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## CH20 20 .11 - Waterworks Improvement

**AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION BY THE TOWN OF LAPEL, INDIANA, OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE TOWN'S WATERWORKS, THE ISSUANCE AND SALE OF REVENUE BONDS TO PROVIDE FUNDS FOR THE PAYMENT OF THE COSTS THEREOF, THE ISSUANCE AND SALE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE AND SALE OF SUCH BONDS, AND THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SUCH WATERWORKS AND OTHER RELATED MATTERS**

Whereas, the Town of Lapel, Indiana (the "Town"), has heretofore established and constructed and currently owns and operates a waterworks by and through its Town Council (the "Town Council") furnishing the public water supply to the Town and its inhabitants (the "Waterworks"), pursuant to the provisions of Indiana Code [8-1.5](#), as amended (the "Act"); and

Whereas the Town has withdrawn the Waterworks from the jurisdiction of the Indiana Utility Regulatory Commission; and

Whereas, the Town Council hereby finds that certain improvements and extension to the Waterworks are necessary; and Commonwealth Engineering, Inc., of Indianapolis, Indiana, consulting engineers employed by the Town (the "Consulting Engineers"), have prepared and filed plans, specifications, and detailed descriptions and estimates of the costs of the necessary improvements and extensions to the Waterworks, which plans, specifications, descriptions, and estimates, to the extent required by law, have been duly submitted to and approved or will be approved by all governmental authorities having jurisdiction there over (the improvements and extensions to the waterworks as described in such engineers plans and specifications and below are referred to herein as the "Project");and

Whereas, this Town Council further finds that the estimates prepared and filed by the Consulting Engineers with respect to the costs of acquisition and construction of improvements and extensions to the Waterworks, and including all authorized expenses relating thereto, including the costs of issuance of bonds and, if necessary,

bond anticipation notes (the BAN's), on account of the financing of all or a portion thereof, will be in the aggregate amount of approximately One Million Eight Hundred Thousand Dollars (\$1,800,000); and

Whereas, the Town has issued its Waterworks Revenue Bonds, Series 2000 (the "Prior Bonds") in the original aggregate principal amount of \$1,328,000, of which \$1,164,000 is now outstanding, and which Prior Bonds constitute a charge on the Net Revenues (as defined below); and

Whereas, the Town Council now finds that all conditions precedent to the issuance of the Bonds on a parity with the Prior Bonds have been or will be met; and

Whereas, the Bonds will constitute a charge against the Net Revenues on a parity with the Prior Bonds and are to be issued subject to the provisions of the laws of the Act and this Ordinance;

Whereas, The Town Council finds that other funds available to the Town in the amount of approximately Five Hundred Thousand Dollars (\$500,000) have been or will be applied to the costs of the Project, leaving a balance of approximately One Million Three Hundred Thousand Dollars (\$1,300,000) and if necessary, BAN's; and

Whereas, the Town Desires to authorize the issuance of waterworks revenue bonds hereunder payable from the Net Revenues of the Waterworks, on a parity with the Prior Bonds, and BAN's, if necessary, payable from proceeds of such waterworks revenue bonds issued to finance the aforementioned costs of the Project, and to authorize the refunding of said BAN's if issued; and

Whereas, this Town Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds, and BAN's, to provide the necessary funds to be applied to the cost of the Project and authorized costs relating thereto, have been complied with in accordance with the provisions of the Act and Indiana Code [5-1-14-5](#); and

Whereas, this Town Council consequently seeks to authorize the issuance of revenue bonds and BAN's to finance the acquisition and construction of the Project pursuant to the Act and Indiana Code [4-1-14-5](#) and the sale of such revenue bonds to the United States of America through the loan program operated by Rural Development, an agency of the United States Department of Agriculture ("Rural Development"), pursuant to the provisions of Indiana Code [5-1-11-1](#) or at public sale pursuant to the provisions of Indiana Code [5-1-11](#), and the sale of such BAN's pursuant to the provisions of the Act and Indiana Code [5-1-14-5](#), subject to and dependent upon the terms and conditions hereinafter set forth;

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAPEL, INDIANA AS FOLLOWS:

**Section 1: Acquisition and Construction of the Project** The Town, acting by and through the Town Council and as the owner and operator of the Waterworks for the furnishing of the public water supply to the Town and its inhabitants, hereby orders, authorizes and directs the Town Council to acquire any and all necessary property and to proceed with the construction of improvements and extensions to the Waterworks, pursuant to the Act and in accordance with the plans, specifications and cost estimates heretofore prepared and filed with the Town

Council by the Consulting Engineers, which plans, specifications and cost estimates are hereby adopted and approved and, be reference, incorporated fully into this Ordinance, and two copies of which are now on file in the office of the Clerk/Treasurer of the Town and are open for public inspection. The actions of the Town Council in connection with the acquisition of any and all necessary property and the construction and financing of such improvements and extensions to the Waterworks are hereby authorized, approved, ratified and confirmed.

Where used in this Ordinance, the term "Town " shall be construed also to include any department, board, commission or officer or officers of the Town or of any Town department, board or commission. The terms "Waterworks", "waterworks", "works" and similar terms used in this Ordinance shall be construed to mean and include the existing structures and property of the Waterworks and all enlargements, improvements, extensions and additions thereto, and replacements thereof, now or subsequently constructed or acquired, whether from the proceeds of the bonds and BAN's authorized herein or otherwise. Such improvements and extensions shall be constructed and the bonds and BAN's herein authorized shall be issued pursuant to the provision of this Ordinance, the Act and Indiana Code [5-1-14-5](#).

**Section 2 Description of the Project** The Project consists of the construction of a new water treatment plant and a new water storage tank and other related needed improvements. The Town, acting by and through the Town Council, shall proceed with the acquisition, construction and installation of the Project and shall enter into all contracts necessary or appropriate for such purpose, in conformity with and subject to the requirements and conditions set forth in this Ordinance and in the Act.

**Section 3 The Bonds:** In accordance with the Act and for the purpose of providing funds with which to pay the costs of the Project, together with authorized expenses relating thereto including the costs of issuance of the Bonds, as hereinafter defined, on account thereof, and refunding the BAN's described below, the Town shall issue and sell its waterworks revenue bonds in the aggregate principal of not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000). The principal of, redemption premium, if any, and interest on the Bonds shall be payable solely out of the Bond and Interest Redemption Account referred to below, on a parity with the Prior Bonds.

The Bonds shall be designated as the "Town of Lapel, Indiana, Waterworks Revenue Bonds, Series 2011." The Bonds shall be issued in an aggregate principal amount of not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000). The Bonds shall be issued as fully registered bonds in denominations of One Thousand Dollars (\$1,000) and any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in any one year (or, if Bonds are purchased by Rural Development, such other denomination or denominations acceptable to Rural Development), shall be numbered consecutively from 11R-1 upward and shall bear interest at a rate not to exceed four percent (4.0%) per annum (the exact rate or rates to be determined by negotiation with Rural Development or by bidding). Interest on the Bonds shall be calculated on the basis of twelve (12) thirty (30) day months for a three hundred sixty (360) day year (or on the basis of a three hundred sixty-five (365) day year, if Rural Development is the purchaser of the Bonds) and shall be payable semiannually on January 1 and July 1 in each year or, if Rural Development is the purchaser of the Bonds, annually on January 1 in each year (each an "Interest Payment Date"), commencing not sooner than

January 1, 2012, until principal is fully paid. The principal of the Bonds shall mature serially commencing not sooner than January 1, 2013, over a period of not more than 40 years (provided that, in the event the Bonds are sold to Rural Development, the Bonds shall be issued as a single Bond with annual principal installment payments due on January 1 of each year, commencing not sooner than January 1, 2013, and having a final maturity of not later than January 1, 2053. The final amortization schedule for the Bonds shall be established by the Clerk/Treasurer as set forth in the Clerk/Treasurer's Certificate (as hereinafter defined) prior to the sale of the Bonds.

