (ii) by ACH transfer, if authorized by the District and agreed to by the Bank; if payment is made by ACH Transfer, such payment shall be initiated in advance of the Maturity Date, in enough time for payment to post on or prior to the Maturity Date.

This note in the total amount of Six Million Dollars (\$6,000,000), issued for the purpose of providing funds to pay all or a portion of the costs of acquisition, construction, maintenance, repair and equipping and development of sewer facilities and related and incidental expenses to be incurred in connection therewith and on account of the issuance of note therefor, as authorized by a resolution of the District adopted by the Board of Directors of the District on the 20th day of

February, 2012, entitled "RESOLUTION OF THE WEST CENTRAL CONSERVANCY DISTRICT AUTHORIZING THE ISSUANCE OF A NOTE, MATURING IN NOT MORE THAN TWO (2) YEARS FOR THE PURPOSE OF PROVIDING FUNDS TO BE APPLIED TO THE ACQUISITION, CONSTRUCTION, MAINTENANCE, REPAIR, EQUIPPING AND DEVELOPMENT OF SEWER FACILITIES AND RELATED IMPROVEMENTS, AND INCIDENTAL EXPENSES IN CONNECTION THEREWITH AND ON ACCOUNT OF THE ISSUANCE OF THE NOTE" (the "Resolution"), and in accordance with Indiana Code § 14-33-7-14, and other applicable provisions of the Indiana Code, as amended (collectively, the "Act"). The Bank, by the acceptance hereof, agrees to all the terms and provisions contained in the Resolution and the Act.

The District hereby irrevocably pledges the Exceptional Benefits Revenues (as defined in the Resolution), pursuant to Ind. Code 5-1-14-4, to the prompt payment of principal and interest on the note authorized by the Resolution (the "2012 Note"), as the same become due.

The District hereby pledges the District Revenues (as defined in the Resolution), pursuant to Ind. Code 5-1-14-4, subject to the prior payment of the Outstanding District Bonds (as defined in the Resolution), to the prompt payment of principal and interest on the 2012 Note, as the same become due.

Principal outstanding on this note is pre-payable at any time prior to the maturity Date on not less than seven days written notice to the Bank, mailed to the address of the Bank. Amounts pre-paid may not be re-borrowed.

This note has been designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this note have been done and performed in regular and due form as provided by law.

IN WITNESS WHEREOF, the District has caused this Note to be executed in the name of the District and on its behalf by the manual or facsimile signature of its duly elected, qualified and acting [chairman][vice chairman] and attested by the manual or facsimile signature of its Secretary, as of the Original Date set forth above.

Б		
By:		 _
,	nl [Vice Chairman]	

WEST CENTRAL CONSERVANCY

	By:	
	[Chairman] [Vice Chairman]	
(SEAL)		
ATTEST:		

DISTRICT

Secretary	
EXHI	BIT A
ADVANCE	REQUEST
The undersigned requests the First M (the "Advance Am 2012 Note (the "2012 Note"), to The West Centre	Merchants Bank, N.A. (the "Bank") advance ount") of the West Central Conservancy District al Conservancy District (the "District").
Upon the receipt by the District of payroutstanding principal amount of this not	ment by the Bank of this Advance Request, the e shall be increased by the amount of
Attached hereto are engineering studies proceeds of this advance request.	outlining the improvements to be made with the
shall be utilized solely for Project Costs, in account the District adopted by the Board of Directors of entitled "RESOLUTION OF THE WEST AUTHORIZING THE ISSUANCE OF A NOT (2) YEARS FOR THE PURPOSE OF PROACQUISITION, CONSTRUCTION, MAIN ACQUISITION, OF SEWER FACILITIES	certifies to the Bank that the Advance Amount fordance with and as defined in the resolution of of the District on the 20th day of February, 2012, The CENTRAL CONSERVANCY DISTRICT TE, MATURING IN NOT MORE THAN TWO VIDING FUNDS TO BE APPLIED TO THE NTENANCE, REPAIR, EQUIPPING AND AND RELATED IMPROVEMENTS, AND THEREWITH AND ON ACCOUNT OF THE
Dated this day of	··
	THE WEST CENTRAL CONSERVANCY DISTRICT
Ву:	Financial Clerk

ACKNOWLEDGEMENT OF ADVANCE

The undersigned hereby approves the advance request and acknowledges the payment, on the date hereof, to or on the order of the West Central Conservancy District an advance of the principal amount of this note in the amount of \$
FIRST MERCHANTS BANK, N.A.

