

ORDINANCE NO. 10-2012

**AN ORDINANCE PLEDGING COLLECTIONS OF A 1.00% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON SALES AND USE TAX BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

WHEREAS, there was submitted to the qualified electors of the City of Austin, Arkansas (the "City") the question of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (the "State") and under Title 26, Chapter 75, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), capital improvement bonds to finance the construction of betterments and improvements to the streets of the City (the "Improvements"); and

WHEREAS, at the special election held June 26, 2012, a majority of the electors voting on the question approved the issuance of bonds in the maximum amount of \$1,250,000; and

WHEREAS, on August 27, 2012, the City enacted Ordinance No. 07-2012 providing for the issuance of \$1,250,000 of Sales and Use Tax Improvement Bonds; and

WHEREAS, the City has made arrangements for the sale of the Series 2012 Bonds to Stephens Inc. (the "Purchaser"), at a price of \$1,202,671.20 (principal amount less original issue discount of \$3,578.80 and less underwriter's discount of \$43,750, plus accrued interest of \$-0-) (the "Purchase Price"), pursuant to a Bond Purchase Agreement between the Purchaser and the City (the "Agreement"), which has been executed on September 13, 2012; and

WHEREAS, the Preliminary Official Statement, dated September 7, 2012, offering the Series 2012 Bonds for sale (the "Preliminary Official Statement"), was approved pursuant to Ordinance No. 07-2012; and

WHEREAS, the Continuing Disclosure Agreement between the City and Bank of the Ozarks, Little Rock, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the Series 2012 Bonds, has been presented to and is before this meeting; and



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

Section 1. The offer of the Purchaser for the purchase of the Series 2012 Bonds from the City at the Purchase Price, for Series 2012 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 be, and is hereby approved.

Section 2. The previous use of the Preliminary Official Statement by the Purchaser in connection with the sale of the Series 2012 Bonds is hereby in all respects approved and confirmed, and the Mayor be and he 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 as set forth in the Agreement.

Section 3. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement on behalf of the City. The Mayor and City Recorder/Treasurer are each authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement. Any legal fees and other administrative costs incurred by the City in connection with making the annual report pursuant to the Disclosure Agreement (except audit fees) shall be considered administrative charges that may be payable from moneys in the Bond Fund.

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 Series 2012 Bonds were authorized pursuant to Ordinance No. 07-2012 and ordered issued in the total principal amount of \$1,250,000, the proceeds of the sale of which are necessary to provide a portion of the funds necessary for accomplishing the Improvements, paying expenses incidental thereto, providing a debt service reserve, and paying expenses of issuing the Series 2012 Bonds.

The Series 2012 Bonds shall bear interest at the rates and shall mature on October 1 in the amounts and in the years as follows:

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Fiscal Total as of 12/31</u>
10/01/13 <sup>(1)</sup>	\$20,000	\$42,152.04	\$62,152.04
10/01/14 <sup>(1)</sup>	40,000	42,106.26	82,106.26
10/01/15 <sup>(1)</sup>	40,000	41,306.26	81,306.26
10/01/16 <sup>(1)</sup>	40,000	40,506.26	80,506.26
10/01/17 <sup>(1)</sup>	40,000	39,706.26	79,706.26
10/01/18 <sup>(2)</sup>	45,000	38,906.26	83,906.26
10/01/19 <sup>(2)</sup>	45,000	37,500.00	82,500.00
10/01/20 <sup>(2)</sup>	45,000	36,093.76	81,093.76
10/01/21 <sup>(2)</sup>	50,000	34,687.50	84,687.50
10/01/22 <sup>(2)</sup>	50,000	33,125.00	83,125.00
10/01/23 <sup>(3)</sup>	50,000	31,562.50	81,562.50