Notwithstanding any other provision of this Ordinance, if the Bonds are sold to Rural Development, the Town may receive payment for the Bonds installments and principal shall not be payable and interest shall not accrue on the Bonds until such principal amount has been advanced pursuant to requests made by the Town to Rural Development, with advances to be allocable in order of the principal installment payments to be made by the Town. In the event that the total principal amount of the Bonds sold to Rural Development is not advanced to the Town, the principal amount of the Bonds sold to Rural Development shall be reduced accordingly in inverse order of such principal installment payments.

The Clerk/Treasurer is hereby authorized to contract with a qualified financial institution to serve as registrar and a paying agent for the Bonds and the BAN's (the "Registrar" and "Paying Agent" and, in both such capacities the "Registrar and Paying Agent"). The Registrar and Paying Agent shall be charged with and shall be appropriate agreement undertake the performance of all of the duties and responsibilities customarily associated with each such position, including without limitation the authentication of the Bonds. The Clerk/Treasurer is authorized and directed to enter into such agreements and understanding with the Registrar and Paying Agent and any subsequent Registrar and Paying Agent as will enable and facilitate the performance of its duties and responsibilities, and is authorized and directed to pay such fees as the Registrar and Paying Agent may reasonably charge for its services in such capacity, and such fees may be paid from the Bond and Interest Redemption Account continued by this Ordinance.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving thirty (30) days' notice in writing to the Town and by first-class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) days or upon the earlier appointment of a successor Registrar and Paying Agent by the Town. Any such notice to the Town may be served personally or sent by certified mail. The Registrar and Paying Agent may also be removed at any time as Registrar and Paying Agent by the Town, in which event the Town may appoint a successor Registrar and Paying Agent. The Town shall notify each registered owner of Bonds then outstanding by first-class mail of the removal of the Registrar and Paying Agent. Notices to registered owners of the Bonds shall be deemed to be given when mailed by first-class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar. Any predecessor Registrar and Paying Agent shall deliver all of the Bonds and cash in its possession with respect thereto, together with the registration books, to the successor Registrar and Paying Agent. The Clerk/Treasurer is hereby authorized to act on behalf of the Town with regard to any of the aforementioned actions of the Town relating to the resignation or removal of the Registrar and Paying Agent and appointment of a successor Registrar and Paying Agent.

If the Bonds or the BAN's are registered in the name of Rural Development or any other purchaser that does not object to such designation, the Clerk/Treasurer shall be designated as the Registrar and Paying Agent for the Bonds or BAN's and shall be charged with the performance of all the duties and responsibilities of Registrar and Paying Agent.

Principal of and any redemption premium on the Bonds, and principal and interest on the BAN's, shall be payable at the principal office of the Paying Agent. Interest on the Bonds shall be paid by check or draft mailed or delivered by the Paying Agent to the registered owner thereof at the address as it appears on the registration books kept by the Registrar as of the fifteenth (15<sup>th</sup>) day of the month immediately preceding the Interest Payment Date or at such other address as may be provided to the Paying Agent in writing by such registered owner. All payments on the Bonds and the BAN's shall be made on any coin or currency of the United States of American which, on the dates of such payments, shall be legal tender for the payment of public or private debt.

Each Bond shall be transferable or exchangeable only on the books of the Town maintained for such purpose at the principal corporate trust office of the Registrar, by the registered owner thereof in person, or by his or her attorney duly authorized in writing upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or his or her attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefore. Each Bond may be transferred or exchanged without cost to the registered owner, except for any tax or other governmental charge which may be required to be paid with respect to such transfer or exchange. The Registrar shall not be obligated to make any transfer or exchange of any Bond (i) during the fifteen (15) days immediately preceding an Interest Payment Date or (ii) after the mailing of notice calling such Bond for redemption. The Town, the Registrar and the Paying Agent may treat and consider the person in whose name any Bond is registered as the absolute owner thereof for all purposes including the purpose of receiving payment of or on account of, the principal thereof, and redemption premium, if any and interest thereon.

In the event any Bond is mutilated, lost, stolen or destroyed, the Town may cause to be executed and the Registrar may authenticate a new Bond of like date, maturity and denomination as the mutilated, lost, stolen, or destroyed Bond, which new Bond shall be marked in a manner to distinguish it from the Bond for which it was issued; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Registrar, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the Town and the Registrar, together with indemnity satisfactory to them. In the event that any such mutilated, lost, stolen or destroyed Bond shall have matured or been called for redemption, instead of causing to be issued a duplicate Bond, the Registrar and Paying Agent may pay the same upon surrender of the mutilated Bond or upon satisfactory indemnity and proof of loss, theft or destruction in the case of a lost, stolen or destroyed Bond. The Town and the Registrar and Paying Agent may charge the owner of any such Bond with their reasonable fees and expenses in connection with the above. Every substitute Bond issued by reason of any Bond being lost, stolen or destroyed shall, with respect to such Bond, constitute a substitute contractual obligation of the Town pursuant to this Ordinance, whether or not

the lost, stolen or destroyed Bond shall be found at any time, and shall be entitled to all the benefits of this Ordinance, equally and proportionately with any and all other Bonds duly issued hereunder.

In the event that any Bond is not presented for payment or redemption on the date established therefore, the Town may deposit in trust with the Paying Agent an amount sufficient to pay such Bond or the redemption price thereof, as appropriate, and thereafter the owner of such Bond shall look only to the funds so deposited in trust with the Paying Agent for payment and the Town shall have no further obligation or liability with respect thereto.

**SECTION 4 THE BAN'S:** In anticipation of the issuance and sale of the Bonds authorized herein, and to provide interim financing to apply to the cost of the Project, the Town is hereby authorized to have prepared and to issue and sell negotiable BAN's of the Town, in an amount not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000) to be designated "Town of Lapel, Indiana, Waterworks Revenue Anticipation Notes, Series 2011." The BAN's shall be issued in fully registered form, shall be numbered consecutively from 11R-1 upwards, shall be issued in denominations of One Thousand Dollars (\$1,000) or integral multiples thereof (or if the BAN's are purchased by Rural Development, such other denomination or denominations acceptable to Rural Development), shall be dated as of the date of issuance of the BAN's and shall bear interest at a rate not exceeding four percent (4.0%) per annum (the exact rate of interest to be determined by negotiation), payable as set forth in the Clerk/Treasurer's Certificate. The BAN's may be sold at a discount not exceeding one percent (1.0%) of the par amount thereof. The initial BAN's delivered will mature as set forth in Clerk/Treasurer's Certificate. Each subsequent BAN delivered will bear the same maturity date as the initial BAN's. The BAN's shall be subject to renewal or extension, subject to the limitations set forth below, at an interest rate not to exceed four percent (4.0%) with the exact rate to be negotiated. The term of the BAN's and all renewal BAN's may not exceed five years from the date of delivery of the initial BANs.

