



Legislation Text

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AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REVENUE BONDS FOR THE PURPOSE OF FINANCING THE COST OF CONSTRUCTING STREET AND ROAD IMPROVEMENTS; PLEDGING A 1% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY. **(NOTE: THIS ORDINANCE WAS AMENDED BY ORD-98:1509 ON FEBRUARY 16, 1998)**

WHEREAS, there was submitted to the qualified electors of the City of Jonesboro, Arkansas (the "City") on February 7, 1995, pursuant to Ordinance No. 2600, adopted January 3, 1995 the question of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (the "State") and under Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), capital improvement bonds in the maximum principal amount of \$44,000,000 for the purpose of financing the cost to the City of extensions, betterments and improvements to streets and roads, with related and ancillary improvements (the "Improvements"); and

WHEREAS, at the special election held February 7, 1995, a majority of the electors voting on the question approved the issuance of such bonds; and

WHEREAS, the City has issued and retired bonds in the principal amount of \$14,990,000; and

WHEREAS, the City Council has determined to proceed with the Improvements and to issue \$29,010,000 in the aggregate principal amount of bonds to finance the balance of the Improvements (the "Project"); and

WHEREAS, the City has made arrangements for the sale of \$29,010,000 in aggregate principal amount of bonds designated "Series 1997" (the "Bonds") to NationsBanc Montgomery Securities, Inc. (the "Purchaser"), at a price of 99.375% of par plus accrued interest plus investors' premium is the amount of \$59,241.45 (the "Purchase Price"), pursuant to a Bond Purchase Agreement between the Purchaser and the City (the "Agreement"), which has been presented to and is before the meeting at which this Ordinance is presented; and

WHEREAS, the City has made arrangements for Nationsbank, N.A. (the "Placement Agent") to act as placement agent for the sale of the Bonds pursuant to a Placement Agreement among the City, the Purchaser and the Placement Agent, which has been presented to and is before the meeting at which this Ordinance is presented; and

WHEREAS, the Preliminary Official Statement, dated November 20, 1997, offering the Bonds for sale (the "Preliminary Official Statement"), has been presented to and is before the meeting at which this Ordinance is presented; and

WHEREAS, it has been proposed that the scheduled payment of principal of and interest on the Bonds when due be insured pursuant to a municipal bond insurance policy guaranteeing the scheduled payment of the principal and interest on the Bonds (the "Insurance Policy" or the "Bond Insurance Policy") to be issued by Financial Security Assurance Inc., a New York stock insurance company (the "Bond Insurer", or "Insurer" or

Financial Security which terms include any successor);

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Jonesboro, Arkansas:

SECTION 1: The Project shall be accomplished. The Mayor is authorized to take such action as may be appropriate to cause the Project to be completed. The City Council authorizes the expenditure of sums in addition to the proceeds of the Bonds (the "Expenditures") for the purpose of paying the costs of the Improvements and hereby declares its intent to reimburse the City for any such Expenditures from the proceeds of Bonds subsequently issued. The City Council declares:

(A) Proceeds of the Bonds will be applied to reimburse the City for any Expenditure within eighteen (18) months after the later of (a) the date of such Expenditure or (b) the date on which the financed Improvements are placed in service and, in any event, within three (3) years after the date of the making of such Expenditure.

(B) The City Council is aware of no reason which would cause it to expect that the Expenditure would be reimbursed from any source other than the proceeds of the Bonds.

(C) The City Council is aware of no reason which would cause it to believe that any Expenditure will not be reimbursed from proceeds of the Bonds.

(D) The City Council is aware of nothing in the budget or financial circumstances of the City which is inconsistent with the intent and declaration of the City Council to finance Expenditures with the Bonds. The City Council is aware of no reason to expect that funds other than proceeds of the Bonds will be reserved or allocated on a long-term basis or otherwise set aside for any Expenditure pursuant to budgetary or financial policies of the City.

(E) Any Expenditure will be a "capital expenditure" within the meaning of applicable United States Treasury Regulations or will constitute a portion of the costs of issuance of the Bonds.

SECTION 2: The offer of the Purchaser for the purchase of \$29,010,000 in principal amount of Bonds from the City at the Purchase Price, bearing interest at the rates per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail is hereby accepted, the Agreement, in substantially the form submitted, is approved, and the Bonds are hereby sold to the Purchaser. The offer of the Placement Agent to use its best efforts to sell the Bonds bearing interest at the rates per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail is hereby accepted, and the Placement Agreement, in substantially the form presented, is approved. The Mayor is hereby authorized and directed to execute and deliver the Agreement and the Placement Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Agreement and the Placement Agreement. The Mayor is authorized and directed to execute and deliver such writings as may be appropriate to the issuance of the Bonds, including a tax compliance agreement and a continuing disclosure agreement in compliance with Securities and Exchange Rule 15c2-12 and to execute and deliver such writings as may be appropriate to secure the Insurance Policy and the Reserve Policy (identified in Section 8 hereof).

SECTION 3: The Preliminary Official Statement is hereby approved and the previous use of the Preliminary Official Statement by the Purchaser in connection with the sale of the Bonds is hereby in all respects approved and confirmed, and the Mayor is hereby authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City for use in connection with the sale of the Bonds as set forth in the Agreement.