10/01/24 <sup>(3)</sup>	55,000	29,687.50	84,687.50
10/01/25 <sup>(3)</sup>	55,000	27,625.00	82,625.00
10/01/26 <sup>(3)</sup>	55,000	25,562.50	80,562.50
10/01/27 <sup>(3)</sup>	60,000	23,500.00	83,500.00
10/01/28 <sup>(4)</sup>	60,000	21,250.00	81,250.00
10/01/29 <sup>(4)</sup>	65,000	18,850.00	83,850.00
10/01/30 <sup>(4)</sup>	65,000	16,250.00	81,250.00
10/01/31 <sup>(4)</sup>	70,000	13,650.00	83,650.00
10/01/32 <sup>(4)</sup>	70,000	10,850.00	80,850.00
10/01/33 <sup>(5)</sup>	75,000	8,050.00	83,050.00
10/01/34 <sup>(5)</sup>	75,000	5,425.00	80,425.00
10/01/35 <sup>(5)</sup>	80,000	2,800.00	82,800.00

- (1) Term Bonds due October 1, 2017  
(2) Term Bonds due October 1, 2022  
(3) Term Bonds due October 1, 2027  
(4) Term Bonds due October 1, 2032  
(5) Term Bonds due October 1, 2035

The Series 2012 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 Series 2012 Bonds shall be numbered from 1 upward in order of issuance. Each Series 2012 Bond shall have a CUSIP number but the failure of a CUSIP number to appear on any Series 2012 Bond shall not affect its validity.

Each Series 2012 Bond shall be dated as of October 4, 2013. Interest on the Series 2012 Bonds shall be payable on April 1, 2013, and semiannually thereafter on April 1 and October 1 of each year. Payment of each installment of interest shall be made to the person in whose name the Series 2012 Bond is registered on the registration books of the City maintained by Bank of the Ozarks, Little Rock, Arkansas, as Trustee and Paying Agent (the "Trustee"), at the close of business on the fifteenth 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; provided, however, payment of interest shall be made by wire transfer if requested by a registered owner of the Series 2012 Bonds in the aggregate principal amount of \$1,000,000 or more. Principal of the Series 2012 Bonds shall be payable at the principal corporate trust office of the Trustee.

Each Series 2012 Bond shall bear interest from the 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 October 4, 2012, 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 Series 2012 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 Series 2012 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 Series 2012 Bond shall be conclusive evidence that such bond has been authenticated and delivered under this Ordinance. The Certificate on any Series 2012 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 Series 2012 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 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, 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 to be maintained 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 maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

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. 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 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 where 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.

Section 5. The Series 2012 Bonds shall be registered initially in the name of Cede & Co., as nominee for the Depository Trust Company ("DTC"), which shall be considered to be the registered owner of the Series 2012 Bonds for all purposes under this Ordinance, including, without limitation, payment by the City of principal of, redemption price, premium, if any, and interest on the Series 2012 Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten Series 2012 Bond for each stated maturity date which shall be immobilized in the custody of DTC with the beneficial owners having no right to receive the Series 2012 Bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership of beneficial interests in the Series 2012 Bonds by book-entry on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book-entry, the City having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the Series 2012 Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Series 2012 Bonds. The Series 2012 Bonds as such shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository, without further action by the City.

If any securities depository determines not to continue to act as a securities depository for the Series 2012 Bonds for use in a book-entry system, the Trustee may establish a securities depository/book-entry system relationship with another securities depository. If the City does not or is unable to do so, or upon request of the owners of all outstanding Series 2012 Bonds, the City and the Trustee, after the Trustee has made



provision for notification of the beneficial owners by the then securities depository, shall permit withdrawal of the Series 2012 Bonds from the securities depository, and authenticate and deliver Series 2012 Bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the securities depository or its nominee, all at the cost and expense (including costs of printing definitive Series 2012 Bonds) of the City or of the beneficial owners of the Series 2012 Bonds.

Prior to issuance of the Series 2012 Bonds, the City shall have executed and delivered to DTC a written agreement (the "Representation Letter") setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the City with respect to the Series 2012 Bonds so long as the Series 2012 Bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the Series 2012 Bonds other than the registered owners, as shown on the registration books kept by the Trustee. The Trustee shall take all action necessary for all representations of the City in the Representation Letter with respect to the Trustee to at all times be complied with.