The BANs shall be issued pursuant to the provisions of Indiana Code [5-1-14-5](#), and the principal thereof shall be refunded and retired out of the proceeds from the issuance and sale hereunder of the Bonds. The Town may also use other revenues or funds of the Town legally available therefore, if any, including amounts available to the Town out of federal or state funds available for application to the Project, for payment of the principal of the BANs, provided, however, that no funds other than proceeds from the issuance and sale of the Bonds, if and when issued are pledged to the payment of principal of the BANs. The interest on the BANs shall be payable either from the net revenues of the Waterworks, or from proceeds from the issuance and sale hereunder of the Bonds.

Notwithstanding any other provision of this Ordinance, if the BANs are sold to Rural Development, the Town may receive payment for the BANs in installments and principal shall not be payable and interest shall not accrue on the BANs until such principal amount has been advanced pursuant to requests made by the Town to Rural Development. In the event that the total principal amount of the BANs sold to Rural Development is not advanced to the Town, the principal amount of the BANs sold to Rural Development shall be reduced accordingly.

**SECTION 5 OPTIONAL PREPAYMENT OF BANs; OPTIONAL REDEMPTION OF THE BONDS; TERM BONDS:**

The BANs are pre-payable by the Town, in whole or in part, at any time upon seven days' notice to the owner of the BANs without any premium (or upon such other terms as determined by the Clerk/Treasurer as reflected in the Clerk/Treasurer's Certificate). In the case of pre-payment, the principal and accrued interest due on the BANs shall be paid only from proceeds of the Bonds, except that such principal and interest due on the BANs may also be paid from other revenues and funds legally available therefore, if any, including federal or state funds available for application to the Project; provided, however, that such funds are not pledged to the payment of the BANs.

Any Bonds sold to Rural Development shall be subject to redemption at the option of the Town, in whole or in part, upon thirty (30) days written notice to the registered owner or owners of Bonds to be redeemed, on any date, in order of maturity selected by the Town and by lot within any such maturity or maturities by the Registrar, at a redemption price of 100% OF THE PRINCIPAL AMOUNT OF EACH Bond to be redeemed, plus accrued interest to the redemption rate; provided, however that, so long as Rural Development is the owner of all or a portion of the Bonds, the Town will not defease the Bonds without Rural Development's consent.

Notwithstanding the foregoing paragraph, with respect to Bonds sold to a purchaser other than Rural Development, the redemption provisions, including redemption dates and prices, with respect to the Bonds shall be set forth in the Clerk/Treasurer's Certificate prior to the sale of such Bonds.

Official notice of such redemption shall be mailed by the Registrar and Paying Agent by certified or registered mail at least thirty (30) days prior to the scheduled redemption date to each of the registered owners of the Bonds called for redemption (unless waived by any such registered owner) at the address shown on the registration books of the Registrar and Paying Agent, or at such other address as is furnished in writing by such registered owner to the Registrar; provided, however, that any failure to give such notice by mailing, or any defect therein with respect to any Bond shall not affect the validity of the proceedings for the redemption, and the registration numbers (and, in case of partial redemption, the respective principal amounts) of the Bonds called for redemption. The place of redemption may be at the principal corporate trust office of the Registrar and Paying Agent or as otherwise determined by the Town. Interest on the Bonds (or portions thereof) so called for redemption shall cease to accrue on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the redemption date and when such Bonds (or portions thereof) are presented for payment. Any Bond redeemed in part may be exchanged for a Bond or Bonds of the same maturity in authorized denominations equal to the remaining principal amount thereof.

In addition to the foregoing notice, the Town may also direct that further notice of redemption be given, including without limitation and at the option of the Town, notice described in paragraph (a) below given by the Registrar and Paying Agent to the parties described in paragraphs (b) and (c) below. No defect in any such further notice and no failure to give all or any portion of any such further notice shall in any manner defeat the effectiveness of any call for redemption of Bonds so long as notice thereof is mailed as prescribed above.

- If so directed by the Town, each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers, if any, of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed.
- If so directed by the Town, each further notice of redemption shall be sent at least thirty-five (35) days before the redemption date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types, comprising the Bonds (such depositories now being The Depository Trust Company of New York, New York, and the Philadelphia Depository Trust Company of Philadelphia, Pennsylvania) and to one of more national information services that disseminate notices of redemption of obligations such as the Bonds (such as Financial Information, Inc.'s Financial Daily Called Bond Service, Kenny Information Service's Called Bond Service, Moody's Municipal and Government News Reports and Standard & Poor's Called Bond Record.)
- If so directed by the Town, each such further notice shall be published one time in The Bond Buyer of New York, New York or, if the Registrar believes such publication is impractical or unlikely to reach a substantial number of the holders of the Bonds, in some other official newspaper or journal which regularly carries notices of redemption of other obligations similar to the Bonds, such publication to be made at least thirty (30) days prior to the date fixed for redemption.

Upon the payment of the redemption price of the Bonds (or portions thereof) being redeemed and if so directed by the Town, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds (or portions thereof) being redeemed with the proceeds of such check or other transfer.

As determined by the Clerk/Treasurer, with the advice of the financial advisor to the Town, as set forth in the Clerk/Treasurer's Certificate, all or a portion of the Bonds may be aggregated into one of more term bonds payable from mandatory sinking fund redemption payments ("Term Bonds") required to be made as set forth below. The Term Bonds shall have a stated maturity or maturities of the first date of the calendar month and in the years both as determined by the Clerk/Treasurer, with the advice of the financial advisor to the Town, as set forth in the Clerk/Treasurer's Certificate.

In the event that the Clerk/Treasurer opts to aggregate certain Bonds into Term Bonds, such Term Bonds shall be subject to mandatory sinking fund redemption prior to maturity at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the redemption date, but without premium, on the first day of the calendar month of each year and in the principal amount as set forth in the Clerk/Treasurer's Certificate.

The Registrar shall credit against any mandatory sinking fund redemption requirement for a Term Bond of a particular maturity, any Bonds of such maturity purchased for cancellation by the Town and canceled by the Registrar and not theretofore applied as a credit against any mandatory sinking fund redemption requirement. Earth Bond so purchased shall be credited by the Registrar at 100% of the principal amount thereof against the mandatory sinking fund redemption requirements for the applicable Term Bond in inverse order of mandatory



sinking fund redemption (or financial maturity) dates, and the principal amount of such Term Bond to be redeemed on such mandatory sinking fund redemption dates by operation of the mandatory sinking fund requirements shall be reduced accordingly.

The Registrar shall determine by lot (treating each \$5,000 principal amount of each Bond as a separate Bond for such purpose) the Bonds within a Term Bond of a particular maturity to be redeemed pursuant to mandatory sinking fund redemption requirements on the first day of the calendar month selected by the Clerk/Treasurer of each year.

Notice of any such mandatory sinking fund redemption shall be given in the manner provided in this Section 5 of this Ordinance.

**SECTION 6 EXECUTION AND AUTHENTICATION OF THE BONDS AND BANs:** The Bonds and the BANs shall be executed in the name of the Town by the manual or facsimile signature of the President of the Town Council (the "Town Council President") and attested by the manual or facsimile signature of the Clerk/Treasurer, who shall cause the seal, of any, of the Town or a facsimile thereof to be affixed to each of the Bonds and the BANs. The Bonds and the BANs shall be authenticated by the manual signature of the Registrar, and no Bond or BAN shall be valid or obligatory for any purpose until the certificate of authentication thereon has been so executed. In case any official whose signature appears on any Bond or BAN shall cease to be such official before the delivery of such Bond or BAN, the signature of such official shall nevertheless be valid and sufficient for all purposes, the same as if such official had been in office at the time of such delivery. Subject to the provisions of this Ordinance regarding the registration of the Bonds and BANs, the Bonds and BANs shall be fully negotiable instruments under the laws of the State of Indiana.

