



d. Should a user feel aggrieved with the EDU assigned, the user may challenge the EDU assigned. A hearing officer may be assigned, and a recommended EDU assignment made to the Board. If the user is still aggrieved with the Board's decision, the user would have 30 days to file a petition for review with the Marion County Circuit Court, which would be a trial *de novo* and the Indiana Rules of Civil Practice would be applicable.

e. The system of "appraisers" to determine exceptional benefits charges for various heavy users of the sewers (such as car washes, laundromats, etc.) would be abolished and these heavy users would be assigned an EDU pursuant to the Ordinance and billed accordingly.

f. The charge for an EDU each year would be determined as follows: The District shall formally adopt its budget as provided by law. Thereafter, the District shall determine the number of EDU's in the District. The Board shall determine the charge for each EDU by estimating the amount of money it will need to operate the Conservancy and shall assign a charge for each EDU considering all factors required by the budget process.

g. The contracts for users outside the boundaries of the District would be canceled and would be replaced by a new contract (a sample of which is attached to this petition). The new contract would treat contract users essentially the same as users in the District but would be charged a surcharge of 15% of their bill to account for collection costs, attorney fees, and other administrative costs which serving these properties has historically cost the District. The contract customers would be allowed to have Citizens transport and process their sewage at any time. The old contracts were based upon the charges that the City of Indianapolis charged for sewage processing. Since entering into these contracts, the City of Indianapolis has sold the sewer system to CWA Authority, Inc. and processing charges have increased dramatically. As such, new contracts are required.

4. That the Board feels that going to an EDU based system is fairer and more equitable for all users of the sewer. In time, it is anticipated that the District may ultimately be able to abolish the *ad valorem* property tax entirely as a method of finance, but until such time the property tax must remain but hopefully at lower rates.

5. The District has, after a public hearing on May 13, 2019, elected to proceed with the construction of its own sewage treatment facility as authorized by this Court. It is anticipated that substantial savings will be made to all customers in the years ahead after the treatment facility is built. At present, the District is exploring locations to purchase real estate for the treatment plant as was authorized by this Court in its Order of March 15, 2019.

6. That the proposed Ordinance is attached hereto as Exhibit "A," a proposed Notice to Freeholders and Other Interested Parties to be published is attached as Exhibit "B," a proposed Notice of Hearing to be sent by certified mail to users in the District paying "exceptional benefits charges" and contract users outside the District is attached as Exhibit "C," and a list of the contract users and properties paying exceptional benefits charges is attached as Exhibit "D."

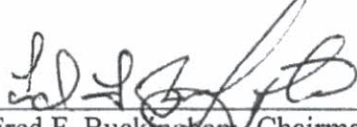
WHEREFORE, the Ben Davis Conservancy District Board of Directors prays:

1. That the Court set the matter down for a public hearing (at least three [3] hours required).
2. That the Court approve the notice to be published. (Exhibit B)
3. That the Court approve the proposed notices to contract users and users receiving exceptional benefits charges. (Exhibit C). That the Court task the petitioner with the duty to send certified mailing from its offices with return receipt addressed to the Conservancy with certifications of receipt of notice to be made to the Court by the Conservancy at a later date for all contract users and users paying exceptional benefits charges.
4. That the Court provisionally approve the proposed sample contract for contract users.
5. That the Court provisionally approve the proposed Ordinance 2019-1 subject to the Board's further action after a further public hearing whereby the attitude and concerns of the freeholders and affected entities can be ascertained and considered.
6. That in the interest of time, should legal objections be raised at the public hearing by contract users of the sewer or any other party as to the termination of existing contracts or the sample contract or any other issue that is personal only to that party, the Court order the parties to meet with the Conservancy Board or their representative and attempt informal settlement.
7. That the Court grant all other proper relief.

I affirm under the penalties of perjury that the foregoing is true to the best of my knowledge and belief.

BEN DAVIS CONSERVANCY DISTRICT

Dated: 6-11-2019

By:   
Fred F. Buckingham, Chairman of the  
Board of Directors

**THREE (3) HOURS REQUESTED FOR A HEARING AFTER AUGUST 1, 2019,  
IN ORDER TO EFFECTUATE PUBLICATION AND NOTICE BY CERTIFIED MAIL.**

John L. Hess (7629-49)  
Hess Hess & Donnelson LLP  
2000 East 116<sup>th</sup> St., Ste. 106  
Carmel, IN 46032  
317-844-1377  
317-844-1408 (FAX)  
[JohnLHessAtty@aol.com](mailto:JohnLHessAtty@aol.com) (EMAIL)

**EXHIBIT A**

**BEN DAVIS CONSERVANCY DISTRICT**  
**ORDINANCE NO. 2019-1**  
**IMPLEMENTING EDU'S AS THE BASIS OF**  
**SEWER USER FEES**

WHEREAS, the Ben Davis Conservancy District (hereafter sometimes referred to as "District") has heretofore operated a system financed by the special benefits property tax and more recently user fees; and