The authorized officers of the Trustee and the City shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a securities depository for all or any portion of the Series 2012 Bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of Series 2012 Bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Section 6. The bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Recorder/Treasurer and shall have impressed or imprinted thereon the seal of the City. The Series 2012 Bonds and the Trustee's Certificate shall be in substantially the following form and the Mayor and City Recorder/Treasurer are hereby expressly authorized and directed to make all recitals contained therein:



(Form of Series 2012 Bond)

REGISTERED

REGISTERED

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

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF LONOKE  
CITY OF AUSTIN  
SALES AND USE TAX BOND  
SERIES 2012

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

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

Dated Date: October 4, 2012

CUSIP No.: \_\_\_\_\_

Registered Owner: Cede & Co.

Principal Amount: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Austin, County of Lonoke, 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 Bank of the Ozarks, Little Rock, Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee"), 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 from the interest commencement date described below at the Interest Rate per annum shown above, payable on each April 1 and October 1 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 fifteenth 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. Notwithstanding the above, payment of interest shall be made by wire transfer when requested by the Registered Owner hereof if it is the registered owner of bonds of this issue in the aggregate principal amount of \$1,000,000 or more.

Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of



DTC (and any payment is made to Cede & Co. or to such other entity as is required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

This bond shall bear interest from the 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 the first interest payment date, 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 Austin, Arkansas Sales and Use Tax Bonds, Series 2012, aggregating One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) in aggregate principal amount (the "bonds"), and is issued for the purpose of financing the costs of accomplishing street improvements, paying necessary expenses incidental thereto, providing a debt service reserve, 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 75, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. 07-2012 of the City duly adopted on August 27, 2012 (the "Authorizing Ordinance"), and an election duly held on June 26, 2012 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 collections that are received by the City (the "Pledged Revenues") from a 1.00% sales and use tax (the "Tax") levied by the City under the Authorizing Legislation and Ordinance No. 04-2012, as amended by Ordinance No. 06-2012 of the City duly adopted on February 27, 2012 and March 26, 2012, and approved by the voters in the City at an election held June 26, 2012, and the City hereby pledges the Pledged Revenues for the payment of this bond. The City has reserved the right in the Authorizing Ordinance to issue additional bonds under the Authorizing Ordinance on a parity of security with the bonds.

The bonds are subject to extraordinary, optional and mandatory sinking fund redemption as follows:

(1) The Series 2012 Bonds may be redeemed at the option of the City from funds from any source, on and after April 1, 2018, in whole at any time 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. If fewer than all of the Series 2012 Bonds shall be called for redemption, the particular maturities of the Series 2012



Bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the Series 2012 Bonds of any one maturity shall be called for redemption, the particular Series 2012 Bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

(2) To the extent not previously redeemed, the Series 2012 Bonds maturing on October 1, 2017, 2022, 2027, 2032 and 2035 are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on October 1 in the years and in the amounts set forth below, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption:

<u>October 1</u>	<u>Principal Amount</u>
2013	\$20,000
2014	40,000
2015	40,000
2016	40,000
2017	40,000

The Bonds maturing October 1, 2022 shall be subject to mandatory sinking fund redemption at a price of the principal amount being redeemed plus accrued interest to the date of redemption, on October 1 in the years and principal amounts as follows:

<u>October 1</u>	<u>Principal Amount</u>
2018	\$45,000
2019	45,000
2020	45,000
2021	50,000
2022	50,000

The Bonds maturing October 1, 2027 shall be subject to mandatory sinking fund redemption at a price of the principal amount being redeemed plus accrued interest to the date of redemption, on October 1 in the years and principal amounts as follows:

<u>October 1</u>	<u>Principal Amount</u>
2023	\$50,000
2024	55,000
2025	55,000
2026	55,000
2027	60,000

The Bonds maturing October 1, 2032 shall be subject to mandatory sinking fund redemption at a price of the principal amount being redeemed plus accrued interest to the date of redemption, on October 1 in the years and principal amounts as follows:



<u>October 1</u>	<u>Principal Amount</u>
2028	\$60,000
2029	65,000
2030	65,000
2031	70,000
2032	70,000

The Bonds maturing October 1, 2035 shall be subject to mandatory sinking fund redemption at a price of the principal amount being redeemed plus accrued interest to the date of redemption, on October 1 in the years and principal amounts as follows:

<u>October 1</u>	<u>Principal Amount</u>
2033	\$75,000
2034	75,000
2035	80,000

(3) The Series 2012 Bonds or portions thereof may be redeemed on any interest payment date from moneys in the Project Fund not needed to complete the Project, after October 1, 2015, in inverse order of maturity (Bonds within a maturity to be selected by lot in such manner as the Trustee shall determine to be fair and equitable) at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

In addition, the Series 2012 Bonds or portions thereof shall be redeemed from Surplus Tax Receipts (hereinafter defined) on any interest payment date, at least annually, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date. "Surplus Tax Receipts" are, so long as there are no Additional Bonds outstanding, 100% of the collections of Tax in excess of the amount necessary to (i) insure the prompt payments of the principal of, interest on and Trustee's and administrative fees and expenses in connection with the Series 2012 Bonds as the same become due, (ii) maintain debt service reserves in the required amounts, and (iii) pay any arbitrage rebate dues under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code").

In the event of a redemption from Surplus Tax Receipts, the Series 2012 Bonds shall be redeemed in inverse order of maturity by lot within a maturity for a particular series in such manner as the Trustee shall determine. Surplus Tax Receipts available for redemption shall be allocated pro rata between the Series 2012 Bonds based upon the principal amount outstanding of the maturity to be redeemed.

If there are Additional Bonds outstanding, "Surplus Tax Receipts" shall mean collection of the Tax in excess of the amount necessary to (i) insure the prompt payments of the principal of, interest on and Trustee's and administrative fees and expenses in connection with the Series 2012 Bonds and any Additional Bonds as the same become due, (ii) maintain debt service reserves in the required amounts, and (iii) pay any arbitrage rebate dues under Section 148(f) of the Code.



The provisions for extraordinary and mandatory sinking fund redemption of the Series 2012 Bonds are subject to the provisions of the Authorizing Ordinance which permit the City to use moneys available for such redemption in the bond fund established for the Bonds to purchase Bonds having a maturity that would be subject to redemption on the next interest payment date at a price not in excess of par plus accrued interest, inclusive of brokerage fees. The City shall receive credit, at par, for Bonds acquired by the City and surrendered to the Trustee not less than 40 days prior to the redemption date.

In case any outstanding Series 2012 Bond is in a denomination greater than \$5,000, each \$5,000 of face value of such Series 2012 Bond shall be treated as a separate Series 2012 Bond of the denomination of \$5,000.

The City has covenanted in the Authorizing Ordinance that Surplus Tax Receipts, as defined above, must be used from time to time on each interest payment date as and to the extent available to redeem outstanding Bonds prior to maturity.

In case any outstanding bond is in a denomination greater than \$5,000, each \$5,000 of face value of such bond shall be treated as a separate bond of the denomination of \$5,000.

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 15 nor more than 60 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, or by other standard means, including facsimile transmission and electronic communication, 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.

So long as the Bonds are in book-entry only form, notice of redemption will be given only to Cede & Co., as nominee of DTC, as registered owner of the Bonds, and the Trustee will not mail redemption notice directly to the Beneficial Owners of the Bonds.

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 therefor. 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.

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 under the laws of the State and receipts derived therefrom are pledged to the payment of the bonds in accordance with the Authorizing Legislation.

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

The bonds are hereby designated as qualified tax-exempt obligations within the meaning of Section 265(b) of the Internal Revenue Code of 1986, as amended.

[Remainder of page left blank intentionally.]



IN WITNESS WHEREOF, the City of Austin, Arkansas has caused this bond to be executed by its Mayor and City Recorder/Treasurer and its corporate seal to be impressed or imprinted on this bond, all as of the Dated Date shown above.

**CITY OF AUSTIN, ARKANSAS**

By: /s/ Bernadette Chamberlain  
Mayor

ATTEST:

/s/ Mary Ann Davis  
City Recorder/Treasurer



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: \_\_\_\_\_.

**BANK OF THE OZARKS  
Little Rock, Arkansas  
TRUSTEE**

By: \_\_\_\_\_  
Authorized Signature

(A Form of Assignment shall be attached to the bonds.)