By:	
Printed:	
Title:	

[END OF FORM NOTE]

The Financial Clerk is hereby authorized and directed to obtain a legal opinion as to the validity of the 2012 Note from Taft, Stettinius & Hollister LLP, and the legal opinion as to the tax exemption on the 2012 Note from Krieg DeVault and to furnish such opinions to the Bank. The costs of such opinions shall be paid out of the proceeds of the 2012 Note or from other funds of the District available for such purpose.

- **SECTION 5.** <u>Use of 2012 Note Proceeds</u>. The proceeds of the Note shall be expended only for the purpose of paying expenses incurred in connection with the Project together with the expenses incidental thereto and on account of the issuance of the 2012 Note.
- SECTION 6. <u>Tax Covenants</u>. In order to preserve the exclusion of interest on the 2012 Note, the interest on which is excluded from gross income for federal income tax purposes and as an inducement to the Bank, the District represents, covenants and agrees that:
 - (a) The District will not take any action or fail to take any action with respect to the 2012 Note that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the 2012 Note pursuant to Section 103 of the Code as in effect on the date of issuance of the 2012 Note, including, without limitation, the taking of such action as is necessary to rebate or cause to be rebated arbitrage profits on 2012 Note proceeds or other monies treated as 2012 Note proceeds to the federal government as provided in Section 148 of the Code, and will set aside such monies, which may be paid from investment income on funds and accounts notwithstanding anything else to the contrary herein, in trust for such purposes.
 - (b) The District will file an information report Form 8038-G with the Internal Revenue Service as required by Section 149 of the Code.
 - (c) The District will not make any investment or do any other act or thing during the period that the 2012 Note is outstanding hereunder which would cause the 2012 Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations applicable thereto as in effect on the date of delivery of the 2012 Note.

Notwithstanding any other provisions of this Resolution, the foregoing covenants and authorizations (the "Tax Sections") which are designed to preserve the exclusion of interest on the 2012 Note from gross income under federal income tax law (the "Tax Exemption") need not be complied with to the extent the District receives an opinion of nationally recognized bond counsel that compliance with such Tax Section is unnecessary to preserve the Tax Exemption.

The 2012 Note qualifies for the exception in Section 265 of the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to tax-exempt obligations, because the 2012 Note is not a private activity bond within the meaning of Section 141 of the Code; the 2012 Note is hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code; the reasonably anticipated amount of qualified tax-exempt obligations (excluding private activity bond) which will be issued by or on behalf of the District, all entities which issue obligations on behalf of the District, and all subordinate entities during the calendar year of issuance of the 2012 Note will not exceed \$10,000,000; and the District, all entities which issue obligations on behalf of the District, and all subordinate entities have not designated more than \$10,000,000 of qualified tax-exempt obligations issued or to be issued during such year of issuance.

SECTION 7. Reporting. For so long as the 2012 Note remains outstanding and is held by the Bank, the District hereby covenants to provide to the Bank:

- (A) annual CPA prepared financial statements of the District within 145 days of calendar year end;
- (B) the State Board of Accounts audit of the District, bi-annually, within 30 days of receipt by the District;
- (C) an annual capital expenditure budget of the District for 2012, within 45 days after the adoption of this Resolution, which lists anticipated capital expenditure projects which are projected to cost in excess of \$500,000; and
- (D) commencing with the District's 2013 budget, an annual capital expenditure budget of the District, within 30 days after the adoption of the District's annual budget, which lists anticipated capital expenditure projects which are projected to cost in excess of \$500,000.
- **SECTION 8.** Covenants. The District hereby covenants to the Bank, for so long as the 2012 Note remains outstanding and is held by the Bank, that:
- (A) the District shall maintain its primary deposit relationship with the Bank and shall maintain its cash management services with the Bank;
- (B) the District shall maintain a Debt Service Coverage Ratio (as hereinafter defined) in excess of 1.25:1.00, which shall be calculated as of the end of each calendar year, commencing December 31, 2012. The District shall annually, within 60 days following the end of a calendar year during the term of the 2012 Note, provide to the Bank a certificate executed by an authorized officer of the District certifying as to the Debt Service Coverage Ratio calculation for the preceding calendar year, which certificate shall show such calculation. Debt Service Coverage Ratio as used herein shall mean annual Revenues less debt service due and paid during

such year on the Outstanding District Bonds and any additional obligations of the District payable from District Revenues, divided by annual debt service requirements on the 2012 Note;