WHEREAS, users of the sewer system who discharge larger volumes of water into the system have been charged an "exceptional benefit charge," based on a report of "appraisers" who determine the computation of the charge and the basis of computation of the charge. The exceptional benefit charges were made pursuant to the Indiana Conservancy Act and certain orders of the Marion County Circuit Court over time; and

WHEREAS, exceptional benefit charges have been assessed against car washes, laundromats, trailer parks, and other like heavy users of water; and

WHEREAS, the use of the exceptional benefit charge is a cumbersome system leading to uncertainty of charges to the user, is paid a year in arrears, and is not uniform; and

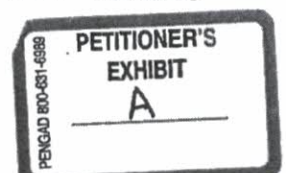
WHEREAS, in 1995, the Indiana General Assembly enacted I.C. § 14-33-22-1 which has authorized conservancy districts within Marion County to charge users of the sewers rates and charges based upon a flat charge for each sewer connection, the amount of water used, the number and size of water outlets, the amount and strength and character of sewer discharge, the size of a sewer connection and any combination of these factors. (See I.C. § 14-33-22-12.)

NOW, THEREFORE, in order to promulgate a fairer, more equitable, and uniform system of rates and charges, the Ben Davis Conservancy District believes a new system should be implemented as set out in this ordinance which will not only replace the exceptional benefit charges but shall implement a system based upon an EDU as the basic unit upon which user fees are made.

The Board of Directors of the Ben Davis Conservancy District (hereafter sometimes referred to as "Board") does hereby enact and ordain as follows:

1. Short Title. This ordinance may be cited as the "Ben Davis Conservancy District User Fee Ordinance."

1.1 Basis of Charges. The basis of the sewer service charges in this ordinance is the establishment of an EDU System which is short for "Equivalent Dwelling Unit." The EDU



System is authorized by I.C. § 14-33-22-1, *et seq.* The exceptional benefit charges heretofore authorized by the Circuit Court are abolished upon the enactment of this ordinance.

2. Definitions. Unless the context otherwise indicates, terms used herein shall have the following meaning:

(a) “Equivalent Dwelling Unit (or EDU)” means the unit of measure by which a single-family residential household in the District is charged by the District for sewer services based on the typical water consumption of a typical single-family residential household. At present, a single-family residential household consumes an average of 310 gallons of water per day and, therefore, is assigned an EDU of one (1). All other users shall be assigned an EDU pursuant to 327 IAC 3-6-11 as amended and incorporated by reference. Any property not classified by 327 IAC 3-6-11 shall be assigned an EDU by the District. The District may use any and all factors that are reasonable, just, and fair in the assignment of the number of EDU’s including negotiation of the appropriate number.

(b) “District” means the Ben Davis Conservancy District. “Board” means the Ben Davis Conservancy District Board of Directors.

(c) “Sewer capacity charge” means a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

(d) “Sewer user fee” means fees, tolls, rates, or other charges for services and facilities furnished by the District in connection with its sanitary sewerage system for different classifications of property.

(e) “Sewer connection” means the connection of a structure or project to a public sewer system.

(f) “Customer” or “user” means any person, firm, corporation, association, governmental agency or other entity to which the services or facilities of the District are furnished whether the customer is physically located within the District’s boundaries or outside the District’s boundaries.

(g) “Single-family dwelling” means a structure designed, improved or used as a residential dwelling with one complete independent living facility, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(h) “Multiple-family dwelling” means any structure designed, improved or used as a residential dwelling with two or more living units with complete

independent living facilities with separate entrances. Complete independent living facilities include permanent provisions for living, sleeping, eating, cooking and sanitation. Multiple family dwellings include apartment houses and duplexes, but not hotels, motels, dormitories, or similar structures, which do not have separate kitchen facilities for any of the units therein.

(i) “BOD” means biochemical oxygen demand, which is a measure of strength of sewage expressed in terms of the amount of oxygen required by bacteria to render sewage inert.

(j) “Tariff” or “Schedule or Rates and Charges” shall mean a schedule implemented by the District attached to an ordinance or otherwise ordained or ordered by the District from time to time setting out the present charges for sewer user fees for various classifications of property, charges for excess suspended solids, BOD’s, capacity charges, connection fees, and other lawful charges. The tariff shall change from time to time based upon changed conditions. The charge for an EDU shall be determined as follows: The District shall formally adopt its budget as provided by law. Thereafter, the District shall determine the number of EDU’s in the Conservancy District. The District shall determine the charge for each EDU by estimating the amount of money it will need to operate the Conservancy and assign a charge for each EDU considering all factors required in the budget process.

(k) “SS” means suspended solids, a measure of strength of sewage expressed in terms of the quantity of the solid material measured in milligrams within a liter of sewage.

(l) “Maximum Day” means the maximum daily loading (flow, BOD, SS) anticipated from a given discharger in a calendar year.

(m) “Maximum Sustained” means the maximum consecutive 5-day-average loading (flow, BOD, SS), i.e., loadings from the maximum consecutive 5-day discharge period during the calendar year from a given discharger.