SECTION 4: Under the authority of the Constitution and laws of the State, including particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, the City of Jonesboro, Arkansas Sales and Use Tax Revenue Bonds, Series 1997 (the "Bonds") are hereby authorized and ordered issued in the total principal amount of \$29,010,000 the proceeds of the sale of which are necessary to provide sufficient funds for accomplishing the Project, paying expenses incidental thereto, funding a debt service reserve and paying expenses of issuing the Bonds. The Bonds shall bear interest at the rates and shall mature on May 15 and November 15 of each year in the amounts as follows:

Maturity	Amount	Rate(%)
05/15/1998 11/15/1998	\$6,935,000 2,250,000	3.800 3.900 4.050
05/15/1999 11/15/1999	2,295,000 2,345,000	4.100 4.750 4.750
05/15/2000 11/15/2000	2,390,000 2,445,000	4.350
11/15/2002	10,350,000	

The Bonds shall be issuable only as fully registered Bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Unless the City shall otherwise direct, the Bonds shall be numbered from 1 upward in order of issuance. Each Bond shall have a CUSIP number but the failure of a CUSIP number to appear on any Bond shall not affect its validity.

Each Bond shall be dated as of December 1, 1997. Interest on the Bonds shall be payable on May 15, 1998, and semiannually thereafter on May 15 and November 15 of each year. Payment of each installment of interest shall be made to the person in whose name the Bond is registered on the registration books of the City maintained by First Commercial Trust Company, National Association, Little Rock, Arkansas, as Trustee and Paying Agent (the "Trustee"), at the close of business on the last day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such Bond subsequent to such Record Date and prior to such interest payment date, by check or draft mailed by the Trustee to such owner at his address on such registration books. Interest will be payable on an interest payment date to the Registered Owners of the Bonds, as shown on the Bond Register at the close of business on the applicable Record Date (a) by check or draft of the Trustee mailed to the address of such Registered Owner shown on the Bond Register or (b) in the case of an interest payment to (i) the Securities Depository, or (ii) any Registered Owner of \$250,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Registered Owner upon written notice given to the Trustee by such Registered Owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. Principal of the Bonds shall be payable at the corporate trust office of the Trustee in Little Rock, Arkansas. The term "Trustee" herein includes the original Trustee and any permitted successor. The Trustee shall always serve as registrar and as paying agent.

Each Bond shall bear interest from the interest payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from December 1, 1997, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time

of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 6 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Certificate on any Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the Bonds.

In case any Bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new Bond of like date, series, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the owner's paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a Bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such Bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. In the event any such Bond shall have matured, instead of issuing a new Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Bond under this Section 4, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The City shall cause books for the registration and for the transfer of the Bonds as provided herein and in the Bonds. The Trustee shall act as the Bond registrar. Each Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered Bond or Bonds of the same series and maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefore.

Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of Bonds of any other authorized denomination or denominations of the same series. The City shall execute and the Trustee shall authenticate and deliver Bonds which the registered owner making the exchange is entitled to receive. The execution by the City of any Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall be thereby authorized to authenticate and deliver such Bond.

No charge shall be made to any owner of any Bond for the privilege of transfer or exchange, but any owner of any Bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. Neither the Trustee nor the City shall be required (i) to issue, transfer or exchange any Bond during a period beginning at the opening of business 15 days before any selection of Bonds of that maturity for redemption and ending at the close of business on the day of the first mailing of the relevant notice of redemption, or (ii) to transfer or exchange any Bonds selected for redemption in whole or in part.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner

thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest on any Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

In any case in which the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption. Notwithstanding any other provisions herein to the contrary, the following shall be applicable with respect to the payment, transfer and exchange with respect to the Bonds:

Each maturity of the Bonds will be issued as a single Bond in the name of CEDE & Co., as nominee for The Depository Trust Company, New York, New York (the "Securities Depository"), which will act as depository for the Bonds. During the term of the Bonds, ownership and subsequent transfer of ownership will be reflected by book entry on the records of the Securities Depository and those financial institutions for whom the Securities Depository effects book-entry transfers (collectively, the "Participants"). No person for whom a Participant has an interest in the Bonds (a "Beneficial Owner") shall receive bond certificates representing an interest in the Bonds except in the event that the Securities Depository or the City shall determine, at its option, to terminate the book-entry system. Payment of principal of, and interest on, the Bonds will be made by the Trustee to the Securities Depository which will in turn remit such payment of principal and interest to its Participants which will in turn remit such principal and interest to the Beneficial Owners of the Bonds until and unless the Securities Depository or City elects to terminate the book-entry system, whereupon the City shall deliver bond certificates to the Beneficial Owners of the Bonds or their nominees. Bond certificates issued under this Section may not be transferred or exchanged except as provided in this Section.

Upon the reduction of the principal amount of any maturity of the Bonds, the Securities Depository may make a notation of such redemption on the panel of the Bond, stating the amount so redeemed, or may return the Series 1997 Bond to the Trustee for exchange for a new Series 1997 Bond, authenticated by the Trustee in the proper principal amount. Such notation, if made by the Securities Depository, may be made for reference only and may not be relied upon by any other person as being in any way determinative of the principal amount of such Bond Outstanding, unless the Trustee has initialed the notation on the panel.

The Securities Depository, or its nominee, will be the sole Bondowner of the Bonds, and no investor or other party purchasing, selling or otherwise transferring ownership of any Bonds will receive, hold or deliver any bond certificates as long as the Securities Depository holds the Bonds immobilized from circulation.

The Bonds may not be transferred or exchanged except:

(1) To any successor of the Securities Depository (or its nominee) or any substitute depository ("Substitute Depository") designated pursuant to (ii) below, provided that any successor of the Securities Depository or any Substitute Depository must be a qualified and registered "clearing agency" as provided in Section 17A of the Securities Act of 1934, as amended.