- (C) the District shall pay to the Bank a \$1,000 closing fee upon the issuance of the 2012 Note;
- (D) the District shall be responsible for all third party costs incurred in connection with the issuance of the 2012 Note, including but not limited to Bank counsel and Bond Counsel fees, whether or not the 2012 Note is issued;
- (E) the District shall, following the first advance pursuant to the 2012 Note, maintain a balance of principal outstanding of not less than \$1,000, until the Maturity Date (taking into account any renewal granted pursuant to section 2 hereof).
- (F) The District shall not amend or supplement this Resolution No. 2012-0220-1 without the prior written consent of the Bank;
- (G) the District shall not issue any additional notes, bonds or obligations payable from the Exceptional Benefits Revenue without the prior written consent of the Bank; and
- (H) the District shall, during the term of the 2012 Note, take steps necessary to collect Revenues, when taken together with other revenues and funds on hand of the District available for such purpose, to meet principal and interest on the 2012 Note as the same become due.
- **SECTION 9.** <u>Defaults/Remedies.</u> Any default of the District pursuant to any other outstanding indebtedness of the District, included but not limited to the Outstanding District Bonds and any Parity Bonds (as defined in the Outstanding District Resolution), shall constitute a default hereunder. Upon the occurrence of a default the Bank may declare amounts due pursuant to the 2012 Note due and payable immediately, and may proceed to protect and enforce its rights by suit in equity, action at law or other appropriate proceedings.
- **SECTION 10.** No Conflict. All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed. After the issuance of the 2012 Note and so long as the 2012 Note or interest thereon remains unpaid, except as expressly provided herein, this Resolution shall not be repealed or amended in any respect which will adversely affect the rights of the Bank, nor shall the District adopt any law, ordinance or resolution which in any way adversely affects the right of the Bank.
- **SECTION 11.** Severability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.
- SECTION 12. Holidays, Etc. If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Resolution, shall be a legal holiday or a day on which banking institutions in the District, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on

the nominal date provided in this Resolution, and no interest shall accrue for the period after such nominal date.

SECTION 13. Effectiveness. This Resolution shall be in full force and effect from and after its passage.

SECTION 14. Small Business Jobs Act Certification. The following information is requested pursuant to Section 4107(d)(2) of the Small Business Jobs Act of 2010. As required by Section 4107(d)(2) of the Small Business Jobs Act of 2010, by signing below, the District hereby certifies to the Lender that the principals of the District and its affiliates have not been convicted of, or pleaded nolo contendre to, a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

The term "principals" for the purpose of the Small Business Jobs Act Certification is defined as follows: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

[Signature Page Follows]

Adopted this 20th day of February, 2012.

WEST CENTRAL CONSERVANCY DISTRICT

Paul M. Allen, Chairman

W- E1/20

William E. Holland, Vice Chairman

Charles C. Dorton, Financial Clerk

W. James Webb, Secretary

Karl P. Buetow, Member

Schedule I

SCHEDULE I

Capital Projects:

Septic system areas to be served with sewers:

 Andrew Manor Avon Heights Carter Lakes Ivywood Addition Meadow Estates Price's Avondale Heights Price's Suburban Heights Rudgate in the Woods Sheffield Park Westview Terrace Woodcreek Farms 	\$ 711,000 \$ 723,000 \$ 719,000 \$ 263,000 \$ 240,000 \$ 2,100,000 \$ 1,910,000 \$ 1,389,000 \$ 1,670,000 \$ 947,000 \$ 340,000
White Lick Creek Interceptor Sewer Extension	\$ 8,600,000
SCADA Upgrade	
Plant Headworks Improvements	
Manhole Rehabilitation	\$ 150,000
Completion of Clay and Truss Pipe Lining Projects (Excluding Prestwick / Clubhouse Project)	\$ 1,210,000
Master Plan Projects:	
Lift Station Elimination Projects	\$ 5,860,000
Northwest Quadrant Interceptor Sewer Extensions	\$24,400,000
NE, SE & SW Quadrant Interceptor Sewer Extensions	\$ 7,000,000
System Capacity Upgrades	\$ 3,000,000