3. Severability. The Board hereby declares that if any provision of this ordinance or the application thereof to any person or circumstance is held invalid by court order, the remainder of this ordinance, or the application of any provision held invalid to other persons or circumstances shall not be affected.

4. Authority. The Board finds that the imposition of fees and charges that have been adopted pursuant to this ordinance have been authorized by I.C. § 14-33-22-1, *et seq.*

5. Sewer User Fees. Sewer user fees shall be determined by ordinance from time to time and shall be based on how many EDU’s a user is assigned or billed, or other factors detailed in the Schedule of Rates and Charges in the ordinance.

6. Study for EDU's. The District shall cause a study to be conducted to determine how many EDU's are to be assigned to all users of the sewer. Each single-family residential household shall be assigned one (1) EDU. All other properties in the District shall be assigned an EDU based upon 327 IAC 3-6-11 to the extent possible or upon water consumption or metered usage for categories of property not classified by 327 IAC 3-6-11. There is an irrebuttable presumption that 100% of water consumed will eventually reach the sanitary sewer and that watering and evaporation is *di minimus* and is already factored into the cost of transportation treatment, and cost of an EDU. Therefore, no set off or credit shall be allowed for lawn watering, evaporation, or any other matter. There are no partial EDU's. Any proportioned EDU shall be assigned the next higher EDU.

**Example:** A customer not classified by 327 IAC 3-6-11 has an average monthly water consumption of 27,000 gallons each month.  $27,000 \div 31 = 870.96$  gallons per day.  $870.96 \div 310 = 2.809$ . The customer shall be assigned an EDU of three (3).

7. Appeals. In the event that an aggrieved customer desires to challenge the number of EDU's assigned to the user, the user shall file with the District a protest, in writing, setting forth why the user believes that the EDU assigned is incorrect. Said challenge may be made at any time but the receipt date of the challenge is the "start date" of any successful appeal. No credit shall be allowed for the time period prior to the start date. A form will be available at the District's office for the use of the aggrieved user. All appeals must be made using the District's form. Upon receipt of the protest, the District shall note the date and time of the receipt of protest and shall appoint a hearing officer to conduct a hearing to hear the merits of the protest and to make a recommendation to the Board as to how many EDU's should be assigned and/or the nature and kind of relief, if any, that should be afforded the aggrieved user. The hearing officer shall be a person familiar with the concept of EDU's and of sewers. The hearing shall be informal and normal rules of evidence shall not apply. The aggrieved user shall be allowed to present any evidence deemed appropriate. The hearing may but is not required to be recorded, and the hearing officer shall forthwith make a recommendation to the Board. The Board shall upon receipt consider the report of the hearing officer and shall notify the aggrieved user as soon as practical as to its decision. The aggrieved user shall not be afforded the right to appear in person before the Board as the hearing officer is to act for and on behalf of the Board. However, the Board may upon majority vote allow the aggrieved party to personally appear before the Board. The decision of the Board shall be mailed by first class mail to the aggrieved user. If favorable, the Board shall adjust the EDU assignments and make a refund to the customer. If the decision is not favorable to the customer, the aggrieved customer shall have thirty (30) days from receipt of the Board's decision to file a request for judicial review with the Marion County Circuit Court. If the report is mailed, an additional five (5) days shall be allowed. If a request for judicial review is not filed within thirty (30) days, the decision of the Board shall be final. The appeal shall be an action *de novo* and shall consist of a request for judicial review in the form of a civil action against the Board with the filing of a complaint and the issuance of a summons to the Board. The Indiana Rules of Civil Procedure and Indiana Statutes regarding evidentiary rules shall govern the trial. The District shall comply with



the Order of the Court and shall refund any monies due if the customer receives a favorable decision from the Court. However, until the Board's initial action is reversed, the number of EDU's assigned to the particular property shall be as first determined by the District and the "end date" of the appeal shall be the date of the determination of the correct EDU assignment. The refund shall be made to the aggrieved user and shall be based upon that sum of money which should have been charged from the "start date" until the date of the corrected assignment of EDU's, either by the Circuit Court or by Order of the Board.

8. Contract Users. The Board has heretofore contracted with certain users whose property lies outside the boundaries of the District. These properties shall be charged for the transportation and treatment of their sewage by assigning an EDU number to the property and assigning other factors affecting their user fees. Such factors shall be determined from time to time and shall be published by ordinance in the Schedule of Rates and Charges. The contract users shall be charged essentially the same as users in the Conservancy boundaries with the exception of other charges that are unique to these properties, including but not limited to inflow and infiltration, plus an additional fee of 15% of the total bill which represents additional administrative costs which these properties have historically cost the District. Any existing contract made between these contract users and the District shall be considered null and void upon the effective date of this ordinance and shall be superseded by this ordinance. This ordinance shall be first approved by the Marion County Circuit Court with notice of the hearing to interested contract users and users being assessed exceptional benefits charges by publication and certified mail. Each contract is subject to negotiation based upon circumstances unique to the property.