(2) To a Substitute Depository designated by or acceptable to the Issuer upon (a) the determination by the Securities Depository that the Bonds shall no longer be eligible for depository services or (b) a determination by the City that the Securities Depository is no longer able to carry out its functions, provided that any such Substitute Depository must be qualified to act as such, as provided in subparagraph (i) above; or

(3) To those persons to whom transfer is requested in written transfer instructions in the event that:

(A) The Securities Depository shall resign or discontinue its services for the Bonds and only if the City is unable to locate a qualified successor within two months following the resignation or determination of noneligibility, or

(B) Upon a determination by the City that the continuation of the book-entry system described herein, which precludes the issuance of certificates to any Bondowner other than the Securities Depository (or its nominee), is no longer in the best interest of the Beneficial Owner of the Bonds.

The Depository Trust Company, New York, New York, is hereby appointed the Securities Depository for the Bonds. To that end, the Mayor is authorized and directed to execute and deliver a blanket letter of representations in customary form.

SECTION 5: The Bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City.

SECTION 6: The Bonds and the Trustee's Certificate shall be in substantially the following form and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:  
(Form of Bond)

REGISTERED

REGISTERED

No. \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF CRAIGHEAD  
CITY OF JONESBORO  
SALES AND USE TAX REVENUE BOND  
SERIES 1997

Interest Rate: \_\_\_\_\_%

Maturity Date: 1, \_\_\_\_\_

Dated Date: 1, 1997

Registered owner:

Principal Amount: Dollars (\$ \_\_\_\_\_)

CUSIP NO.: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Jonesboro, County of Craighead, State of Arkansas (the "City"), for value received, hereby promises to pay to the Registered Owner shown above upon the presentation and surrender hereof at the principal corporate trust office of First Commercial Trust Company, National Association, Little Rock,

Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee" and the "Paying Agent"), on the Maturity Date shown above, the Principal Amount shown above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and to pay by check or draft to the Registered Owner shown above interest thereon, in like coin or currency, at the Interest Rate per annum shown above, payable on each May 15 and November 15 after the Dated Date shown above, until payment of such Principal Amount or, if this Bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this Bond. Payment of each installment of interest shall be made to the person in whose name this Bond is registered on the registration books of the City maintained by the Trustee at the close of business on the last day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this Bond subsequent to such Record Date and prior to such interest payment date. Interest will be payable on an interest payment date to the Registered Owner of this Bond, as shown on the Bond Register at the close of business on the applicable Record Date (a) by check or draft of the Trustee mailed to the address of such Registered Owner shown on the Bond Register or (b) in the case of an interest payment to (i) the Securities Depository, or (ii) any Registered Owner of \$250,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Registered Owner upon written notice given to the Trustee by such Registered Owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), ABA routing number and account number to which such Registered Owner wishes to have such transfer directed.

This Bond shall bear interest from the interest payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless it is authenticated prior to May 15, 1998 in which event it shall bear interest from the Dated Date shown above, or unless at the time of authentication hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

This Bond is one of an issue of City of Jonesboro, Arkansas Sales and Use Tax Revenue Bonds, Series 1997, aggregating Twenty-Nine Million Ten Thousand Dollars (\$29,010,000) in aggregate principal amount (the "Bonds"), and is issued for the purpose of financing the costs of streets and roads, with related and ancillary improvements, paying necessary expenses incidental thereto, and paying expenses of authorizing and issuing the Bonds.

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), particularly Amendment No. 62 to the Constitution of the State and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to an ordinance of the City duly adopted (the "Authorizing Ordinance"), and an election duly held at which the majority of the legal voters of the City voting on the question approved the issuance of the Bonds. Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City, the Trustee and the registered owners of the Bonds. The Bonds are special obligations of the City, payable from the proceeds derived by the City from a 1% sales and use tax (the "Tax") levied by the City under the Authorizing Legislation and Ordinance No. 2600 of the City duly adopted on January 3, 1995, and the City hereby pledges its collections of the Tax for the payment of this Bond.

(REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND ON THE REVERSE SIDE HEREOF WHICH HAVE THE SAME EFFECT AS IF SET FORTH IN THIS PLACE.)

IN WITNESS WHEREOF, the City of Jonesboro, Arkansas has caused this Bond to be executed by its Mayor and City Clerk, their facsimile signatures thereunto duly authorized, and its corporate seal to be impressed or imprinted on this Bond, all as of the Dated Date shown above.

CITY OF JONESBORO, ARKANSAS

ATTEST:

(Facsimile signature)  
City Clerk

By (Facsimile signature)  
Mayor

(SEAL)

(Reverse Side of Bond)

CITY OF JONESBORO, ARKANSAS  
SALES AND USE TAX REVENUE BOND  
SERIES 1997

FURTHER PROVISIONS

Mandatory Sinking Fund Redemption. The Bonds maturing November 15, 2002 shall be subject to mandatory redemption by the City at the principal amount thereof, without premium, plus accrued interest to the redemption date, in the following principal amounts on May 15 and November 15 of each year as follows:

Date

05/15/2001

11/15/2001

Principal Amount

\$2,505,000

2,560,000

Date

05/15/2002

11/15/2002

(Maturity)

Principal  
Amount



\$2,615,000  
2,670,000

The Bonds maturing on November 15, 2002 are subject to extraordinary redemption prior to maturity as follows: The Bonds shall be redeemed by the City from surplus tax collections (defined below) and from proceeds of the Bonds not needed for the purposes intended, in whole or in part, on any interest payment date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine).

For the purpose of selection of Bonds by lot, each \$5,000 of face value of such Bond shall be treated as a separate Bond of the denomination of \$5,000.