Section 7. The City hereby expressly pledges and appropriates all of the revenues derived by the City from collections of a 1.00% sales and use tax (the "Tax") levied by Ordinance No. 04-2012 as amended by Ordinance No. 06-2012, adopted February 27, 2012 and March 26, 2012 and approved by the voters at a special election on June 26, 2012 (the "Pledged Revenues"), to the payment of the principal of and interest on the bonds when due at maturity or at redemption prior to maturity, administrative costs, the fees and charges of the Trustee and any required arbitrage rebate due to the United States. The City covenants that the Tax shall not 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 Bank of the Ozarks, Little Rock, Arkansas, as the bank which shall receive collections of the Tax from the State Treasurer and the City covenants to file a written designation thereof with the State Treasurer prior to the issuance of the Series 2012 Bonds. The Trustee shall deposit all Pledged Revenues as and when received into a special fund of the City in the Trustee which is hereby created and designated "Sales and Use Tax Revenue Fund" (the "Revenue Fund").

(b) Moneys in the Revenue Fund shall, within two (2) business days of receipt, be transferred to the following accounts each month, in the following order of priority:

- (1) 1/6 of the interest on the bonds next due - Debt Service Account in the Bond Fund (hereinafter identified); and
- (2) 1/12 of the principal of the bonds next due at maturity or upon mandatory sinking fund redemption - Debt Service Account in the Bond Fund; and
- (3) the Trustee's fees and expenses and other administrative charges next due - Expense Account in the Bond Fund; and
- (4) the amount which may be necessary to increase the Debt Service Reserve Account to the required level - Debt Service Reserve Account in the Bond Fund; and
- (5) the amount necessary to pay any arbitrage rebate due under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code") - Expense Account in the Bond Fund; and
- (6) the balance shall be used to redeem Bonds prior to maturity according to the redemption provision of the Bonds.



The deposits made into the Debt Service Account in the Bond Fund shall be reduced in order to take into account as a credit (1) interest earnings, (2) accrued interest deposited therein from bond proceeds and (3) transfers from the Debt Service Reserve Account. The deposits made into the Debt Service Account shall be increased as needed (a) so that approximately level payments are made in order to make the first two debt service payments on the Series 2012 Bonds and (b) in order to make up any deficiencies in prior months' deposits.

Section 9. (a) There is hereby created a special fund of the City in the Trustee which is 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, the Trustee's fees and expenses and other administrative charges, and any arbitrage rebate due the United States under Section 148(f) of the Code. There shall be established in the Bond Fund the following accounts into which money from the Revenue Fund shall be deposited monthly: (i) Debt Service Account; (ii) Debt Service Reserve Account, and (iii) Expense Account. Moneys in the following Bond Fund accounts 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 upon mandatory sinking fund redemption; and
- (3) to make provision in the Bond Fund for payment of one-half of the principal next due on the bonds at maturity or upon mandatory sinking fund redemption if principal is not due on such interest payment date; and
- (4) to transfer into the Debt Service Reserve Account such amounts as necessary to increase the Debt Service Reserve Account to the Required Level (hereinafter defined); and
- (5) to pay the Trustee's fees and expenses and other administrative charges then due; and
- (6) to pay the amount which is payable as arbitrage rebate to the United States Treasury under Section 148(f) of the Code; and
- (7) to redeem bonds prior to maturity according to the redemption provisions of the bonds.

In addition, moneys in the Expense Account shall be used to pay, when due, the arbitrage rebate.



The Bond Fund (excluding those moneys in the Debt Service Reserve Account) shall, except as provided in this Section, be depleted once a year except for a carryover amount not to exceed the greater of (i) one year's earnings on the Bond Fund or (ii) 1/12 of the debt service on the bonds. Any moneys in the Bond Fund shall, except as provided in this Section, be spent for one of the above purposes within a thirteen-month period beginning on the date of deposit, and any amount received from investment of money held in the Bond Fund will be spent within a one-year period beginning on the date of receipt. The Trustee shall recalculate the Required Level upon the defeasance or payment in full of any particular issue of the bonds.