9. Grease. Grease causes great problems for the District in that it clogs lines more than any other unlawful substance introduced to the sewer lines. If the District determines that any establishment is introducing unreasonable amounts of grease, the District may require the customer to install a grease trap and if the customer refuses, the District may without further authority install the grease trap and collect the amount required for installation along with reasonable attorney fees from the customer or may seek further injunctive action from the Circuit Court of Marion County.

10. BOD's and Suspended Solids. Should the Board determine that any user is discharging an unreasonable amount of BOD's and suspended solids, the Board may charge the user a reasonable charge later determined and included in the Schedule or Rates and Charges.

11. Sewer Connection. The District has heretofore established uniform existing rates for sewer connections as well as capacity charges. These rates shall be amended from time to time by the Schedule or Rates and Charges or future ordinances.

12. Other Ordinances Not Repealed. All other ordinances of the District not modified by this ordinance shall remain in full force and effect.

13. Board May Change Rates from Time to Time. If this ordinance is approved by the Circuit Court, it shall not be necessary to request approval of any new rates or charges implemented from time to time, but an aggrieved party shall have the right at any time to file an action with the Marion County Circuit Court challenging the validity of the Schedule or Rates and Charges.

This ordinance shall be effective January 1, 2020.

All of which his enacted and ordained this \_\_\_\_\_, 2019.

\_\_\_\_\_  
FRED BUCKINGHAM, Chairman

\_\_\_\_\_  
BEVERLY A. MATTHEWS, Vice Chairman

\_\_\_\_\_  
JEFFREY T. WOOD, Member

ATTEST:

\_\_\_\_\_  
Secretary

**BEN DAVIS CONSERVANCY DISTRICT**  
703 South Tibbs Avenue  
Indianapolis, Indiana 46241-2708  
317-241-2941

Fred F. Buckingham  
Chairman  
Beverly A. Matthews  
Vice-Chairman  
Jeff Wood  
Director

Angela Wirth  
Secretary

Date Received by Conservancy
------------------------------

**APPEAL OF EDU DETERMINATION**

FROM:

\_\_\_\_\_  
Name of User

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Address

\_\_\_\_\_  
E-mail address (if any)

TO: Board of Directors Ben Davis Conservancy District

I wish to contest the EDU determination or the amount of my sewer user charges at \_\_\_\_\_ (service address) for the following reasons: (Use additional sheets if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In support of my appeal, I enclose the following documents: (Use additional sheets if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- I do not desire a hearing but wish the Conservancy to make a decision upon the written documents that I am submitting.
- I desire a hearing where I can be personally present. I understand that I can be represented by counsel. I understand that if I request a continuance, it should be requested within 2 working days prior to the hearing. One continuance shall be granted as of right. Further continuances are discretionary with the Hearing Officer and may be granted if good cause is shown.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

**BEN DAVIS CONSERVANCY DISTRICT**

703 South Tibbs Avenue  
Indianapolis, Indiana 46241-2708  
317-241-2941

Fred F. Buckingham  
Chairman  
Beverly A. Matthews  
Vice-Chairman  
Jeff Wood  
Director

Angela Wirth  
Secretary

FROM: Board of Directors Ben Davis Conservancy District

TO: \_\_\_\_\_

SUBJECT: Appeal of \_\_\_\_\_ Dated: \_\_\_\_\_

1. The above customer has contested his/her sewer user charges. A copy of his/her appeal is attached hereto.
2. You are hereby appointed as Hearing Officer to provide a full and fair hearing to the customer at a location within Marion County, Indiana. You are directed to hear any matter the customer may choose to present and to make a recommendation to the Board of Directors, detailing your reasons for the recommendation for the Board's action.
3. The hearing shall take place within 30 days and you are to arrange for the hearing and give the customer written notice of the date, place, and time of the hearing. The hearing may but is not necessary to be recorded and shall be informal and there are no formal rules of evidence.
4. The customer shall be entitled to one continuance as a matter of right but additional continuances may be granted in your discretion for good cause.
5. After hearing their evidence, you will make a written recommendation to the Board and detail your reasons for the Board's recommended action.

Date: \_\_\_\_\_

\_\_\_\_\_  
For the Board of Directors

**NOTICE OF HEARING**

TO: \_\_\_\_\_ (Name)  
\_\_\_\_\_ (Address)  
\_\_\_\_\_

You are hereby notified that a hearing on your appeal of EDU assessment with the Ben Davis Conservancy District will take place on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_.m. at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

At the hearing, you may appear in person or by counsel. You may present oral or written evidence of any kind and may bring witnesses. There are no formal rules of evidence. Please be prompt. If you desire a continuance, you have the right to at least one continuance for any reason. Further continuances may be granted only on a showing of good cause. If you wish a continuance, please contact me at the address and/or telephone number below as soon as possible.

If you fail to appear for the scheduled hearing and a continuance was not granted, your appeal may be dismissed.

Sincerely,

\_\_\_\_\_  
Hearing Officer  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone Number: (\_\_\_\_) \_\_\_\_\_

FROM: \_\_\_\_\_, Hearing Officer of the Ben Davis  
Conservancy District, address \_\_\_\_\_  
\_\_\_\_\_.