So long as the Bonds are issued in book-entry-only form, if fewer than all the Bonds are called for redemption, the particular Bonds to be redeemed will be selected pursuant to the procedures established by the Securities Depository. So long as the Bonds are issued in book-entry-only form, notice of redemption will be mailed, first class mail, postage prepaid, not less than 30 days before the redemption date, to Cede & Co., as nominee for the Securities Depository. The Trustee will not give any notice of redemption to the Beneficial Owners of the Bonds.

In the event that the Bonds are converted to certificated form, selection of fewer than all Bonds for redemption shall be made by the Trustee (i) by lot in the case of mandatory (sinking fund) redemption and (ii) in inverse order of maturity and by lot within a maturity in the case of optional redemption.

The City has covenanted in the Authorizing Ordinance that surplus tax collections, being collections from the Tax in excess of the amount necessary to insure the prompt payment of the principal of, interest on and Trustee's and Paying Agent's fees in connection with the Bonds as the same become due and the prompt reimbursement for any draw on certain reserve instruments must be used as and to the extent available to redeem outstanding Bonds prior to maturity.

Notice of redemption identifying the Bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed and the date they shall be presented for payment shall be given by the Trustee, not less than thirty days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to all registered owners of Bonds to be redeemed. Failure to mail an appropriate notice or any such notice to one or more registered owners of Bonds to be redeemed shall not affect the validity of the proceedings for redemption of other Bonds as to which notice of redemption is duly given in proper and timely fashion. All such Bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date. With respect to notice of redemption of the Bonds at the option of the City, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Trustee prior to the giving of such notice, such notice shall state that redemption shall be conditional upon the receipt of such moneys by the Trustee on or prior to the date fixed for such redemption. If such moneys shall not have been so received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

This Bond is transferable by the Registered Owner shown above in person or by his attorney-in-fact duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the

limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond or Bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefore. This Bond is issued with the intent that the laws of the State shall govern its construction.

The City and the Trustee may deem and treat the Registered Owner shown above as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable only as fully registered Bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, fully registered Bonds may be exchanged for a like aggregate principal amount of fully registered Bonds of the same maturity of other authorized denominations.

This Bond shall not be valid until it shall have been authenticated by the Certificate hereon duly signed by the Trustee.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed, under the Constitution and laws of the State, particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by this Bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that a tax sufficient to pay the Bonds and interest thereon has been duly levied in accordance with the Authorizing Legislation and made payable annually until all of the Bonds and interest thereon have been fully paid and discharged.

(Form of Trustee's Certificate)

#### TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of the within mentioned Authorizing Ordinance.

Date of Authentication: \_\_\_\_\_.

FIRST COMMERCIAL TRUST COMPANY,  
NATIONAL ASSOCIATION  
Little Rock, Arkansas  
TRUSTEE

By  
Authorized Signature

(Form of Assignment)

#### ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_ ("Transferor"),  
hereby sells, assigns and transfers unto \_\_\_\_\_, the within Bond and all rights thereunder, and hereby irrevocably  
constitutes and appoints \_\_\_\_\_ as attorney to transfer the within Bond on the books kept for registration  
thereof with full power of substitution in the premises.

Date:

Transferor

GUARANTEED BY:

NOTICE: Signature(s) must be guaranteed by a financial institution acceptable to the Trustee.

[A statement shall be placed on the Bonds to the effect that scheduled principal of and interest on the Bonds  
when due is insured by the Insurer pursuant to the insurance Policy.]

SECTION 7: The City hereby expressly pledges and appropriates all of the revenues derived by the City from  
the City's 1% sales and use tax levied by Ordinance No. 2600 adopted January 3, 1995 and approved at a  
special election held February 7, 1995 (the "Tax"), to the payment of the principal of and interest on the Bonds  
when due at maturity or at redemption prior to maturity and to the payment of the fees and charges of the  
Trustee. The City covenants that the Tax shall never be repealed or reduced while any of the Bonds are  
outstanding. The City further covenants to use due diligence in collecting the Tax. Nothing herein shall prohibit  
the City from increasing the Tax from time to time, to the extent permitted by law, and no part of the revenues  
derived from any such increase shall become part of the revenues pledged hereunder.

SECTION 8: (A) The City hereby designates First Commercial Trust Company, National Association, Little  
Rock, Arkansas, the Trustee, as the institution which shall irrevocably receive collections of the Tax (the  
"Pledged Revenues") from the State Treasurer and the City covenants to file a written designation thereof with  
the State Treasurer prior to the issuance of the Bonds. The Trustee shall deposit all collections of the Tax as and  
when received into a special fund of the City with the Trustee which is hereby created and designated "Sales  
and Use Tax Bond Fund" (the "Bond Fund"), for the purpose of providing funds for the payment of principal of  
and interest on the Bonds as they become due at maturity or at redemption prior to maturity, and the Trustee's  
fees and expenses. Collections of the Tax received prior to issuance of the Bonds will be deposited in the Bond  
Fund. Interest earnings on moneys in the Bond Fund shall be transferred as and when received into the  
Construction Fund (hereinafter identified) until the Improvements are completed as certified in accordance with  
Section 14 hereof unless needed to make the payments described in clauses (1), (2) and (3) below. Otherwise,  
moneys in the Bond Fund shall be used on each interest payment date in the following order of priority as and  
when necessary:

(1) to pay the interest on the Bonds then due; and

(2) to pay the principal of the Bonds then due at maturity or by reason of mandatory sinking fund redemption;  
and

(3) to pay the Trustee's fees and expenses then due; and

(4) to make provision in the Bond Fund for payment of one-half of the principal next due on the Bonds at maturity or by reason of mandatory sinking fund redemption if principal is not due on such interest payment date; and

(5) to reimburse for any draw on the Reserve Policy (identified below); and

(6) to make any rebate payment due the United States under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

(7) to effect extraordinary mandatory redemption of the Bonds prior to maturity.

