

ORDINANCE NO. 2137

AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF HOTEL AND RESTAURANT GROSS RECEIPTS TAX BONDS FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF CAPITAL IMPROVEMENTS; TO PLEDGE COLLECTIONS OF A 2% HOTEL AND RESTAURANT GROSS RECEIPTS TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; TO PRESCRIBE OTHER MATTERS RELATING TO THE BONDS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, there was submitted to the qualified electors of the City of Sherwood, Arkansas (the "City") 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 and Title 26, Chapter 75, Subchapter 6 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), capital improvement bonds in the maximum principal amount of \$5,500,000 for the purpose of financing all or a portion of the costs of parks improvements to the City's parks; and

WHEREAS, at the general election held November 8, 2016, a majority of the electors voting on the question approved the issuance of such bonds; and

WHEREAS, the City intends to fund the following projects with the proceeds of the Bonds:

- i. Design and construction of the soccer fields;
- ii. Design and construction of the tennis courts;
- iii. Design and construction of the splash pad; and
- iv. Such other projects as may be approved from time to time by the Commission;

(collectively, the "Projects"); and

WHEREAS, the City Council of the City (the "Council") and the City Advertising and Promotion Commission (the "Commission"), have determined that the Projects are not general capital improvements within the City but are for, or in direct support of, improvements to the City's public parks and recreational facilities; and

WHEREAS, the Commission has determined to proceed with the Projects and has recommended that the City issue the capital improvement bonds approved at the election in the aggregate principal amount of \$5,500,000 designated as "City of Sherwood, Arkansas Hotel and Restaurant Gross Receipts Tax Bonds, Series 2017" (the "Bonds"); and

WHEREAS, the City and the Commission have made arrangements for the sale of the Bonds to Stephens Inc. (the "Purchaser"), at a price of \$5,415,345.10 (principal amount less original issue discount of \$21,404.90, and less the Underwriter's discount of \$63,250.00) (the "Purchase Price"), pursuant to a Bond Purchase Agreement between the Purchaser and the City (the "Purchase Agreement"), which has been exhibited to and is before the City Council at the meeting at which this Ordinance is adopted; and

WHEREAS, the Commission has approved the pledging of the Pledged Revenues (defined in Section 8 hereof) to the payment of the principal of and interest on the Bonds; and

WHEREAS, the Preliminary Official Statement, dated February 21, 2017, offering the Bonds for sale (the "Preliminary Official Statement"), has been exhibited to and is before the City Council at the meeting at which this Ordinance is adopted; and

WHEREAS, the Continuing Disclosure Agreement by and among the City, the Commission, and Bank of the Ozarks, with offices in Little Rock, Arkansas (the "Trustee"), providing for the ongoing disclosure obligations of the City and the Commission with respect to the Bonds (the "Disclosure Agreement"), has been exhibited to and is before the City Council at the meeting at which this Ordinance is adopted; and

WHEREAS, Municipal Assurance Corp. (“MAC”) will be issuing a municipal bond debt service reserve insurance policy (the “Policy”) in order to fund a debt service reserve for the Bonds; and

WHEREAS, the Insurance Agreement between the City and MAC (the “Reserve Agreement”) has been exhibited to and is before the City Council at the meeting at which this Ordinance is adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERWOOD, ARKANSAS:

Section 1. The offer of the Purchaser for the purchase of the Bonds from the City at the Purchase Price for 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 accepted, and the Purchase Agreement, in substantially the form exhibited to this meeting, is approved and the Bonds are hereby sold to the Purchaser. The Mayor is hereby authorized and directed to execute and deliver the Purchase Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Purchase Agreement.

Section 2. The Preliminary Official Statement is hereby approved, ratified, and deemed final 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, confirmed, and ratified, 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 Purchase 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 for and on behalf of the City. The Mayor, the Chair of the Commission, and other officials of the City are authorized and directed to take all action required on the part of the City to fulfill the City’s obligations under the Disclosure 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 Bonds are hereby authorized and ordered issued in the aggregate principal amount of \$5,500,000, and the proceeds of the sale of the Bonds (the “Bond Proceeds”) will be used to finance all or a portion of the costs of the Projects, to provide a debt service reserve, and to pay expenses of issuing the Bonds (the “Costs of Issuance”). The Bonds shall mature on December 1st in the years and in the amounts and shall bear interest as follows:

<u>Year</u>	<u>Type of Bond</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2022	Term	\$ 935,000	2.125%
2027	Term	\$ 870,000	3.125%
2032	Term	\$1,020,000	3.500%
2037	Term	\$1,210,000	3.750%
2042	Term	\$1,465,000	4.000%

The Bonds shall be dated April 11, 2017, and 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.