The Bonds and BANs may, in compliance with all applicable laws, be issued and held in book entry form on the books of the central depository system, The Depository Trust Company, or its successors, or any successor central depository system appointed by the Town from time to time (the "Clearing Agency"). The Town and Registrar may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the Bonds or the BANs as are necessary or appropriate to accomplish or recognize such book entry form Bonds or BANs.

During any time that the Bonds or the BANs are held in book entry form on the books of a Clearing Agency (1) any such Bond or BAN may be registered upon the books kept by the Registrar in the name of such Clearing Agency, or any nominee thereof, including CEDE & Co., as nominee of the Depository Trust Company; (2) the Clearing Agency in whose name such Bond or BAN is so registered shall be, and the Town and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such Bond or BAN for all purposes of this Ordinance, including, without limitation, the receiving of payment of the principal of, premium, if any, on and interest on such Bond or BAN, the receiving of notice and giving of consent; (3) neither the Town nor the Registrar or Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any Bond or BAN, including, without limitation, any responsibility or obligation

hereunder to maintain accurate records of any interest in any Bond or Ban or any responsibility or obligation hereunder with respect to the receiving of payment of principal, premium, if any, or interest on any Bonds or BANs, the receiving of notice or the giving of consent; and (4) the Clearing Agency is not required to present any Bond or BAN called for partial redemption prior to receiving payment so long as the Registrar and Paying Agent and the Clearing Agency have agreed to the method for noting such partial redemption.

If either (i) the Town receives notice from the Clearing Agency which is currently the registered owner of the Bonds or the BANs to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as Clearing Agency for the Bonds or the BANs or (ii) the Town elects to discontinue its use of such Clearing Agency as a Clearing Agency for the Bonds or the BANs, then the Town and Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the Bonds or the BANs as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the Bonds or the BANs and to transfer the ownership of each of the Bonds or the BANs to the person or persons, including any other Clearing Agency, as the holder of the Bonds or the BANs may direct in accordance with this Ordinance. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Bonds or the BANs, shall be paid by the Town.

During any time that the Bonds or the BANs are held in book entry form on the books of a Clearing Agency, the Registrar and Paying Agent shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owners of the Bonds or the BANs as of a date selected by the Registrar and Paying Agent. For purposes of determining whether the required advice, direction or demand of a Registered Owner of the Bond or BAN has been obtained, the Registrar or Paying Agent shall be entitled to treat the beneficial owners of the Bonds or BANs as the Bondholders or holders of the BANs.

During any time that the Bonds or BANs are held in book entry form on the books of a Clearing Agency, the Clerk/Treasurer and/or the Registrar are authorized to enter into a Letter of Representations agreement with the Clearing Agency, and the provisions of any such Letter Or Representations or any successor agreement shall control on the matters set forth herein.

**SECTION 7 SECURITY AND SOURCES OF PAYMENT FOR THE BONDS:** The Bonds, when fully paid for an delivered to the purchaser thereof, together with any other bonds issued on a parity therewith, as to both principal and interest shall be valid and binding special revenue obligations of the Town, payable, on a parity basis with the Prior Bonds, solely from and secured by an irrevocable pledge of an constituting a charge upon all of the Net Revenues (herein defines as gross revenues after deduction only for the payment of the reasonable expense of operation, repair and maintenance) derived from the Waterworks, including all such Net Revenues from existing works, the Project and all additions and improvements thereto and replacements thereof subsequently constructed or acquired, to be set aside into the Bond and Interest Redemption Account as herein provided. The Town shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues of the Waterworks and the Bonds shall not constitute an indebtedness of the Town within the meaning of the provisions and limitations of the constitution of the State of Indiana.

**SECITON 8 FORM OF THE BONDS:** The form and tenor of the Bonds shall be substantially set forth in Appendix A attached hereto and incorporated herein as if set forth at this place (with blanks properly completed prior to the preparation of Bonds).

**SECTION 9 ISSUANCE, SALE AND DELIVERY OF THE BONDS AND THE BANs:** The Clerk/Treasurer is hereby authorized and directed to have the Bonds and the BANs prepared, and the Town Council President and the Clerk/Treasurer are each hereby authorized and directed to execute the Bonds and the BANs in the form and manner herein provided. The Clerk/Treasurer is hereby authorized and directed to deliver the Bonds and the BANs to the purchaser or purchasers thereof after the sale made in accordance with the provisions of the Act and this Ordinance, provided that at the time of said delivery the Clerk/Treasurer shall collect the full amount which the purchaser or purchasers have agreed to pay therefore, which shall be not less than 97.0% of the par amount of the Bonds plus accrued interest thereon to the date of delivery, if any, and in the case of the BANs shall be not less than 99.0% of the par amount of the BANs. The proceeds derived from the sale of the Bonds (or instead, the BANs, if such BANs are issued), shall be and are hereby set aside for application to the costs of the Project, together with the expenses necessarily incurred in connection therewith including the expenses incurred in the issuance of the Bonds and the BANs. The authorized officers for the Town are hereby authorized and directed to draw all proper and necessary warrants and to do whatever other acts and thins that may be necessary or appropriate to carry out the provisions of this Ordinance.

The Bonds may, in the discretion of the Clerk/Treasurer, be sold to Rural Development, at a price of one hundred percent (100%) of the par value of the Bonds, plus accrued thereon to the date of delivery pursuant to one or more loan resolutions (the "Loan Resolutions") entered into between the Town and Rural Development on or before the date of issuance of the Bonds. The Town covenants that, in addition to the other terms and conditions applicable to the Bonds authorized by this Ordinance, it will comply with all conditions set forth by Rural Development in any Letter of Conditions, any Loan Resolution and any Loan Agreement.

The Bonds may, in the discretion of the Clerk/Treasurer, be sold by public sale. In the event the Bonds are sold by Public sale, prior to the sale of the Bonds, the Clerk/Treasurer shall cause to be published a notice of intent to sell two times at least one week apart in the Anderson Herald Bulletin and the Court & Commercial Record. The notice of such sale or a summary thereof may also be published in the Bond Buyer, a financial journal published in the City and State of New York and/or in other publications, in the discretion of the Clerk/Treasurer. The notice must state that any person interested in submitting a bid for the Bonds may furnish in writing, at the address set forth in the notice, the person's name, address and telephone number, and that nay such person may also furnish a telex number. The notice must also state: (1) the amount of the Bonds to be offered; (2) the denominations; (3) the dates of maturity; (4) the maximum rate or rates of interest; (5) the place of sale; and (6) the time within which the name, address and telephone number must be furnished, which must not be less than seven days after the last publication of the notice. Each person so registered shall be notified of the date and time bids will be received not less than twenty-four (24) hours before the date and time of sale. The notification shall be made by telephone at the number furnished by the person and also by telex if the person furnishes a telex number. Such notice may also include such other information as the Clerk/Treasurer shall deem necessary. Such notice shall also provide, among other things, that each bid shall be accompanied by a certified cashier's check or financial surety bond in an amount equal to one (1%) of the principal amount of the

Bonds to guarantee performance on the part of the bidder, and that in the event the successful bidder shall fail or refuse to accept delivery of an pay for the Bonds as soon as the Bonds are ready for delivery, or at the time fixed in the notice of intent to sell, then such check or financial surety bond and the proceeds thereof shall become the property of the Town and shall be considered as the Town's liquidated damages on account of such default.