(B) There shall be held and maintained as a part of the Bond Fund, in an account therein designated "Debt Service Reserve," a Municipal Bond Debt Service Reserve Insurance Policy (the "Reserve Policy") issued by the Insurer pursuant to which the Trustee shall be authorized to draw for payment of principal of and interest on the Bonds, in the event that Pledged Revenues should at any time be insufficient for such purposes. The Trustee is hereby authorized to effect such draws and to apply the proceeds thereof for such purposes.

(C) When all Bonds have been paid and discharged, or defeased as set forth in Section 9 hereof, and provision made for the Trustee's fees and expenses and Insurer's fees and expenses and any arbitrage rebate due to the United States under Section 148(f) of the Code, there shall be no obligation to make any further payments into the Bond Fund, and any Pledged Revenues remaining in the Bond Fund may be used by the City for any lawful purpose (but subject to the provisions of this Ordinance).

(D) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds, Trustee's fees, and any arbitrage rebate due to the United States under Section 148(f) of the Code.

(E) The Trustee is authorized and directed to withdraw moneys from the Bond Fund from time to time as necessary for paying principal of and interest on the Bonds when due at maturity or at redemption prior to maturity and for making other authorized Bond Fund expenditures.

(F) The Bonds shall be specifically secured by a pledge of the Pledged Revenues, which pledge in favor of the Bonds is hereby irrevocably made according to the terms of this Ordinance, and the City, and the officers and employees of the City, shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

(G) The City shall repay any draws under the Reserve Policy and pay all related reasonable expenses incurred by Financial Security. Interest shall accrue and be payable on such draws and expenses from the date of payment by Financial Security at the Late Payment Rate. "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by The Chase Manhattan Bank (N.A.) at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by The Chase Manhattan Bank (N.A.)) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event The Chase Manhattan Bank (N.A.) ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such national bank as Financial Security shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate

(collectively, "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to Financial Security shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to Financial Security on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Debt Service Reserve shall be transferred to the Bond Fund for payment of debt service on Bonds before any drawing may be made on the Reserve Policy or any other credit facility credited to the Debt Service Reserve in lieu of cash ("Credit Facility"). Payment of any Policy Costs shall be made prior to replenishment of any such cash amounts. Draws on all Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the Debt Service Reserve. Payment of Policy Costs and reimbursement of amounts with respect to other Credit Facilities shall be made on a pro-rata basis prior to replenishment of any cash drawn from the Debt Service Reserve.

(H) If the City shall fail to pay any Policy Costs in accordance with the requirements of Paragraph (g) hereof, Financial Security shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under the Ordinance other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect owners of the Bonds.

(I) This Ordinance shall not be discharged until all Policy Costs owing to Financial Security shall have been paid in full. The City's obligation to pay such amounts shall expressly survive payment in full of the Bonds.

(J) The Trustee shall ascertain the necessity for a claim upon the Reserve Policy and to provide notice to Financial Security in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Bonds. The Trustee shall give notice to Financial Security of any failure of the City to make timely payment in full of deposits into the Bond Fund within two business days of the date due.

(K) The Reserve Policy shall expire on the earlier of the date the Bonds are no longer outstanding and the final maturity date of the Bonds.

SECTION 9: Any Bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such Bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) cash sufficient to make such payment and/or (2) Government Securities (as defined in Section 14(d) hereof) (provided that such deposit will not cause any of the Bonds to be classified as "arbitrage Bonds" within the meaning of Section 148 of the Code), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of all such Bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such Bonds, all such moneys and/or Government Securities.

When all the Bonds shall have been paid within the meaning of this Ordinance, and if the Trustee has been paid its fees and expenses and if any Bond Insurer's fees and expenses and any required arbitrage rebate payment has been made to the United States under Section 148(f) of the Code or provision made therefore, the Trustee shall at the direction of the City, take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such Bonds to be paid over or delivered to or at the direction of the City.

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Insurance Policy, the Bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, and the assignment and pledge of the Pledged Revenues and all covenants, agreements and other obligations of the City to the registered owners of the Bonds shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such registered owners.

SECTION 10: The Bonds shall be callable for payment prior to maturity in accordance with the terms set out in the face of the Bond form set forth in Section 6 of this Ordinance, including the use of Surplus Tax Collections to redeem the Bonds maturing November 15, 2002 in accordance with clause (6) of Section 8(a) of this Ordinance and the Form of Bond.

SECTION 11: It is hereby covenanted by the City with the owners of the Bonds that the City will faithfully and punctually perform all duties with reference to the Tax and the Bonds required by the Constitution and laws of the State and by this Ordinance, including the collection of the Tax, as herein specified and covenanted and the applying of the Pledged Revenues as herein provided.

SECTION 12: The Trustee will keep or cause to be kept proper books of accounts and records in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues and such books shall be available for inspection by the City, the Purchaser, the Bond Insurer and the owner of any of the Bonds at reasonable times and under reasonable circumstances. The Trustee shall furnish a report to the City on a monthly basis of all receipts and disbursements of the Pledged Revenues received by the Trustee, which monthly report shall commence two months following the month in which the Bonds are issued. The Trustee shall also furnish to the Bond Insurer, semiannually, a report reflecting the amount on deposit in the funds held by the Trustee and the Bonds retired during the previous six month period.

SECTION 13: (A) If (i) there be any default in the payment of the principal of and interest on any of the Bonds, or (ii) the City defaults in the performance of any covenant contained in this ordinance or (iii) there is filed a voluntary or involuntary petition against the City in bankruptcy, which petition is not dismissed subject to the provisions of subsection (g) below, within sixty (60) days (collectively, an "Event of Default"), the Trustee may, with the consent of the Bond Insurer, and shall, upon the written request of the owners of not less than 10% in principal amount of the Bonds then outstanding, by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the State and under this Ordinance, and to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State.