The 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 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 Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten 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 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 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 therefore. DTC is expected to maintain records of the positions of participants in the Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Bonds. The 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 Bonds for use in a book-entry system, the City 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 beneficial owners of all outstanding 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 Bonds from the securities depository, and authenticate and deliver 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 Bonds) of the City, if the City fails to maintain a securities depository/book-entry system, or of the beneficial owners, if they request termination of the system.

Prior to issuance of the 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 Bonds so long as the 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 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, the City, and the Commission 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 Bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of Bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Interest on the Bonds shall be payable on December 1, 2017, and semiannually thereafter on June 1st and December 1st of each year. Principal shall be payable December 1, 2017, and annually thereafter on December 1st 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 the Trustee, at the close of business on the fifteenth (15th) 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. The Bonds shall be registered as to principal and interest. Principal of the Bonds shall be payable at the corporate trust office of the Trustee. The Bonds will bear interest from the dates and shall be subject to redemption prior to maturity as hereinafter set forth in the Bond form.

Each 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 April 11, 2017, 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, 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 books to be maintained 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 Bond 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 (and premium, if any) 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 Bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk-Treasurer and shall have impressed or imprinted thereon the seal of the City.

Section 6. The Bonds and the Certificate shall be in substantially the following form and the Mayor and City Clerk-Treasurer are hereby expressly authorized and directed to make all recitals contained therein:

[Remainder of page intentionally left blank.]

1987 Annotated (the “Authorizing Legislation”), and pursuant Ordinance No. _____, duly adopted on February 27, 2017 (the “Authorizing Ordinance”), and an election duly held on November 8, 2016 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 collections of the two percent (2%) tax levied by the City upon the gross receipts or gross proceeds from motels, hotels, and restaurants under Title 26, Chapter 75, Subchapter 6 of the Arkansas Code of 1987 Annotated and Ordinance No. 905 of the City duly adopted on December 19, 1989, as amended by Ordinance No. 931 of the City duly adopted on June 25, 1990, and as further amended by Ordinance No. 1077, duly adopted on November 23, 1992 (the “Tax”), and the City hereby pledges its collections of the Tax for the payment of this Bond.

(1) Extraordinary Redemption. The Bonds shall be redeemed by the City from Bond Proceeds 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, and if in part, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine).

(2) Optional Redemption. The Bonds may be redeemed at the option of the City, from funds from any source, on and after June 1, 2022, 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 Bonds shall be called for redemption, the particular maturities of the Bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the Bonds of any one maturity shall be called for redemption, the particular Bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

(3) Mandatory Sinking Fund Redemption. To the extent not previously redeemed, the Bonds maturing on December 1, 2022, 2027, 2032, 2037, and 2042, are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on December 1st 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:

Bonds Maturing December 1, 2022

<u>Year (December 1)</u>	<u>Principal Amount</u>
2017	\$170,000
2018	145,000
2019	150,000
2020	155,000
2021	155,000
2022 (maturity)	160,000

Bonds Maturing December 1, 2027

<u>Year (December 1)</u>	<u>Principal Amount</u>
2023	\$160,000
2024	170,000
2025	175,000
2026	180,000
2027 (maturity)	185,000

Bonds Maturing December 1, 2032

<u>Year (December 1)</u>	<u>Principal Amount</u>
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2028	\$190,000
2029	195,000
2030	205,000
2031	210,000
2032 (maturity)	220,000

Bonds Maturing December 1, 2037

<u>Year (December 1)</u>	<u>Principal Amount</u>
2033	\$225,000
2034	235,000
2035	240,000
2036	250,000
2037 (maturity)	260,000

Bonds Maturing December 1, 2042

<u>Year (December 1)</u>	<u>Principal Amount</u>
2038	\$270,000
2039	280,000
2040	295,000
2041	305,000
2042 (maturity)	315,000

The provisions for mandatory sinking fund redemption of the Bonds are subject to the provisions of the Authorizing Ordinance which permit the City to receive credit for Bonds previously redeemed or for Bonds acquired by the City and surrendered to the Trustee.