TO: Board of Directors Ben Davis Conservancy District

SUBJECT: Appeal of \_\_\_\_\_

I considered the appeal of the above-named customer on \_\_\_\_\_.  
The customer  appeared in person;  presented evidence;  failed to appear as scheduled;  
 other \_\_\_\_\_.

After considering the matter, I t is my recommendation that the Board of Directors take  
the following action:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

My reason for the recommendation is as follows: (Attach additional sheets, if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_ Hearing Officer

**DETERMINATION OF THE BOARD OF DIRECTORS**

The Board of Directors of the Ben Davis Conservancy District on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ has taken the following action on this appeal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**BEN DAVIS CONSERVANCY DISTRICT**

703 South Tibbs Avenue  
Indianapolis, Indiana 46241-2708  
317-241-2941

Fred F. Buckingham  
Chairman  
Beverly A. Matthews  
Vice-Chairman  
Jeff Wood  
Director

Angela Wirth  
Secretary

DATE: \_\_\_\_\_  
FROM: Board of Directors, Ben Davis Conservancy District  
TO: \_\_\_\_\_  
SUBJECT: Decision by the Board of Directors

The Board of Directors has on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ taken the following decision after receiving the recommendation of the Hearing Officer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you are dissatisfied with the decision of the Board, you have 30 days after receiving the decision (35 days from the above date if the decision was mailed) to file a Request for Judicial Review with the Circuit Court of Marion County. The appeal will be *de novo*, but Rules of Evidence will be applicable to any hearing. This Request for Judicial Review if not filed within the period may be dismissed as untimely and the action of the Directors of the Conservancy will be binding.

\_\_\_\_\_  
For the Board of Directors

**SANITARY SEWER SERVICE USER AGREEMENT**

THIS Agreement (the "Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2019, (the "Effective Date"), by and between the Ben Davis Conservancy District (hereafter "District") and \_\_\_\_\_, a \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ and doing business in the State of Indiana (hereafter "User"). The resident agent, managing partner or principal agent of User is \_\_\_\_\_, whose address is \_\_\_\_\_ and whose email address is \_\_\_\_\_, and whose telephone number is (\_\_\_\_) \_\_\_\_\_.

WHEREAS, \_\_\_\_\_, is the legal and rightful owner of a certain parcel of real property located at \_\_\_\_\_, Indianapolis, Indiana, and also referred to as \_\_\_\_\_, further identified by the Marion County Assessor as Parcel(s) \_\_\_\_\_ (hereafter the "Site"), the legal description of which is attached hereto as "Exhibit A"; and

WHEREAS, the District is a conservancy lawfully established under Indiana Law that operates a sanitary sewer system in Wayne Township, Indiana, and transports sanitary sewage to a sewage treatment plant that is owned and operated by the CWA Authority (hereafter "CWA") and who pays CWA a fee based upon the volume of sewage processed and the amount of solids and other matters in the wastewater; and

WHEREAS, User desires permission to connect to the District's public sanitary sewer for the purpose of discharging sanitary sewage into said District's sewer system; and

WHEREAS, the property owned by the User is situated sufficiently near the boundary limits of the District but is outside of the District's boundary; and

WHEREAS, Citizens Energy Group operating as Citizens Water Authority (CWA) has no connection point which would reasonably allow the user to discharge its sewage into any sewer lines owned by the CWA; and



WHEREAS, the District is willing to permit a connection to be made to the public sewer system of the District in order to serve the property of the User, providing that the User agrees to pay any applicable fees for the privilege of connection to the District's sewer system and providing further that user agrees to pay monthly fees or service charges so long as the User continues to use the sanitary sewer system of the District and providing further the User agrees to the terms and conditions contained herein, pertaining to such sewer services; and

WHEREAS, The User has obtained a release from the legal entity that is responsible for providing sewer service in the area of the property to be served; and

WHEREAS, the User shall comply with all construction standards and requirements regarding the connection in accordance with the plans, specifications, and profiles which have been approved by the District and which are now on file in the District's office and are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, and of the mutually agreed acts upon the part of each party to be performed hereunder, it is mutually agreed as follows:

1. User may maintain, operate, and use a sanitary sewage connector system capable of handling the discharge of sewage from its premises and connect the same to the District's public sanitary sewer system in a manner shown by the drawings and specifications approved by the District and on file which by their reference is made a part of this Agreement. If User has already constructed the sanitary sewage system and has been discharging its sewage into said system it is contemplated the User will be permitted to continue said discharge of its sewage if the User complies with all terms of this Agreement. User agrees to operate and maintain said sewage system to the point of connection with the District's system at its own expense and such operation and maintenance shall be subject to the approval of the District.
2. All work in connection with the installation and construction of the connection of said sewage system to the District's system and the maintenance of User's sewer lines shall be performed subject to the rules and regulations and ordinances governing this class of work and to the satisfaction of the District.
3. User agrees that the connection with the District's system shall be solely used for, and as, a sanitary sewer. Storm water or clear water runoff from roofs, areaways, yards, driveways, and all other such areas are strictly prohibited.
4. User agrees to pay the District a monthly fee which shall be determined annually for the purpose of transmitting sewage from the User to the District's sewer lines and ultimately to a sewage processing plant. Said fee shall be determined by the District at the District's discretion using one of the following

methods:

a. Cost per Gallon Discharged: The District shall formally adopt its budget as provided by law. The cost per gallon shall be determined by taking the budget amount for each year divided by the number of gallons of sewage processed for the previous year, the result of which shall be the "cost per gallon" that the District is required to pay to transport, administer, and process each gallon of sewage. The "cost per gallon" shall be applied to the water records or metered flow records as obtained by the District. The District shall notify the User annually of the "cost per gallon" charge.