(B) No owner of any Bond shall have any right to institute any suit, action, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right

to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more owners of the Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of the outstanding Bonds, and that any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided.

(C) All rights of action under this Ordinance or under any of the Bonds, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name and for the benefit of all the owners of the Bonds, subject to the provisions of this Ordinance.

(D) No remedy herein conferred upon or reserved to the Trustee, to the Bond Insurer or to the owners of the Bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law or by the Constitution of the State.

(E) No delay or omission of the Trustee or of any owners of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to the Trustee and to the owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(F) The Trustee may, and with the consent of the Bond Insurer and upon the written request of either the Bond Insurer or the owners of not less than a majority in principal amount of the Bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon. No waiver shall be granted except upon the prior written consent of the Bond Insurer.

(G) Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of a default under this Ordinance, provided that the Bond Insurer is not in default under the Insurance Policy, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the owners of the Bonds or the Trustee for the benefit of the owners of the Bonds under this Ordinance.

SECTION 14: When the Bonds have been executed by the Mayor and City Clerk and the seal of the City impressed or imprinted as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to the Purchaser upon payment of the Purchase Price. The accrued interest shall be deposited in the Bond Fund. Expenses of issuing the Bonds, including the premiums for the Insurance Policy and the

Surety Bond, as set forth in the delivery instructions to the Trustee signed by the Mayor, may be paid from the Purchase Price.

The balance of the Purchase Price shall be deposited in a special account of the City hereby created and designated the "Street and Road Construction Fund." The moneys in the Construction Fund shall be used for accomplishing the Improvements, paying expenses incidental thereto and paying the expenses of issuing the Bonds. Moneys in the Construction Fund shall also be used to pay the principal of and interest on the Bonds when due if moneys in the Bond Fund are not sufficient for the purpose. Disbursements shall be made from the Construction Fund on the basis of checks or requisitions. Requisitions shall specify: the name of the person, firm or corporation to whom payment is to be made, together with the address thereof; the amount of the payment; the purpose of the payment; and that the payment is a proper charge on the Construction Fund. Each check or requisition must be signed by the Mayor or a person designated in writing by the Mayor certifying his or her approval thereof. The City shall keep records as to all payments made from the Construction Fund.

When the Improvements have been completed and all required expenses paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof, this fact shall be evidenced by a certificate signed by the Mayor, which certificate shall state the date of the completion and that all obligations payable from the Construction Fund have been discharged. A copy of the certificate shall be filed with the Trustee. Any remaining balance shall be transferred to the Redemption Account in the Bond Fund.

SECTION 15: (A) Moneys held for the credit of the Construction Fund may be invested and reinvested in Permitted Investments, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(B) Moneys held for the credit of the Bond Fund shall be invested and reinvested in Permitted Investments, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys will be required for payment of the principal of and interest on the Bonds when due.

(C) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund, and, except as set forth in Section 8(a), the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund.

(D) "Permitted Investments" are defined to mean:

(1) Bank certificates of deposit or time deposits insured at all times by the Federal Deposit Insurance Corporation or collateralized by a perfected security interest in Government Securities perfected against claims of innocent purchasers under state and federal law or of any bank the short-term obligations of which are rated "A-1" or better by S&P;

(2) Direct obligations of or obligations fully and unconditionally guaranteed by (including obligations issued or held in book entry form on the books of) the United States of America ("Government Securities");

(3) Investments in a money market fund composed of Government Obligations and rated "nAAAm" or



"wAAAm-G" or better by S&P and are rated "Aaa" or better by Moody's;

(4) Tax-Exempt Obligations, which are defined as follows: Any bonds or other obligations of the State of Arkansas or of any agency, instrumentality or local governmental unit of such State which are eligible for the investment of public funds, which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice, which are rated, based on an irrevocable escrow account or fund ("escrow"), in the highest rating category of S&P and Moody's or any successors thereto and which obligations are described in Section 149(g)(3)(B)(i)(I) and (II) of the Code; or

(E) The Trustee shall invest and reinvest pursuant to the direction of the City and, in the absence of instructions from the City, as set forth in this Section 15.

(F) All Permitted Investments shall have a market value at least equal to the amount of money credited to such funds and shall be made in such a manner that the money required to be expended from any fund will be available at the proper time or times.

(G) The value of the Permitted Investments shall be determined no less frequently than semiannually and shall be determined as follows:

(1) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or more recently prior to such time of determination;

(2) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(3) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(4) as to any investment not specified above: the value thereof established by prior agreement among the City, the Trustee and the Insurer.

(I) Notwithstanding anything set forth in this Section, all investment of funds held in the Construction Fund and the Bond Fund shall be subject to the terms of a Tax Compliance Agreement to be entered into by the City and the Trustee at or prior to issuance of the Bonds.