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 thirty (30) days nor more than sixty (60) 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.

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.

No charge shall be made to the owner of any Bond for the privilege of registration, but any owner requesting any such registration shall pay any tax or 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 City nor the Trustee shall be required to transfer or exchange any Bond selected for redemption in whole or in part.

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 premium, if any, 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 do exist, 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 Tax revenues sufficient to pay the Bonds and interest thereon have been duly pledged in accordance with the Authorizing Legislation for the payment of the Bonds and interest thereon.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Authorizing Ordinance until it shall have been authenticated by the Certificate hereon duly signed by the Trustee.

[Signature page follows.]

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

CITY OF SHERWOOD, ARKANSAS

By: _____
Mayor

ATTEST:

City Clerk-Treasurer

(SEAL)

(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: _____

Bank of the Ozarks
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 member of or participant in the Securities Transfer Agents Medallion Program (STAMP), or in another signature guaranty program recognized by the Trustee.

Section 7. The City hereby expressly pledges and appropriates collections of the two percent (2%) tax levied by the City pursuant to Title 26, Chapter 75, Subchapter 6 of the Arkansas Code of 1987 Annotated and Ordinance No. 905, adopted December 19, 1989, as amended by Ordinance No. 931, adopted June 25, 1990, and as further amended by Ordinance No. 1077, adopted November 23, 1992, on the gross receipts or gross proceeds from motels, hotels, and restaurants (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 Trustee's fees and expenses, any required arbitrage rebate due to the United States, and any fees or other amounts due MAC. The City covenants that the Tax shall never be repealed or reduced while any of the Bonds are outstanding or while any amounts are due and payable to MAC. 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) There is hereby created in a bank selected by the City that is a member of the Federal Deposit Insurance Corporation ("FDIC") a special fund of the City designated as the "Hotel and Restaurant Gross Receipts Tax Revenue Fund" (the "Revenue Fund").

(b) On and after the date the Bonds are issued, the City Clerk-Treasurer of the City shall deposit all collections of the Tax (the "Pledged Revenues") as and when received into the Revenue Fund.

(c) Except as provided in (d) below, on or before the twenty-fifth (25th) day of each month, commencing April 25, 2017, the City Clerk-Treasurer of the City shall deposit from the Revenue Fund the following amounts into the following accounts in the following order of priority:

(1) one-sixth (1/6) of the interest on the Bonds next due, except for the initial interest payment date of December 1, 2017, in which case one-eighth (1/8) of the interest due on that date shall be deposited - Debt Service Account in the Bond Fund;

(2) one twelfth (1/12) of the principal of the Bonds next due at maturity or upon mandatory sinking fund redemption except for the initial principal or sinking fund payment date of December 1, 2017, in which case one-eighth (1/8) of the amount due on that date shall be deposited - Debt Service Account in the Bond Fund, and beginning December 2017 and for each Bond Year thereafter, one-twelfth (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;

(3) the amount, if any, which may be necessary to reimburse MAC with respect to the Policy and to fund and maintain the Debt Service Reserve Fund (hereinafter identified) at any required level - Debt Service Reserve Fund;

(4) the Trustee's fees and expenses and other administrative charges next due, any arbitrage rebate due the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and the fees for any arbitrage rebate calculation - Expense Account in the Bond Fund; and

(5) any remaining amounts shall be used to cover any deficiency in the monthly transfers required by (1) through (4) above for any previous month.

The transfers 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 Fund.

(d) Anything herein to the contrary notwithstanding, the City Clerk-Treasurer of the City shall transfer from the Revenue Fund into the Bond Fund not less than five (5) business days before each June 1st and December 1st, commencing December 1, 2017, an amount, in addition to other moneys in the Bond Fund, that will be sufficient to cause the Bond Fund to have moneys to pay the principal of and interest on the Bonds on the next due date thereof.

(e) After making the monthly deposits as set forth above, all amounts in the Revenue Fund shall be transferred to the Advertising and Promotion Fund and be used for any lawful purpose.