All bids for the Bonds sold at public sale shall be sealed and shall be presented to the Clerk/Treasurer at the Clerk/Treasurer's office, and the Clerk/Treasurer shall continue to receive all bids offered until the hour fixed for the sale of the Bonds, at which time and place the name and the rate of interest which the Bonds are to bear, not exceeding four percent (4.0%) per annum. Said interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). Bids specifying more than one interest rate shall also specify the amount and maturities of the Bonds bearing each rate, and all the Bonds maturing on the same date shall bear the same rate of interest. The interest rate on Bonds of a given maturity must be at least as great as the interest rate on Bonds of any earlier maturity. Subject to the provisions set forth below, the Clerk/Treasurer shall award the Bonds to the bidder offering the lowest net interest cost to the Town, to be determined by computing the total interest on all of the Bonds from the date thereof to their maturities and deducting therefrom the premium bid, if any, or adding thereto the amount of any discount. No bid for less than 97.0% of the par value of the Bonds (or such higher percentage of the par value of the Bonds as the Clerk/Treasurer, with the advice of the financial advisor to the Town, shall determine prior to the publication of the notice of intent to sell), plus accrued interest at the rate or rates named to the date of delivery, will be considered. The Clerk/Treasurer shall have full right to reject any and all bids. In the event no acceptable bid is received at the time fixed for the sale of the Bonds, the Clerk/Treasurer shall be authorized to continue to receive bids from day to day thereafter for a period not to exceed thirty (30) days, without advertising, pursuant to Indiana law.

The Clerk/Treasurer is hereby authorized to determine, in his discretion, to sell the Bonds pursuant to the general provisions of Indiana Code [5-1-11](#) (rather than Section 2(b) thereof) and in the event of such a determination, those portions of this Section 9 which conflict with such provisions shall be deemed inapplicable.

The Town, having satisfied all the statutory requirements for the issuance of the Bonds, may elect to issue its BAN or BANs, pursuant to a Bond Anticipation Note Purchase Agreement (the "Purchase Agreement"), to be entered into between the Town and the purchaser of the BANs. The Town Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim construction financing for the Project until permanent financing becomes available. It shall not be necessary for the Town to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs. The Town Council President and the Clerk/Treasurer are hereby authorized and directed to execute a Purchase Agreement in such form or substance as they shall approve acting upon the advice of Counsel. The Town Council President and the Clerk/Treasurer may also take such other action or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the

Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Prior to the delivery of the Bonds and the BANs, the Clerk/Treasurer, subject to the approval of the Town Council, (i) shall be authorized to investigate, negotiate and obtain bond insurance, other forms of credit enhancement and/or credit ratings on the Bonds and the BANs and to obtain a legal opinion as to the validity of the Bonds and the BANs from Barnes & Thornburg LLP, Indianapolis, Indiana, bond counsel for the Town, with such opinion to be furnished to the purchaser of the Bonds or to the purchasers of the BANs at the expense of the Town. The costs of obtaining such insurance, other credit enhancement and/or credit ratings, together with bond counsel's fee for delivering such opinion and in the performance of related services in connection with the issuance, sale and delivery of the Bonds and the BANs, shall be considered as a part of the costs of the Project and shall be paid out of the proceeds of the Bonds or BANs, respectively, except that if BANs are issued, any such costs relating to the Bonds shall be paid from available funds of the Town.

**SECTION 10 DISPOSITION OF PROCEEDS OF THE BONDS AND BANs; TOWN OF LAPEL, 2011**

**WATERWORKS CONSTRUCTION ACCOUNT:** The proceeds from the sale of the BANs (or, if and to the extent BANs are not issued, the Bonds) shall be deposited in a bank or banks which are legally qualified depositories for the funds of the Town, in the special account to be designated as "Town of Lapel, Indiana Waterworks Construction Account" (the "Construction Account"). Amounts in the Construction Account shall be expended only for the purpose of paying the costs of the Project, as provided in the Ordinance and in the Act, together with the incidental expenses incurred in connection with the Project and the costs of issuance of the BANs (or, if no BANs are issued, the Bonds) as otherwise permitted or required by the Act. Any balance or balances remaining unspent in the Construction Account after completion of the Project, which are not required to retire obligations incurred in connection with the acquisition or construction of the Project, shall be used solely for one or more of the purposes permitted under the provisions of Indiana Code [5-1-13](#), as amended. Pursuant to the Act, the owners of the Bonds and BANs shall be entitled to a lien on the proceeds of the Bonds and BANs respectively, until such proceeds are applied as required by this Ordinance and Indiana law.

Notwithstanding the provisions of this Section 10, if BANs are issued, then the proceeds of the Bonds relating thereto shall be used to refund the BANs and are hereby pledged for such purpose, and any proceeds of the Bonds remaining after the BANs have been paid in full shall be deposited in the Bond and Interest Redemption Account referred to below.

**SECTION 11 SEGREGATION AND APPLICATION OF WATERWORKS REVENUES:** All revenues derived from the operation of the waterworks and from the collection of water rates and charges shall be segregated and kept in a special fund separate and apart from all other funds of the Town. Out of this fund the proper and reasonable expenses of operation, repair and maintenance of the waterworks shall be paid and the requirements of the Bond and Interest Redemption Account shall be met.

The income and revenues of the Waterworks shall be segregated and set aside into a special fund separate and apart from all other funds of the Town heretofore established and designated as the "Town of Lapel, Indiana, Waterworks Special Fund" (the "Special Fund"), to be used and applied in the operation, repair and maintenance thereof, in the payment of the principal of and interest on the then outstanding bonds of the Waterworks and in establishing a reserve for such payment, in establishing an improvement account and for other purposes of the Waterworks all as follows:

- **Operation and Maintenance Account.** On the last day of each calendar month, a sufficient amount of the gross revenues of the Waterworks shall be paid into an account of the Special Fund heretofore established and hereby continued and designated as the "Town of Lapel, Indiana, Waterworks Operation and Maintenance Account" (the "Operation and Maintenance Account") for the payment of all necessary and reasonable expenses of operation, repair and maintenance of the Waterworks for the then next succeeding two calendar months.
- **Bond and Interest Redemption Account.** There is hereby continued an account of the Special Fund previously established by the Town designated as the "Town of Lapel, Indiana, Bond and Interest Redemption Account" (the "Bond and Interest Redemption Account"), which account shall be used for the payment of the interest on and principal of the then outstanding bonds of the Waterworks and the payment of any fiscal agency charges in connection with the payment of such principal and interest thereon. Said account shall be continued until all outstanding bonds of the Waterworks, including the Bonds, have been paid. The Bond and Interest Redemption Account consists of a Debt Service Subaccount and a Reserve Subaccount. As available, there shall be paid into the Debt Service Subaccount of the Bond and Interest Redemption Account a sufficient amount of the net revenues of the Waterworks for the payment of (a) the interest on the Bonds, the Prior Bonds and any other bonds hereafter issued and payable by their terms from the net revenues of the Waterworks, as such interest shall fall due; (b) the necessary fiscal agency charges for paying such bonds and interest; and (c) the principal of the Bonds, the Prior Bonds and any other bonds hereafter issued and payable by their terms from the net revenues of the Waterworks, as such principal shall fall due. The monthly payments into the Debt Service Subaccount of the Bond and Interest Redemption Account shall be in an amount equal to at least one-sixth (1/6) (one twelfth (1/12) if interest on the Bonds is payable on an annual basis) of the amount required for the payment of interest on the Bonds and all other bonds hereafter issued and payable by their terms from the revenues of the Waterworks during the next succeeding six (6) months (twelve (12) months if interest on the Bonds is payable on an annual basis) and an amount equal to one twelfth (1/12) of the amount required during the next succeeding twelve (12) calendar months for payments into the Debt Service

Subaccount of the Bond and Interest Redemption Account for the purposes described herein other than the payment of interest.