SECTION 16: First Commercial Trust Company, National Association, Little Rock, Arkansas is hereby appointed to act as Trustee and Paying Agent pursuant to this Ordinance. The Trustee shall be responsible for the exercise of good faith and reasonable prudence in the execution of its trusts. The recitals in this Ordinance and in the Bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the owners of not less than 10% in principal amount of Bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign by giving 60 days' notice in writing to the City Clerk, the Bond Insurer and the owners of the Bonds, and the majority in

principal amount of the owners of the outstanding Bonds at any time, with or without cause, may remove the Trustee. Provided however, no resignation or removal of the Trustee (except by or with the written consent of the Bond Insurer) shall be effective until a successor Trustee shall have been appointed and shall have accepted its duties hereunder. In addition, the Trustee may be removed at any time, at the request of the Bond Insurer while the Insurance Policy is in effect, for any reason. The majority in principal amount of the owners of the outstanding Bonds may appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the City Clerk. If the majority in principal amount of the owners of the outstanding Bonds shall fail to appoint a successor Trustee within thirty (30) days after notice of resignation by the Trustee, the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Clerk. The new Trustee shall be a bank or a trust company in good standing, duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$50,000,000 and acceptable to the Bond Insurer while the Insurance Policy is in effect. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the Bonds agree. Such written acceptance shall be filed with the City Clerk, and a copy thereof shall be placed in the Bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee.

SECTION 17: (A) The terms of this Ordinance shall constitute a contract between the City and the owners of the Bonds and no variation or change in the undertaking herein set forth shall be made while any of the Bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(B) With the consent of the Bond Insurer while the Insurance Policy is in force, the Trustee may consent to any variation or change in this Ordinance in order to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto without the consent of the owners of the Bonds.

(C) With the consent of the Bond Insurer while the Insurance Policy is in force, the owners of not less than 75% in aggregate principal amount of the Bonds 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 City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any Bond, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or (3) the creation of a pledge of the Pledged Revenues superior to the pledge created by this Ordinance, or (4) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (5) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

(D) Notwithstanding any other provision of this Ordinance, in determining whether the rights of the owners of the Bonds will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, the Trustee shall consider the effect on the owners of the Bonds as if there were no Insurance Policy.

(E) Any provision of this Ordinance expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Insurer hereunder without the prior written consent of the Insurer.

(F) The Bond Insurer's consent shall be required for the initiation or approval of any action not described in this Section which requires Bondholder consent.

SECTION 18: (A) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Bonds to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Bonds and the Pledged Revenues will not be used directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage Bonds" within the meaning of Section 148 of the Code.

(B) The City recognizes that the exclusion of the interest paid on the Bonds from gross income for purposes of regular federal income taxation is dependent upon compliance with the provisions of Section 148 of the Code (and regulations thereunder). The City shall, unless and until the City secures and delivers to the Trustee a written opinion of Tax Counsel as described below, make the determinations and take the actions hereinafter required and make such further or different determinations and take such further or different actions as are necessary, in the opinion of Tax Counsel, to comply with the requirements of Section 148(f) of the Code (and the regulations pertaining thereto).

As used in this Section, the term "Tax Counsel" means any lawyer or firm of lawyers, acceptable to the Trustee, of national reputation with regard to the exemption from federal income tax of interest on state and local obligations.

(C) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of, the Improvements or the proceeds of the Bonds, in such manner as to cause the Bonds to be "private activity Bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of the Bonds to make or finance loans to any person and (ii) that while the Bonds are outstanding the Improvements will be used by persons on a basis as members of the general public.

(D) The City covenants that it will not reimburse itself from Bond proceeds for any costs paid more than sixty days prior to the date the Bonds are issued except in compliance with United States Treasury Regulation No. 1.150-2.

SECTION 19: (A) The City covenants that it will take no action which would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(B) The City further covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, a statement concerning the Bonds which contains the information required by Section 149(e) of the Code.

SECTION 20: Notwithstanding any other provision of this Ordinance, as long as the Insurance Policy shall be in full force and effect, the City and the Trustee agree to comply with the following provisions:

(A) The Bond Insurer shall be deemed to be the sole holder of the Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to Section 13 and Section 16.

(B) No grace period for a covenant default shall exceed 30 days, nor be extended for more than 60 days, without the prior written consent of the Bond Insurer.

(C) Any discretion of the Trustee in the application of funds after default shall not permit the Trustee to fail to liquidate Permitted Investments in the Bond Fund and apply amounts credited to such funds to the payment of debt service on any Payment Date (defined below).

(E) The Bond Insurer shall be granted and shall have the right to remove the Trustee.

(F) Copies of any modification or amendment to the Ordinance or any other Related Document (defined below) shall be sent to Fitch Investors Service and Moody's Investors Service, Inc. at least 10 days prior the effective date hereof.

(G) Rights of the Bond Insurer to direct or consent to City, Trustee or bondholder actions under this Ordinance shall be suspended during any period in which the Bond Insurer is in default in its payment obligations under the Bond Insurance Policy (except to the extent of amounts previously paid by the Bond Insurer and due and owing to the Bond Insurer) and shall be of no force or effect in the event the Bond Insurance Policy is no longer in effect or the Bond Insurer asserts that the Bond Insurance Policy is not in effect or the Bond Insurer shall have provided written notice that it waives such rights.

(H) The rights granted to the Bond Insurer under this Ordinance or any other Related Document to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Bond Insurance Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Bondholders, nor does such action evidence any position of the Bond Insurer, positive or negative as to whether Bondholder consent is required in addition to consent of the Bond Insurer.

(I) Only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated or (4) pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or any combination thereof, shall be authorized to be used to effect defeasance of the Bonds unless the Bond Insurer otherwise approves.

To accomplish defeasance the City shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Bond Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Bond Insurer), and (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under this Ordinance; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the City, the Trustee and the Bond Insurer. In the event a forward purchase agreement will be employed in the refunding, such agreement shall be subject to the approval of the Bond Insurer and shall be accompanied by such opinions of counsel as may be required by the Bond Insurer. The Bond Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under this Ordinance unless and until they are in fact paid and retired or the above criteria are met.

(J) Amounts paid by the Bond Insurer under the Bond Insurance Policy shall not be deemed paid for purposes of this Ordinance and shall remain Outstanding and continue to be due and owing until paid by the City in accordance with this Ordinance.