Section 9. (a) There is hereby created a special fund of the City in the Trustee which is designated "Hotel and Restaurant Gross Receipts 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, any arbitrage rebate, the fees for the arbitrage rebate calculation, and the Trustee's fees and expenses. There shall be established in the Bond Fund the following accounts into which moneys from the Revenue Fund shall be deposited monthly: (i) Debt Service Account; (ii) Redemption Account; and (iii) Expense Account. 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 - Debt Service Account;

(2) to pay the principal of the Bonds then due at maturity or upon mandatory sinking fund redemption - Debt Service Account;

(3) to pay the Trustee's fees and expenses and other administrative charges, any arbitrage rebate, and the fees for the arbitrage rebate calculation then due - Expense Account; and

(4) to redeem Bonds prior to maturity - Redemption Account.

(b) When the moneys in the Bond Fund shall be and remain sufficient to pay (i) the principal of all the Bonds then outstanding, (ii) interest on the Bonds until the next interest payment date, and (iii) the Trustee's fees and expenses and other administrative charges, any arbitrage rebate, and the fees for calculating arbitrage rebate, 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 have been paid shall be used to reimburse MAC for any amounts owing with respect to the Policy and the balance shall be transferred to the Advertising and Promotion Fund and be used for any lawful purposes.

(c) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds, as the same become due, and for the other purposes set forth in this Section 9. The Trustee is authorized and directed to withdraw moneys from the Bond Fund from time to time as necessary for paying principal of, premium, if any, and interest on the Bonds when due at maturity or at redemption prior to maturity and for making other authorized Bond Fund expenditures.

(d) The Trustee shall deposit moneys into the Redemption Account in accordance with Section 14 of this Ordinance and any amounts instructed by the City to be deposited therein for the purpose of optionally redeeming the Bonds prior to maturity. The Trustee shall use moneys in the Redemption Account to redeem the Bonds.

(e) All moneys in the Expense Account in the Bond Fund shall be used to pay the Trustee's fees and expenses and other administrative charges, any arbitrage rebate, and the fees for calculating arbitrage rebate.

(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, including, without limitation, the Commission, shall execute, perform, and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

Section 10. There is hereby created a special fund in the name of the City in the Trustee which is designated "Hotel and Restaurant Gross Receipts Tax Debt Service Reserve Fund" (the "Debt Service Reserve Fund"). There shall be established in the Debt Service Reserve Fund a Reserve Account into which shall be deposited the Policy (the "Reserve Account") in an amount equal to one-half (1/2) of the maximum annual principal and interest requirements on the Bonds. The Reserve Account in the Debt Service Reserve Fund shall only secure the Bonds. Moneys in the Reserve Account in the Debt Service Reserve Fund shall be used to make the payments described in clauses (1)

and (2) of Section 9(a) above with respect to the Bonds if moneys in the Debt Service Account in the Bond Fund are not otherwise sufficient for that purpose. The City may establish an account or accounts in the Debt Service Reserve Fund to separately secure Additional Parity Bonds (hereinafter defined), and not the Bonds, in an amount not to exceed one-half (1/2) of the maximum annual principal and interest requirements on such Additional Parity Bonds. Other accounts in the Debt Service Reserve Fund may be established with cash, a surety bond, or a debt service reserve insurance policy.

Section 11. Notwithstanding any provision of this Ordinance to the contrary the following provisions shall govern with respect to the Policy:

(a) The prior written consent of MAC shall be a condition precedent to the deposit of any credit facility (a "Credit Facility") credited to the Reserve Account in the Debt Service Reserve Fund established for the Bonds in lieu of a cash deposit into the Reserve Account. Amounts drawn under the Policy shall be available only for the payment of scheduled principal and interest on the Bonds when due.

(b) From the Pledged Revenues and in accordance with the provisions of this Ordinance and the Reserve Agreement, the City shall repay any draws under the Policy and pay all related reasonable expenses incurred by MAC and shall pay interest thereon from the date of payment by MAC at the Late Payment Rate. "Late Payment Rate" means the lesser of (x) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank 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 JPMorgan Chase Bank) plus five percent (5%), and (ii) the then applicable highest rate of interest on the Bonds and (y) 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 three hundred sixty (360) days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such national bank as MAC shall specify. If the interest provisions of this subparagraph (b) shall result in an effective rate of interest which, for any period, exceeds the limit of the usury or any other laws applicable to the indebtedness created herein, then all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied as additional interest for any later periods of time when amounts are outstanding hereunder to the extent that interest otherwise due hereunder for such periods plus such additional interest would not exceed the limit of the usury or such other laws, and any excess shall be applied upon principal immediately upon receipt of such moneys by MAC, with the same force and effect as if the City had specifically designated such extra sums to be so applied and MAC had agreed to accept such extra payment(s) as additional interest for such later periods. In no event shall any agreed-to or actual exaction as consideration for the indebtedness created herein exceed the limits imposed or provided by the law applicable to this transaction for the use or detention of money or for forbearance in seeking its collection.