(b) There shall be deposited and maintained in the Debt Service Reserve Account an amount equal to the maximum annual debt service requirement on the bonds (the "Required Level"). The City shall fund the Debt Service Reserve Account at the times the bonds are issued. Moneys in the Debt Service Reserve Account shall be used to make principal and interest payments on the bonds when due if moneys in the Bond Fund are not otherwise sufficient for that purpose. Moneys in the Debt Service Reserve Account over and above the Required Level shall be immediately transferred from the Debt Service Reserve Account into the Bond Fund. The Trustee shall recalculate the Required Level upon the defeasance or payment in full of any particular issue of the bonds. The Required Level for the Debt Service Reserve Account shall be reduced at the time an issue of bonds is no longer outstanding to an amount equal to one-half of the maximum annual debt service requirements on the issues of bonds that remain outstanding.

(c) When the moneys in the Bond Fund shall be and remain sufficient to pay (1) the principal of all the bonds then outstanding, (2) interest on the bonds until the next interest payment date, (3) the Trustee's fees and expenses and other administrative charges, and (4) 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 after the principal of, premium, if any and interest on the bonds and the other obligations set forth herein have been paid may be used by the City for any lawful purpose.

(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 expenses and other administrative charges, and any arbitrage rebate due to the United States under Section 148(f) of the Code as the same become due.

(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.

Section 10. 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) non-callable Government Securities (as defined in Section 17 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 any 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, if the Trustee has been paid its fees and expenses, and if any required arbitrage rebate payment has been made to the United States under Section 148(f) of the Code or provision made therefor, the Trustee shall 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.

Section 11. The City covenants that it will not issue any additional bonds, or incur any additional obligations, secured by a lien on or pledge of the Pledged Revenues prior to the lien and pledge in favor of the outstanding bonds. The City further covenants that it will not issue additional bonds, or incur additional obligations, secured by a lien on or pledge of the Pledged Revenues on a parity with the outstanding bonds, except as hereinafter authorized.

The City may issue additional bonds, or incur additional obligations, secured by a lien on or pledge of the Pledged Revenues, expressly subordinate to the lien and pledge in favor of the bonds.

Section 12. The Series 2012 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. The City hereby covenants to use Series 2012 Bond proceeds not necessary for the purposes intended to redeem Series 2012 Bonds on the first available interest payment date.



Section 13. It is hereby covenanted and agreed 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 Pledged Revenues, as herein specified and covenanted, and the applying of the Pledged Revenues as herein provided.

Section 14. 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, 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 one month following the first month in which the Pledged Revenues are received by the Trustee.

Section 15. (a) If there be any default in the payment of the principal of and interest on any of the bonds, or if the City defaults in the performance of any covenant contained in this Ordinance, the Trustee may, and shall, upon the written request of the owners of not less than 25% 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 25% 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 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 upon the written request of the owners of not less than a majority of the owners 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.

Section 16. When the Series 2012 Bonds have been executed and sealed 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. The expenses of issuing the Series 2012 Bonds as set forth in the delivery instructions to the Trustee signed by the Mayor and City Recorder/Treasurer (the "Delivery Instructions") shall be paid from the Purchase Price. The amount necessary to be deposited into the Capitalized Interest Account and the Debt Service Reserve Account as set forth in the Delivery Instructions shall be deposited therein.

The balance of the Purchase Price shall be deposited in a special account of the City in a depository acceptable to the City hereby created and designated the "Construction Fund" (the "2012 Construction Fund"). The amounts credited to the 2012 Construction Fund shall be expended to accomplish the purpose for which the account was created. Issuance costs and other expenses shall be paid from the 2012 Construction Fund. Disbursements shall be made from the 2012 Construction Fund on the basis of requisitions which shall specify: the name of the person, firm or corporation



to whom payment is to be made; the amount of the payment; the purpose of the payment; and that the payment is a proper charge. Each requisition must be signed by the City's Mayor and City Recorder/Treasurer. The City shall issue its check upon the 2012 Construction Fund to the person, firm or corporation designated in the requisition. The City shall keep records as to all payments made from the 2012 Construction Fund.

Moneys in the 2012 Construction Fund shall be transferred to the Trustee to be used to pay the principal of and interest on the Series 2012 Bonds when due on a pro rata basis if moneys in the Bond Fund are not sufficient for that purpose.