(K) This Ordinance shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full or duly provided for.

(l) Claims Upon the Bond Insurance Policy and payments by and to the Bond Insurer:

If, on the third business day prior to the related scheduled interest payment date or principal payment date or the date to which Bond maturity has been accelerated ("Payment Date") there is not on deposit with the Trustee, after making all transfers and deposits required under this Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Trustee shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Trustee shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Bond Insurance Policy.

The Trustee shall designate any portion of payment of principal on Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Bond Insurer, registered in the name of Financial Security Assurance Inc. in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the City on any Bond or the subrogation rights of the Bond Insurer.

The Trustee shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

Upon payment of a claim under the Bond Insurance Policy the Trustee shall establish a separate special purpose trust account for the benefit of holders of the Bonds referred to herein as the "Policy Payments Account" and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Bond Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

Any funds remaining in the Policy Payments Account following a Bond Payment date shall promptly be remitted to the Bond Insurer.

(M) The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy.

(N) The City shall agree to pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in respect of this Ordinance or any other transaction document (each a "Related Document"), (ii) the pursuit of any remedies under this Ordinance or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, this Ordinance or any other Related Document whether or not executed or completed, (iv) the violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it or (v) any litigation or other dispute in connection with the Ordinance or any other Related Document or the transactions contemplated thereby, other than amounts resulting from the failure of the Bond Insurer to honor its obligations under the Bond Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect to this Ordinance or any other Related Document.

(O) Payments required to be made to the Bond Insurer shall be payable solely from the revenues and assets pledged hereunder and shall be paid (i) prior to an event of default, to the extent not paid from the Bond Fund, and (ii) after an event of default, with respect to amounts other than principal and interest on the Bonds, on the same priority as payments to the Trustee for expenses. The obligations to the Bond Insurer shall survive discharge or termination of the Related Documents.

(P) The Bond Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Bond Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with this Ordinance, whether or not the Bond Insurer has received a Notice (as defined in the Bond Insurance Policy) of Nonpayment or a claim upon the Bond Insurance Policy.

(Q) The notice address of the Bond Insurer is: Financial Security Assurance Inc. 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director Surveillance. Telephone: (212)826-0100; Telecopier: (212) 339-3529. Re: Policy No. 21133-N. In each case in which notice or other communication refers to an Event of Default or with respect to which failure on the part of the Bond Insurer to respond shall be deemed to constitute consent or acceptance, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED".

(R) The Bond Insurer shall be provided with the following information:

- (i) annual audited financial statements within 120 days after the end of the City's fiscal year and the Issuer's annual budget within 30 days after the approval thereof;

- (ii) notice of any draw upon the Surety Bond within two Business Days after knowledge thereof;
- (iii) notice of any default known to the Trustee within five Business Days after knowledge thereof;
- (iv) prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;
- (v) notice of the resignation or removal of the Trustee, Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;
- (vi) the commencement of any proceeding by or against the City commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, Receivership, rehabilitation or similar law (an "Insolvency Proceeding");
- (vii) the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on any of the Bonds;
- (viii) a full original transcript of all proceedings relating to the execution of any amendment or supplement to the Related Documents; and
- (xi) all reports, notices and correspondence to be delivered under the terms of the Related Documents.

SECTION 21: To the extent that this Ordinance confers upon or gives or grants to the Insurer any right, remedy or claim under or by reason of this Ordinance, the Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

SECTION 22: Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Trustee, the Insurer, and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee, the Insurer, and the registered owners of the Bonds.

SECTION 23: (A) While the Insurance Policy is in effect, the City or the Trustee, as appropriate, shall furnish to the Insurer:

- (1) as soon as practicable after the filing thereof, a copy of any financial statement of the City and a copy of any audit and annual report of the City;
- (2) a copy of any notice to be given to the registered owners of the Bonds, including, without limitation, notice of any redemption of or defeasance of Bonds, and any certificate rendered pursuant to this Ordinance relating to the security for the Bonds; and
- (3) such additional information the Insurer may reasonably request.

(B) The Trustee shall notify the Insurer of any failure of the City to provide relevant notices, certificates and reports required hereunder.

(C) The City will permit the Insurer to discuss the affairs, finances and accounts of the City or any information the Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the City. The Trustee or City, as appropriate, will permit the Insurer to have access to and to make copies of all books and records relating to the Bonds and the Pledged Revenues at any reasonable time.

(D) The Insurer shall have the right to direct an accounting at the City's expense, and the City's failure to comply with such direction within 30 days after receipt of written notice of the direction from the Insurer shall be deemed a default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any registered owner of the Bonds.

(E) Notwithstanding any other provision of this Ordinance, the Trustee shall immediately notify the Insurer if at any time there are insufficient moneys to make any payments of principal and/or interest on the Bonds as required and immediately upon the occurrence of any event of default hereunder.

SECTION 24: Any moneys held by the Trustee, in the Bond Fund or otherwise, 2 1/2 years following the date of final maturity or redemption of all Bonds shall be returned to the City, and no bondholder shall thereafter have any right to such moneys or any claim against the City therefore.

SECTION 25: The provisions of this Ordinance are separable and in the event that any section or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of this Ordinance.

SECTION 26: All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 27: It is hereby ascertained and declared that the Improvements are immediately needed for the preservation of the public peace, health and safety and that issuance of the Bonds is subject to changes in interest rates. The Improvements cannot be accomplished without the issuance of the Bonds, and, therefore, it is declared that an emergency exists and this Ordinance, being necessary for the preservation of the public peace, health and safety, shall be in force immediately upon its passage.

PASSED this 1<sup>st</sup> day of December, 1997.