All of the net revenues of the Waterworks not used in making the required Debt Service Subaccount payments shall next be set aside as available and paid into the Reserve Subaccount monthly until there has been accumulated therein an amount equal to the least of (a) the maximum annual debt service on all bonds payable from the net revenues of the Waterworks, (b) 125% of the average annual debt service on all bonds payable from the net revenues of the Waterworks, or (c) ten percent (10%) of the proceeds of all bonds payable from the net revenues of Waterworks (the least of (a), (b) and (c) is herein referred to as the "Reserve Requirement"), until there has been accumulated in the Reserve Subaccount an amount equal to the Reserve Requirement.

In no event shall any part of the Bond and Interest Redemption Account be used in calling Bonds for redemption prior to maturity, except to the extent that the amount then in Bond and Interest Redemption Account exceeds the amount required to pay the principal of the bonds payable therefrom which will mature within a period of twelve (12) calendar months next succeeding the date of said redemption, together with all interest on Bonds payable in said period. Any excess of funds above said required level may also be used in purchasing outstanding bonds at a price less than the applicable redemption price. Moneys in the Bond and Interest Redemption Account shall not be used for any other purpose whatsoever except as provided in this Ordinance.

- **Improvement Account.** In the event all required monthly deposits into the Bond and Interest Redemption Account have been made, then any excess net revenues of the bonds shall be deposited monthly as available into an account of the Special Fund previously established and continued hereby as the "Town of Lapel, Indiana, Waterworks Improvement Account" (the "Improvement Account"), to be used to pay the cost of additions, improvements, replacements and repairs to the Waterworks. No revenues of the Waterworks shall be deposited in or credited to the Improvement Account which will interfere with the requirements of the Bond and Interest Redemption Account.

In the event of any deficiency at any time in the Bond and Interest Redemptions Account for the purposes of paying the interest on or principal of the Bonds or such additional bonds or any required fiscal agency charges, funds may be withdrawn from the Improvement Account for deposit into the Bond and Interest Redemption Account in the amount of such deficiency.

Any revenues remaining after meeting the requirements of the Operation and Maintenance Account, the Bond and Interest Redemption Account and the Improvement Account may be used for any lawful purpose including payments in lieu of taxes which would be payable if the Town's Waterworks were privately owned and transfers to the Town's General Fund or any other fund of the Town.

All of the amounts in the several funds and accounts created and/or continued pursuant to this Section 11 shall be deposited in lawful depositories of the State, and shall be continuously held and secured or invested as provided by the laws of Indiana relating to the depositing, securing, holding and investing of public funds, including particularly Indiana Code [5-13-9](#). The amounts in the Bond and Interest Redemption Account and all other funds and accounts created pursuant to this Section 11 shall be kept in separate bank accounts apart

from all other bank accounts of the Town. In no event shall any of the revenues of the Waterworks be transferred or used for any purpose not authorized by this Ordinance so long as any of the bonds issued pursuant to the provisions of this Ordinance shall be outstanding.

**SECTION 12 BOOKS OF RECORDS AND ACCOUNTS:** The Town shall keep proper books of record and accounts, separate from all of its other records and accounts, in which completed and accurate entries shall be made and showing all revenues collected from said works and deposited in such accounts and all disbursements made therefrom on account of the operation of the works, and to satisfy the requirements of the Bond and Interest Redemption Account and all other financial obligations relating to said works. There shall be prepared and furnished upon written request, to the holders of the Bonds or BANs at the time then outstanding, not more than ninety (90) days after the end of each fiscal year, complete financial statements of the works, covering the preceding year, which annual statements shall be certified by the Clerk/Treasurer, or by licensed certified public accountants employed for that purpose. Copies of all such statements and reports shall be kept filed in the office of the Clerk/Treasurer. Any owner or owners of at least five percent (5%) of the Bonds or BANs then outstanding shall have the right at all reasonable times to inspect the works and all records, accounts and data of the Town relating thereto. Such inspections shall be performed by representatives duly authorized by written instrument.

**SECTION 13 RATES AND CHARGES:** The Town, to the fullest extent permitted by law, shall fix, maintain and collect reasonable and just rates and charges for the use of and the services rendered by the Waterworks so that such rates and charges shall produce revenues at least sufficient each year to (a) pay all the legal and other necessary expenses incident to the operation of the Waterworks, including maintenance costs, operating charges, upkeep, repairs, depreciation charges on bonds or other obligations, including leases; (b) provide a sinking fund for payment of bonds or other obligations, including leases; (c) provide a debt service reserve for all obligations, including leases, as required by the terms of such obligations; (d) provide adequate money for working capital; (e) provide adequate money for making extensions and improvements; and (f) provide money for the payment of any taxes that may be assessed against the Waterworks.

So long as any of the Bonds are outstanding, none of the facilities and services afforded by the Waterworks shall be furnished without a reasonable and just charge being made therefor. The reasonable cost and value of any facility or service rendered to the Town, or to any department, agency, or instrumentality thereof by the Waterworks by furnishing water for public purposes or by maintaining hydrants and other facilities for fire protections shall be (i) charged against the Town; and (ii) paid for in monthly installments as the service accrues, out of the current revenues of the Town, collected or in the process of collection, and the tax levy of the Town made by it to raise money to meet its necessary current expenses. The revenue received shall be deemed to be revenue derived from the operation of the Waterworks and shall be used and accounted for in the same manner as other revenues derived from the operation of the Waterworks.

**SECTION 14 DEFEASANCE:** If, when the bonds issued hereunder shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the



bonds for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of American, the principal of the interest on which when due will provide sufficient funds; or (iii) time certificates of deposit fully secured as to both principal and interest by obligations of the kind described in (ii) above of a bank or banks the principal of and interest on which when due will provide sufficient moneys, shall be held in trust for such purpose, and provision be made for paying all fees and expenses for the redemption, then an in that case the Bonds issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the net revenues of the Town's Waterworks.