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 one-twelfth (1/12) of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to MAC 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 MAC on account of principal due, the coverage under the Policy will be increased by a like amount, subject to the terms of the Policy. The obligation to pay Policy Costs shall be secured by a valid lien on all revenues and other collateral pledged as security for the Bonds (subject only to the priority of payment provisions set forth under this Ordinance).

All cash and investments in the Reserve Account shall be transferred to the Bond Fund for payment of debt service on the Bonds before any drawing may be made on the Policy or any other Credit Facility credited to the Reserve Account in lieu of cash. Payment of any Policy Costs shall be made prior to replenishment of any such cash amounts. Draws on all Credit Facilities (including the 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 Reserve Account. 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 Reserve

Account. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable alternative credit instrument without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

(c) Upon a failure to pay Policy Costs when due or any other breach of the terms of this Section 11, MAC shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Ordinance, other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect owners of the Bonds.

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

(e) The City shall include any Policy Costs then due and owing MAC in the calculation of the additional bonds test in Section 13 this Ordinance.

(f) The Trustee shall ascertain the necessity for a claim upon the Policy in accordance with the provisions of subparagraph (b) hereof and to provide notice to MAC in accordance with the terms of the Policy at least five (5) business days prior to each date upon which interest or principal is due on the Bonds. Where deposits are required to be made by the City with the Trustee to the Bond Fund for the Bonds more often than semi-annually, the Trustee shall be instructed to give notice to MAC of any failure of the City to make timely payment in full of such deposits within two (2) business days of the date due.

(f) The City will pay or reimburse MAC, solely from the Pledged Revenues, any and all charges, fees, costs, losses, liabilities, and expenses which MAC may pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants, and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the Policy, (ii) the administration, enforcement, defense, or preservation of any rights in respect of this Ordinance or any document executed in connection with the Bonds (the “Related Documents”), including defending, monitoring, or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the City) relating to this Ordinance or any other Related Documents, any party to this Ordinance or any other Related Documents or the transactions contemplated by the Related Documents, (iii) the foreclosure against, sale, or other disposition of any collateral securing any obligations under this Ordinance or any other Related Documents, if any, or the pursuit of any remedies under this Ordinance or any other Related Documents, to the extent such costs and expenses are not recovered from such foreclosure, sale, or other disposition, (iv) any amendment, waiver, or other action with respect to, or related to this Ordinance, the Policy, or any other Related Documents whether or not executed or completed, or (v) any action taken by MAC to cure a default or termination or similar event (or to mitigate the effect thereof) under this Ordinance or any other Related Documents; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of MAC spent in connection with the actions described in clauses (ii) through (v) above. MAC reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver, or consent proposed in respect of this Ordinance or any other Related Documents. Amounts payable by the City hereunder shall bear interest at the Late Payment Rate from the date such amount is paid or incurred by MAC until the date MAC is paid in full.

(g) The obligation of the City to pay all amounts due to MAC shall be an absolute and unconditional obligation of the City and will be paid or performed strictly in accordance with the provisions of this Section 11, irrespective of: (i) any lack of validity or enforceability of or any amendment or other modifications of, or waiver with respect to the Bonds, this Ordinance, or any other Related Documents; (ii) any amendment or other modification of, or waiver with respect to the Policy; (iii) any exchange, release, or non-perfection of any security interest in property securing the Bonds, this Ordinance, or any other Related Documents; (iv) whether or not such Bonds are contingent or matured, disputed or undisputed, liquidated, or unliquidated; (v) any amendment, modification, or waiver of or any consent to departure from the Policy, this Ordinance, or all or any of the other Related Documents; (vi) the existence of any claim, setoff, defense (other than the defense of payment in full), reduction, abatement, or other right which the City may have at any time against the Trustee or any other person or entity other than MAC, whether in connection with the transactions contemplated herein or in any other Related Documents or any unrelated transactions; (vii) any statement or any other document presented under or in connection with the Policy proving in any and all respects invalid,

inaccurate, insufficient, fraudulent, or forged or any statement therein being untrue or inaccurate in any respect; or (viii) any payment by MAC under the Policy against presentation of a certificate or other document which does not strictly comply with the terms of the Policy.