or

b. Cost per Equivalent Dwelling Unit (EDU): An Equivalent Dwelling Unit (EDU) Ordinance has been legally adopted and is currently in place for the District. EDU's will be determined for each type of User by the District in accordance with the EDU Ordinance, the terms of which are incorporated herein by reference.

5. Such fees, liabilities, costs, and volume surcharges may be modified and increased periodically. User shall be given notice in accordance with state regulations and statutes governing the notice and implementation of increases in sanitary sewer service rates and charges, and User shall be responsible for the increased fees and surcharges. In the event of non-payment or material violation of any other covenant by User or User's agent, the District shall have the right to demand disconnection from the District's system within 30 days and if not disconnected, to cause connection to be removed by self-help.
6. At any time either party may install a meter at a point determined by the District or District's representative which will accurately determine the discharge volume into the District's system. Said meter reading and costs of maintaining the meter shall be at the expense of the party desiring the measurement.
7. If required, User shall report any well or other discharge records to the District and shall make available certified records of metered discharges. User shall calibrate said meter as frequently as is reasonably recommended by the District or District's representative.
8. The District shall accept discharge readings as shown by metered records as the sewage gallonage of the User subject to the following conditions:
  - a. Either party may request a temporary test of sewage delivered to the District by the User for the purpose of comparing meter records with actual use.
  - b. The cost of the temporary test of sewage delivered shall be paid by the party requesting the test.

- c. The test of sewage shall be performed by a qualified person agreed upon by both parties and if no agreement can be reached then by the order of the Marion County Circuit Court.
  - d. Should there be a variation between the assumed volume and the actual sewage delivered to the system as determined by the temporary test, the District shall adjust the rate to conform to the results of the temporary test.
9. User agrees that the discharge can be monitored by the District in order to identify any prohibited discharges or materials to the sanitary sewer lines. If any such prohibited discharges or materials are discovered, User agrees to immediately cease and desist the discharge.
10. All facilities and grounds at User's Site shall be open to inspection by authorized representatives of the District for the purpose of monitoring flows and determining regulatory compliance including, but not limited to, compliance with Federal, State, and local rules and regulations associated with the discharge of wastewater.
11. User agrees to indemnify and hold harmless the District from any and all loss, damage, expense, claims, demands, actions, or cause of action arising out of the construction, maintenance, and operation of its sewage system, or occasioned by or in any way growing out of User's operations whether such loss shall be suffered directly by the District or through its liability to third persons by reasons of injuries to persons, damages to property, or violations of any Agreements.
12. User acknowledges that, in the event the CWA shall construct sanitary sewer lines capable of handling User's sanitary sewer discharge, the CWA may require User to connect to the CWA lines.
13. This Agreement shall run with the land of User as hereinabove described and shall be binding upon the User and the District, their grantors, successors, and assigns so long as said sewer system shall be used by User. At such time that sewer system shall cease to be used, this Agreement shall immediately cease and terminate and this instrument shall be of no further force or effect.
14. All parties agree that this instrument may be recorded and agree that they shall execute any and all documents necessary for recording at the User's expense.
15. User agrees that no extensions or additional connections shall be permitted to be made to User's system without the express written consent of the District which shall be subject to the execution of a separate Sewer Service Agreement between the additional party and the District.
16. If warranted by the District, User shall collect representative process waste samples from an approved sampling point for analysis of contaminants if required. User agrees to pay the sampling and analysis costs as charged directly to User by an independent laboratory acceptable to the District. User shall

provide the District with a copy of the analysis report. In no instance shall User discharge pollutants in excess of the following unless approved and arrangements are made with the District for additional surcharges to be paid by User. User's discharge shall not exceed 300 mg/l for BOD; 240 mg/l for Total Suspended Solids (TSS), and 20 mg/l for NH3-N.