**SECTION 15 SALE, LEASE, and MORTGAGE OR DISPOSITION OF THE WATERWORKS:** For purposes of safeguarding the interests of the owners of the Bonds, the Town covenants, represents and agrees as follows:

- The Town will not sell, lease, mortgage, pledge or otherwise dispose of or encumber the Waterworks or any component or part thereof except as permitted in this Section 15.
- The Town may sell, scrap, discard or otherwise dispose of materials relating to the Waterworks being replaced in the ordinary course of business of the Waterworks. The proceeds, if any, received from the sale of such materials relating to the Waterworks shall be deposited in and credited to the Improvement Account.
- The Town may sell or otherwise dispose of equipment or fixtures of the Waterworks under the following conditions:
- If the book value of such property, as determined by consulting engineers employed by the Town, together with the book value of all such property previously sold, scrapped, discarded or disposed of under this Section 15© in such fiscal year, does not exceed tow percent (2%) of the book value of the Waterworks, then such property may be sold or otherwise disposed of in accordance with the Act, so long as the Town Council (by affirmative vote at a meeting duly called and held)(i)finds that such property is no longer necessary, useful or profitable in the operation of the Waterworks and (ii) authorizes the sale or other disposition of such property. Any proceeds received from the sale of such property shall be deposited in and credited to the Improvement Account.
- If the book value of such property, together with the book value of all such property previously sold, scrapped, discarded or disposed of under this Section 15 © in such fiscal year, exceeds two percent (2%) of the book value of the Waterworks, then such property may be sold or otherwise disposed of upon the affirmative vote of the Town Council, as provided in subsection (1) herein, if the consulting engineers employed by the Town submit to the Town Council a written determination that (A) the sale or other disposition of such property will not materially and adversely affect the operation of the Utility or the Town's ability to meet its obligations under this Ordinance or (B) such property is no longer necessary, useful or profitable in the operation of the Waterworks. Any proceeds derived from the sale of such property shall be deposited in and credited to the Improvement Account.

**SECTION 16 ADDITIONAL BANs AND BONDS:** The Town reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs so long as the interest is payable only on the same Interest Payment Dates as the original BANs and the principal is payable solely from the Bond proceeds. The Town also

reserves the right to authorize and issue additional bonds payable out of the net revenues of its Waterworks, ranking on a parity with the bonds authorized by this ordinance, for the purpose of financing the cost of future additions, extensions and improvements to the Waterworks, subject to the following conditions:

- The interest on and principal of all bonds payable from the revenues of the Waterworks shall have been paid to date in accordance with the terms thereof.
- The net operating revenues of the Waterworks in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the bonds authorized by this section shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds to be issued; or, prior to the issuance of said parity bonds, the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's revenues would have produced net operating revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued. For purposes thereof the records of the Waterworks shall be analyzed and all showings shall be prepared by certified public accountants employed by the Town for that purpose.
- The principal of said additional parity bonds shall be payable on January 1 and the interest on said additional parity bonds shall be payable on the same Interest Payment Dates as the Bonds.
- In the event the Bonds are sold to Rural Development, the certified public accountant referenced in (b) above shall additionally certify that net operating revenues for the fiscal year following the year in which such additional parity bonds are to be issued are projected to be equal to at least one hundred twenty percent (120%) of the average annual debt service requirements on all outstanding bonds of the Waterworks, including such additional parity bonds.

**SECTION 17 ADDITIONAL COVENANTS OF THE TOWN:** For the purpose of further safeguarding the interests of the owners of the Bonds and BANs herein authorized, it is specifically provided as follows:

- The Town shall at all times maintain its Waterworks in good condition and operate the same in an efficient manner and at a reasonable cost.
- So long as any of the Bonds or BANs herein authorized are outstanding, the Town shall maintain insurance on the insurable parts of said works of a kind and in an amount such as are normally carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds shall be used in replacing or repairing the property destroyed or damaged; or if not used for that purpose shall be treated and applied as net revenues of the Waterworks.
- Except as hereinbefore provided in Section 16 hereof, so long as any of the Bonds or BANs herein authorized are outstanding, no additional bonds, BANs or other obligations payable from any portion of the revenues of the Waterworks shall be authorized, executed or issued by the Town except such as shall be made subordinate and junior in all respects to the bonds and BANs herein authorized, unless all of the bonds and BANs herein authorized are redeemed, retired or cancelled pursuant to Section 14 hereof coincidentally with the delivery of such additional bonds, BANs or other obligations.

- The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds for the uses and purposes herein set forth and, so long as any of Bonds are outstanding, the provisions of this Ordinance shall also be construed to create a trust in the Revenues of the Waterworks herein directed to be set apart and paid into the Bond and Redemption Account for the uses and purposes of such Account as set forth in this Ordinance.
- The provisions of this Ordinance shall constitute a contract by and between the Town and the owners of the Bonds, all of the terms of which shall be enforceable at law or in equity, and after the issuance of the Bonds this Ordinance shall not be repealed or amended in any respect would adversely affect the rights and interests of the owners of the Bonds, and the Town Council of the Town shall not adopt any law, ordinance or resolution which in any way would adversely affect the rights of such owners so long as any of the principal of or interest on the Bonds remains unpaid; provided, that the Town shall have the right to amend this Ordinance, under certain circumstances, without notice to or approval by any owners of the Bonds in accordance with Section 20 or this Ordinance. The owners of the Bonds shall have all of the rights, remedies and privileges provided in the Act and under Indiana law.

**SECTION 18 PERMITTED ACTIONS RELATING TO PRESERVATION OF EXCLUSION OF INTEREST FROM FEDERAL GROSS INCOME:**

- The Clerk/Treasurer is hereby authorized to invest moneys pursuant to the provisions of this Ordinance at a restricted yield (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the bonds and BANs, or the tax-exempt status of interest on the bonds and BANs, under federal law.
- The Clerk/Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds an accounts created or referenced herein. In order to comply with the provisions of this Ordinance, the Clerk/Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the Town as to requirements of federal law to preserve the tax exclusion or exemption.

**SECTION 19 TAX COVENANTS:** In order to preserve the exclusion of interest on the Bonds and the BANs from gross income for federal income tax purposes and as an inducement to the holders of the Bonds and BANs, the Town represents, covenants and agrees that:

- No person or entity, other than the Town or another state or local governmental unit, will use proceeds of the Bonds or BANs or property secured by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the Town or another state or local governmental unit will own property financed by the Bond or BAN proceeds or will have actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, an arrangement such as take-or-pay or output contract or any other type of contract that differentiates that person's or entity's use of such property from the use by the public at large.
- No Bond or BAN proceeds will be loaned to any entity or person. No Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a non-governmental person in any manner that would be in substance constitute a loan of the Bond or BAN proceeds.

- The Town will not take, or cause or permit to be taken by it or by any party subject to its control, or fail to take or cause or permit to fail to be taken by it or by any party under its control, any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds or BANs pursuant to Section 103 of the Code, nor will the Town further covenants that it will not make any investment or do any other act or thing during the period that any Bond or BAN is outstanding hereunder which would cause any Bond or BAN 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 Bonds or BANs.
- The Town will, to the extent necessary to preserve the exclusion of interest on the Bonds and BANs from gross income for federal income tax purposes, rebate all required arbitrage profits on Bond and BAN proceeds or other moneys treated as Bond or BAN proceeds to the federal government and will set aside such moneys in a Rebate Account to be held by the Clerk/Treasurer in trust for such purpose.
- All officials, officers, members, employees and agents of the Town are hereby authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the Town as of the date that the Bonds are issued, and to make covenants on behalf of the Town evidencing the commitments made herein and to do all such other acts necessary or appropriate to carry out this Ordinance. In particular and without limiting the foregoing, any and all appropriate officials, officers, members, employees and agents of the Town are authorized to certify and/or enter into covenants on behalf of the Town regarding (i) the facts and circumstances and reasonable expectations of the Town as of the date that the Bonds are issued and (ii) commitments made herein by the Town regarding the amount and use of the proceeds of the Bonds.
- The Clerk/Treasurer is hereby authorized to employ consultants and attorneys from time to time to advise the Town with respect to the requirements under federal law for the continuing preservation of the exclusion of interest on the Bonds from gross income for purposes of federal income taxation, as described in this Section 19.