(h) The City shall fully observe, perform, and fulfill each of the provisions (as each of those provisions may be amended, supplemented, modified, or waived with the prior written consent of MAC) of this Ordinance applicable to it, each of the provisions thereof being expressly incorporated into this Section 11 by reference solely for the benefit of MAC as if set forth directly herein. No provision of this Ordinance or any other Related Document shall be amended, supplemented, modified, or waived, without the prior written consent of MAC, in any material respect or otherwise in a manner that could adversely affect the payment obligations of the City hereunder or the priority accorded to the reimbursement of Policy Costs under this Ordinance. MAC is hereby expressly made a third party beneficiary of this Ordinance and each other Related Document.

(i) The City covenants to provide to MAC, promptly upon request, any information regarding the Bonds or the financial condition and operations of the City as reasonably requested by MAC. The City will permit MAC to discuss the affairs, finances, and accounts of the City or any information MAC may reasonably request regarding the security for the Bonds with appropriate officers of the City and will use commercially reasonable efforts to enable MAC to have access to the facilities, books, and records of the City on any business day upon reasonable prior notice.

(j) Notices and other information to MAC shall be sent to the following address (or such other address as MAC may designate in writing): Municipal Assurance Corp., 1633 Broadway, New York, New York 10019, Attention: Managing Director – Surveillance, Re: Policy No. 700557-S.

Section 12. 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) moneys sufficient to make such payment and/or (2) direct or fully guaranteed obligations of (including obligations issued or held in book-entry form on the books of) the United States of America (“Government Securities”) that are noncallable (provided that such deposit will not affect the tax exempt status of the interest on any of the Bonds or 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. All moneys must be insured at all times by the FDIC or otherwise collateralized with Government Securities.

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 and if the Trustee has been paid its fees and expenses, if any required arbitrage rebate payment has been made to the United States under Section 148(f) of the Code or provision made therefor, and if there are no amounts due MAC with respect to the Policy, 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 for deposit into the Advertising and Promotion Fund.

Section 13. The City covenants that it will not issue any Bonds, or incur any obligation, secured by a lien on or pledge of Pledged Revenues, except as hereinafter provided. The City may issue additional bonds secured by a pledge of the Pledged Revenues on a parity with the pledge in favor of the Bonds (“Additional Parity Bonds”) so long as the City has received collections of Pledged Revenues for a twelve (12) month period that ends not less than thirty (30) days and not more than ninety (90) days prior to the date that the Additional Parity Bonds are authorized by the City Council of the City to be issued, in an amount equal to or in excess of one hundred thirty percent (130%) of the maximum annual debt service requirement for the Bonds, any outstanding Additional Parity Bonds and the Additional Parity Bonds proposed to be issued.

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

Section 14. 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. The City hereby covenants to use Bond Proceeds not necessary for the purposes intended to redeem Bonds on the first available interest payment date.

Section 15. It is hereby covenanted and agreed by the City with the owners of the Bonds and MAC that the City and the Commission 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 16. The City 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 prior to their deposit into the Advertising and Promotion Fund and such books shall be available for inspection by the Trustee, the Purchaser, and the owner of any of the Bonds at reasonable times and under reasonable circumstances. Upon the written request by the Trustee, the City shall furnish a report to the Trustee on a monthly basis of all receipts and transfers of the Pledged Revenues received by the City. The Trustee shall provide the City and the Commission with a monthly report of all transactions relating to the Bond Fund and the Construction Fund (hereinafter identified).