17. User agrees to pay the District for any surcharges and monitoring fees as may be required by the CWA when such fees are a direct result of Users discharges from the Site. User agrees to reimburse the District for any liabilities, reasonable costs, volume surcharges, and treatment charges imposed by CWA for solids or other materials in the wastewater when such liabilities, costs, surcharges and/or treatment charges can be shown to be a direct result of User's discharges from the Site.
18. In the event that the District discontinues having its sewage treated by CWA and constructs its own treatment facility in the future, this Agreement may at the option of the District be amended.
19. The District reserves the right to establish maximum discharge volumes and rates if necessary. If User exceeds the established volume and the exceedances results in operational issues with the District's system, this Agreement may be cancelled and the User may be forced to disconnect from the system.
20. Authorization to discharge may be temporarily halted or revoked by the District upon determination that the waste-stream is adversely affecting the collection system or the wastewater treatment facility. Any such determination as to such discharge shall be at the sole discretion of the District and such decision shall be done independently without need of agreement between User or any other entity.
21. In the event that the User defaults on payment of any sum due or any other default requiring legal action, the User shall pay the District's reasonable costs and attorney fees in enforcing any covenant hereunder.
22. All parties represent and warrant that all necessary corporate or other action has been taken in order for said entities to enter into this Agreement and shall be bound thereby.

This Agreement will commence on the Effective Date and will expire upon change in ownership or within five (5) years from the Effective Date unless the District and User agree in writing to extend the term of the Agreement. User shall notify the District by written notice of at least sixty (60) days of its intent to terminate said Agreement. In the event the parties fail to agree in writing to extend the Agreement at the end of five (5) years, the Agreement may nevertheless be extended on a month-to-month basis at the discretion of the District.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officers, have executed this instrument in Indianapolis, Indiana as of the day and year first above written.

The representatives executing this Agreement by the Ben Davis Conservancy District and \_\_\_\_\_ -  
\_\_\_\_\_ certify that they are authorized to execute this Agreement.

Dated: \_\_\_\_\_, 201\_\_

**DISTRICT:**

Ben Davis Conservancy District

703 S. Tibbs Avenue

Indianapolis, IN 46241

**USER:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**ACKNOWLEDGMENT OF BOARD OF DIRECTORS OF THE  
BEN DAVIS CONSERVANCY DISTRICT**

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF MARION         )

Before me, a notary public in and for the State aforesaid, came \_\_\_\_\_, personally known to me as an officer of the above entity and subscribed his/her name to said Sanitary Sewer Service Agreement and swore that the contents thereof were true as verily believed and as subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My commission expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_

**ACKNOWLEDGMENT OF \_\_\_\_\_**

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF MARION         )

Before me, a notary public in and for the State aforesaid, came \_\_\_\_\_, personally known to me as an officer of the above entity and subscribed his/her name to said Sanitary Sewer Service Agreement and swore that the contents thereof were true as verily believed and as subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My commission expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION COUNTY CIRCUIT COURT  
CAUSE NO. 49C01-1906-PL-023150  
(FORMERLY CAUSE NO. 0000006448)

IN THE MATTER OF THE )  
 )  
BEN DAVIS CONSERVANCY DISTRICT )

**NOTICE BY PUBLICATION**

**TO: ALL FREEHOLDERS, CONTRACT USERS, USERS CHARGED FOR EXCEPTIONAL BENEFITS AND ALL USERS OF THE BEN DAVIS CONSERVANCY DISTRICT AND ALL OTHER INTERESTED ENTITIES**

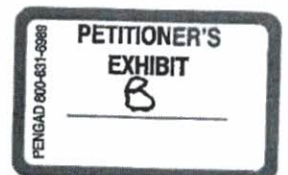
A petition has been filed in the Marion County Circuit Court for authority to enact an Ordinance which would implement an "EDU" (or Equivalent Dwelling Unit) as the unit of measure by which a single-family residential household is charged by the District for sewer service based on typical water consumption of a single-family residential household. If enacted, all properties in the District would be assigned an EDU based upon the classification of that property by 327 IAC 3-6-11 or by the District for any property not classified by 327 IAC 3-6-11. The Ordinance seeks to lessen the reliance on the *ad valorem* property tax and substitute water consumption based on an EDU as the basis of sewer user fees. The authority for such a change is I.C. § 14-33-22-1, *et seq.* You may obtain a copy of the petition by downloading it from the Conservancy's website at [www.bdconservancy.com](http://www.bdconservancy.com), by requesting a copy from the Conservancy at (317) 241-2981, or by requesting a copy from the Clerk of this Court.

A public hearing on this proposed Ordinance is set for \_\_\_\_\_, 2019, at \_\_\_\_\_ o'clock \_\_\_\_m. in the Marion County Circuit Court, City-County Building, Room W-506, 200 East Washington Street, Indianapolis, Indiana.

You are invited to attend and present any matter you deem relevant.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk, Marion County Circuit Court



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION COUNTY CIRCUIT COURT  
  
CAUSE NO. 49C01-1906-PL-023150  
(FORMERLY CAUSE NO. 0000006448)

IN THE MATTER OF THE )  
 )  
BEN DAVIS CONSERVANCY DISTRICT )

**NOTICE OF PUBLIC HEARING**

**Via Certified Mail – Return Receipt Requested**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE TO ALL CONTRACT USERS OUTSIDE OF THE BOUNDARIES  
OF THE BEN DAVIS CONSERVANCY DISTRICT AND ALL  
FREEHOLDERS OF THE BEN DAVIS CONSERVANCY DISTRICT  
PAYING EXCEPTIONAL BENEFITS CHARGES**