When all required expenses have been paid and expenditures made from the 2012 Construction Fund for and in connection with the accomplishment of the 2012 Improvements and the financing thereof, this fact shall, if moneys remain in the 2012 Construction Fund, be evidenced by a certificate signed by the Mayor, which certificate shall state, among other things, that all obligations payable from the 2012 Construction Fund have been discharged. A copy of the certificate shall be filed with the Trustee, and upon receipt thereof the City shall transfer any remaining balance to the Trustee for deposit into the Bond Fund for purposes of redeeming the Series 2012 Bonds.

Section 17. (a) Moneys held for the credit of the 2012 Construction Fund shall be invested and reinvested by the City in Permitted Investments (hereinafter defined) or other investments permitted by Arkansas law 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 Debt Service Reserve Account 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 five years from the date of the investment or the final maturity date of the bonds that are outstanding on the date of the investment, whichever is earlier.

(c) Moneys held for the credit of the Bond Fund (other than the Debt Service Reserve Account) shall be invested and reinvested in Permitted Investments, which will mature, or which will be subject to redemption by the holder thereof at the option of the holder, not later than the date or dates on which the money shall be required for the payment of the principal of and interest on the bonds when due.

(d) Obligations purchased as an investment of any fund or account shall be deemed at all times a part of such fund. Any profit or loss realized on investments of moneys in any fund shall be charged to said fund.

(e) The Trustee shall so invest and reinvest moneys in the Bond Fund pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.



(f) "Permitted Investments" are defined as (i) direct or fully guaranteed obligations of the United States of America ("Government Securities"), (ii) direct obligations of an agency, instrumentality or government-sponsored enterprise created by an act of the United States Congress and authorized to issue securities or evidences of indebtedness, regardless of whether the securities or evidences of indebtedness are guaranteed for repayment by the United States Government, (iii) certificates of deposit or time deposits of banks, including the Trustee, which are insured by Federal Deposit Insurance Corporation or, if in excess of insurance coverage, collateralized by Government Securities or other securities authorized by Arkansas law to secure public funds or (iv) money market funds invested exclusively in Government Securities and the obligations described in (ii) above.

Section 18. Bank of the Ozarks, 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 25% 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 Recorder/Treasurer and the owners of the bonds, and either the City, so long as it is not in default hereunder, or the majority in principal amount of the owners of the outstanding bonds at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee either by resignation or removal, the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Recorder/Treasurer. 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. The preceding criteria may be met by a parent corporation if the parent corporation has guaranteed the obligations of the successor trustee. 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 Recorder/Treasurer 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. Notwithstanding the above, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed.

Section 19. (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) The Trustee may consent to any variation or change in this Ordinance that the Trustee determines is not to the material prejudice of the owners of the bonds, in order to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto or in connection with the issuance of the Additional Parity Bonds, without the consent of the owners of the bonds.

(c) 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.

Section 20. (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 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 being financed 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.

(c) The City covenants that it will not reimburse itself from Series 2012 Bond proceeds for any costs paid prior to the date the Series 2012 Bonds are issued except in compliance with United States Treasury Regulation No. 1.150-2 (the "Regulation"). This Ordinance shall constitute an "official intent" for the purpose of the Regulation.

(d) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Bond Fund to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Non-purpose Investments (as therein defined) attributable to the Series 2012 Bonds, other than investments attributable to such excess over (B) the amount which would have been earned if such Non-purpose Investments attributable to the Series 2012 Bonds were invested at a rate equal to the Yield (as defined in the Code) on the Series 2012 Bonds, plus (2) any income attributable to the excess described in (1), subject to



the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant to advise the City in making the determination required to comply with this subsection (d). Anything herein to the contrary notwithstanding this provision may be modified or rescinded if in the opinion of Bond Counsel such modification or rescission will not affect the tax-exempt status of the Series 2012 Bonds for federal income tax purposes.

Section 21. 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. 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 Series 2012 Bonds are issued, a statement concerning the Series 2012 Bonds which contains the information required by Section 149(e) of the Code.

Section 22. 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 23. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 24. It is hereby ascertained and declared that the 2012 Improvements are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The 2012 Improvements cannot be accomplished without the issuance of the Series 2012 Bonds, which cannot be sold at the interest rates specified herein unless this Ordinance is immediately effective. 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 and take effect immediately upon and after its passage.

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PASSED: September 24, 2012.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder/Treasurer