**SECTION 20 SUPPLEMENTAL ORDINANCES:** Without notice to or consent of the owners a majority of bonds herein authorized, the Town may, from time to time and at any time, adopt an ordinance supplemental hereto (which supplemental ordinance or ordinances shall thereafter form a part hereof) for any of the following purposes:

- To cure any ambiguity or formal defect or omission in this Ordinance or in any supplemental ordinance or to make any other change authorized herein;
- To grant to or confer upon the owners of the bonds herein authorized any additional benefits, rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the bonds herein authorized or to make any change which, in the judgment of the Town, is not to the prejudice of the owners of the bonds herein authorized;
- To modify, amend or supplement this Ordinance to permit the qualification of the bonds herein authorized for sale under the securities laws of the United States of America or of any of the United States of America or to obtain or maintain bond insurance with respect to payments of principal of and interest on bonds herein authorized;
- To provide for the refunding or advance refunding of the bonds herein authorized;

- To procure a rating on the bonds herein authorized from a nationally recognized securities rating agency or agencies designated in such supplemental ordinance if such supplemental ordinance will not adversely affect the owners of the bonds herein authorizes; and
- Any other purpose which, in the judgment of the Town, does not adversely affect the interests of the owners of the bonds herein authorized.

Subject to the terms and provisions contained in this Section 20, and not otherwise, the owners of not less than sixty-six and two-thirds (66 2/3%) in aggregate principal amount of the bonds issued pursuant to this Ordinance and then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Town of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding or rescinding in any particular any of the terms that nothing herein contained shall permit or be construed as permitting.

- An extension of the maturity of the principal of or interest on any bond issued pursuant to this ordinance; or
- A reduction in the principal amount of any bond or the redemption premium of the rate of interest thereon; or
- The creation of a lien upon or a pledge of the revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or
- A preference or priority of any bond or bonds issued pursuant to this ordinance over any other bond or bonds issued pursuant to the provisions of this ordinance; or
- A reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

The owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk/Treasurer of the Town. No owner of any bond issued pursuant to this Ordinance shall have any right to object to the adoption of such supplemental ordinance or to object or any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Town or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this Ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the Town and all owners of bonds issued pursuant to the provisions of this Ordinance then outstanding, shall thereafter be determined, exercised and enforced in accordance with this Ordinance, subject in all respect to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this Ordinance, the rights and obligations of the Town and of the owners of the bonds authorized by this Ordinance and the terms and provisions of the bonds and this Ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the Town and the consent of the owners of all the bonds issued pursuant to this Ordinance then outstanding.

**SECTION 21 REPEAL OF CONFLICTING ORDINANCES:** All ordinances and parts of ordinances in conflict herewith are hereby repealed.

**SECTION 22 RATES AND CHARGES:** The estimate of the rates and charges which will be needed and charged to the general classes of users or property to be served by the waterworks in order to provide sufficient moneys to make payments of principal of and interest on the Bonds along with the other payments identified in this Ordinance, is set forth in an ordinance entitled "An Ordinance Amending Ordinance No. 8-2010, establishing New Rates and Charges for the Use and Services Rendered by the Waterworks System of the Town of Lapel, Indiana," adopted on October 25, 2011.

**SECTION 23 COMPLIANCE WITH TAX SECTIONS:** Notwithstanding any other provisions contained in this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the tax exempt status of interest on the Bonds and BANs or the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the Town receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

**SECTION 24 QUALIFIED TAX-EXEMPT OBLIGATIONS:** The BANs and the Bonds are hereby designated as "qualified tax-exempt obligations" for the purposes of Paragraph (3) of Section 265(b) of the Code, and any or all officials, officers, members, employees and agents of the Town are hereby authorized to execute on behalf of the Town any documents necessary or appropriate to evidence further such designation. The reasonably anticipated amount of "tax-exempt obligations" (as such term is used in Section 265(b) of the Code)(other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the Town or otherwise on behalf of the Town or subordinate entities during calendar year 2011 does not exceed \$10,000,000. The designation set forth in this Section 24 as to the BANs or the Bonds may be revoked by the Clerk/Treasurer in the Clerk/Treasurer's Certificate.

**SECTION 25 CLERK/TREASURER'S CERTIFICATE DISCLOSURE:** The Clerk/Treasurer shall, prior to the sale of the Bonds, set forth in a certificate (the "Clerk/Treasurer's Certificate") the amortization schedule for the Bonds, the percentage of par at which the Bonds shall be sold and any other matters required by this Ordinance to be provided in the Clerk/Treasurer's Certificate.

If required by the Rule hereinafter defined, the Bonds shall be offered and sold pursuant to an Official Statement with respect to the Bonds (the "Official Statement"), to be made available and distributed in such manner, at such times, for such periods and in such number of copies as maybe required pursuant to Rule 15c2.12 promulgated by the United States Securities and Exchange Commission (the "Rule") and any and all applicable rules and regulations of the Municipal Securities Rulemaking Board. The Town Council hereby authorizes the Town Council President and Clerk/Treasurer (a) to authorize and approve a Preliminary Official Statement, as the same may be appropriately confirmed, modified and amended for distribution as the Preliminary Official Statement of the Town; (b) on behalf of the Town, to designate the Preliminary Official Statement as the final Official Statement with respect to the Bonds, subject to completion as permitted by and otherwise pursuant to the Rule; and (c) to authorize and approve the Preliminary Official Statement to be

placed into final form and to enter into such agreements or arrangements as may be necessary in order to provide for the distribution of a sufficient number of copies of the Official Statement under the Rule.

**SECTION 26 FURTHER ACTIONS:** The Town Council hereby requests, authorizes and directs the Town Council President and the Clerk/Treasurer, and each of them for an on behalf of the Town, to prepare, execute and deliver any and all other instruments, letters, certificates, and documents as are determined to be necessary or appropriate to consummate the actions contemplated by this Ordinance, and such determination shall be conclusively evidenced by delivery thereof. The instruments, letters, certificates, agreements and documents necessary to consummate the transactions contemplated by this Ordinance shall, upon execution, as set forth herein, constitute the valid and binding obligations or representations and warranties the full performance and satisfaction of which by the Town are hereby authorized and directed.

**SECTION 27 PAYMENTS ON HOLIDAYS:** If the date of making any payment or the 1<sup>st</sup> date for the performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the Town or the city or town in which the Registrar and Paying Agent is located are typically closed, such payment may be made or act performed or done 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 of this Ordinance, and no interest shall accrue for the period after such nominal date.

**SECTION 28 PARTIAL INVALIDITY:** If any section, paragraph or provision of this Ordinance 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 Ordinance.

**SECTION 29 CAPTIONS:** The captions in this Ordinance are inserted only as a matter of convenience and reference, and such captions are not intended and shall not be construed to define, limit, establish, interpret or describe the scope, intent or effect or any provision of this Ordinance.

**SECTION 30 EFFECTIVENESS:** This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the Town Council of the Town of Lapel on the 3<sup>rd</sup> day of November, 2011.

#### Further Information

**11-2011**

**Date Passed: 11/3/2011**