A petition has been filed in the Marion County Circuit Court by the Ben Davis Conservancy District for authority to enact an Ordinance which would implement an “EDU” (or Equivalent Dwelling Unit) as the unit of measure by which a single-family residential household is charged by the District for sewer service based on typical water consumption of a single-family residential household. If enacted, all properties in the District would be assigned an EDU based upon the classification of that property by 327 IAC 3-6-11 or by the District for any property not classified by 327 IAC 3-6-11. If provisionally approved by the Court, the Ordinance will be the subject of further public hearings before it could be enacted. As either a contract user or a user paying exceptional benefits charges, you are receiving this notice as your rates could change. The Ordinance seeks to lessen the reliance on the *ad valorem* property tax and substitute water consumption based on an EDU as the basis of sewer user fees. The authority for such a change is I.C. § 14-33-22-1, *et seq.* You may obtain a copy of the petition by downloading it from the Conservancy’s website at [www.bdconservancy.com](http://www.bdconservancy.com), by requesting a copy from the Conservancy at (317) 241-2981, or by requesting a copy from the Clerk of this Court.

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You are invited to attend and present any matter you deem relevant.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk, Marion County Circuit Court

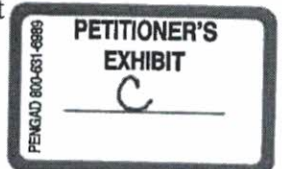




EXHIBIT D

ENTITIES NOW PAYING EXCEPTIONAL BENEFITS CHARGES  
AND CONTRACT CHARGES

I.

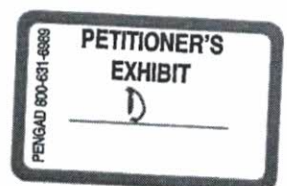
Entities Paying Exceptional Benefits Charges

1. The Bidwell Family Corp.  
John Hurst, Registered Agent  
4151 W Washington St  
Indianapolis IN 46241
  
2. Bull Frog Trailer Park LLC  
Barbara Fishers, Registered Agent  
11704 N SR 9  
Fountaintown IN 46130
  
3. Classic Car Wash  
Wagar Baig  
5301 W 56<sup>th</sup> St  
Indianapolis IN 46254
  

and

Classic Car Wash  
6443 W Washington St  
Indianapolis IN 46241

4. Fabric Care Center  
Thomas Prionas, Registered Agent  
5760 W Morris St  
Indianapolis IN 46241



II.  
Entities Paying Contract Charges  
Outside of Boundaries of  
Ben Davis Conservancy District

1. Best Western Hotel  
Kirit Patel, Manager  
55 S High School Rd  
Indianapolis IN 46241

and

Swagat Hospitality Corp  
d/b/a Best Western Hotel  
Prafel B Patel, Registered Agent  
9203 Tenor Way  
Indianapolis IN 46231

2. Bob Evans  
CT Corp System, Registered Agent  
251 E Ohio St Ste 1100  
Indianapolis IN 46204
3. Covington Square Apartments LLC  
CT Corp System, Registered Agent  
130 W Market St Ste 800  
Indianapolis IN 46204
4. Gate Gourmet  
Corporation Service Co, Registered Agent  
135 N Pennsylvania St Ste 1610  
Indianapolis IN 46204
5. Harrison Mobile Home Park  
John Thoe, Registered Agent  
1649 Central Ave  
Indianapolis IN 46202
6. Penske Truck Leasing Corporation  
Corporation Service Co, Registered Agent  
135 N Pennsylvania St Ste 1610  
Indianapolis IN 46204

7. James Bohunsky  
d/b/a Garden City Mobile Home Park  
4915 Rockville Rd  
Indianapolis IN 46224

8. James Bohunsky  
d/b/a Bohunsky Mobile Home Park  
4915 Rockville Rd  
Indianapolis IN 46224

9. James Cottongin  
5230 Martha St  
Indianapolis IN 46224

10. Logistics Insight  
Centra Inc  
PO Box 869  
Warren MI 48090

and

Logistics Insight  
c/o Norman E Harned, Registered Agent  
13210 Fogwell Pkwy  
Roanoke IN 46783

11. Neier Inc  
Richard L Neier, Registered Agent  
2057 S CR 800 W  
Coatesville IN 46121

and

Neier Inc  
Attn: Manager  
4711 W Washington St  
Indianapolis IN 46241

12. Metropolitan School District of  
Wayne Township  
Jeff Butts, Registered Agent  
1220 S. High School Road  
Indianapolis, IN 46241
  
13. Mario Rodriguez, Executive Director  
Indianapolis Airport Authority  
7800 Col H Weir Cook Memorial Dr  
Indianapolis IN 46241

and

Brian Touhy, Board Counsel  
Indianapolis Airport Authority  
50 S Meridian St  
Indianapolis IN 46204

14. CWA Authority Inc  
Jennett M Hill, Registered Agent  
2020 N Meridian St  
Indianapolis IN 46202
  
15. Magnode Corporation  
John Hurst, Registered Agent  
400 E State St  
Trenton OH 45067-1599