Section 17. (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 and such failure continues unremedied for thirty (30) days, or if the City declares bankruptcy or seeks relief from its creditors under the provisions of any other similar state or federal law, the Trustee may, and shall upon the written request of the owners of not less than ten percent (10%) in principal amount of the Bonds then outstanding, by proper suit compel the performance of the duties of the officials of the City and the Commission 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 outstanding 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 ten percent (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 to the Trustee 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 18. When the Bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to or at the direction of the Purchaser upon payment in cash of the Purchase Price. The accrued interest, if any, shall be deposited in the Bond Fund. Unless paid by the Purchaser as part of the Purchase Price, the amount necessary to pay the premium for the Policy shall be paid to MAC. The Costs of Issuance as set forth in the delivery instructions to the Trustee signed by the Mayor and City Clerk-Treasurer shall 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 “2017 Parks & Recreation Construction Fund” (the “Construction Fund”) in the Trustee. The moneys in the Construction Fund shall be used for accomplishing the Projects, paying expenses incidental thereto, and paying the Costs of Issuance. 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 that purpose. Disbursements shall be made from the 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 on the Construction Fund. Each requisition must be signed by two (2) authorized representatives of the City. The Trustee shall issue its check upon the Construction Fund payable to the person, firm, or corporation designated in the requisition.

When the Projects have been completed and all required expenses paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Projects and the financing thereof, this fact shall, if there are moneys in the Construction Fund, be evidenced by a certificate signed by the Mayor, which certificate shall state, among other things, 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, and upon receipt thereof the Trustee shall transfer any remaining balance to the Bond Fund.

Section 19. (a) Moneys held for the credit of all funds created by this Ordinance may be invested and reinvested in Permitted Investments.

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

(c) The Trustee shall so invest and reinvest pursuant to the direction of the City and in the Trustee’s discretion in the absence of any direct instructions from the City.

(d) “Permitted Investments” are defined to mean:

(1) Direct or fully guaranteed obligations of the United States of America (“Government Securities”);

(2) Obligations guaranteed as a payment of principal and interest by the United States of America (“Government Guaranteed Securities”);

(3) Cash (insured at all times by the FDIC or otherwise collateralized with obligations described in clauses (1) or (2) above);

(4) Time deposits or certificates of deposit of banks, including the Trustee, which are insured by the FDIC, or if in excess of insurance coverage, collateralized by Government Securities, Government Guaranteed Securities, or other securities authorized by State law to secure public funds.

Permitted Investments shall mature, or shall be subject to redemption by the holder thereof, at the option of such holder, not later than (A) the payment date for interest or principal and interest in the case of the Bond Fund and (B) five (5) years for the Debt Service Reserve Fund. The Trustee shall follow any investment instructions of the City which are not inconsistent with the foregoing provisions of this paragraph.

(e) Moneys held for the credit of any other fund shall be continuously invested and reinvested in Permitted Investments or other investments as may, from time to time, be permitted by 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 the moneys held for the credit of the particular fund will be required for purposes intended.

Section 20. 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 ten percent (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 sixty (60) days' notice in writing to the City Clerk-Treasurer, and the owners of the Bonds, and the City or the majority in principal amount of the owners of the outstanding Bonds, so long as it is not in default hereunder, at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, the City shall forthwith designate a new Trustee. 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 (or is an affiliate of, or has a contractual relationship with, a corporation or banking association meeting such capital and surplus requirements which guarantees the obligations and liabilities of the proposed 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 Clerk-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. The Trustee's resignation shall become effective upon the acceptance of the trusts by the successor Trustee.

Section 21. 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).

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

(b) The owners of not less than seventy-five percent (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 21 shall permit or be construed as permitting (i) an extension of the maturity of the principal of or the interest on any bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or (iii) the creation of a pledge of the Pledged Revenues superior to the pledge created by this Ordinance, or (iv) a privilege or priority of any bond or bonds over any other bond or bonds, or (v) a

reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 22. The Mayor, the Chair of the Commission, and other officers of the City in accordance with their offices, are authorized to execute such writings and take such action as may be appropriate to cause the Bonds to be issued. Without limiting the generality of the foregoing, the Mayor, the Chair of the Commission, and other officers of the City are authorized to execute and deliver such undertakings as may be appropriate to the securing of the Policy, including the Reserve Agreement.

Section 23. (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 Bond Proceeds 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. The City covenants to pay to the United States Treasury any arbitrage rebate due under Section 148 of the Code at the times required by 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 Projects or the Bond Proceeds, 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 Bond Proceeds for any costs paid prior to the date the 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 (i) the excess of (A) the amount earned on all Non-purpose Investments (as therein defined) attributable to the 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 Bonds were invested at a rate equal to the Yield (as defined in the Code) on the Bonds, plus (ii) any income attributable to the excess described in (i), 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 Bonds for federal income tax purposes.

(e) The City has designated the Bonds as a “qualified tax-exempt obligation” within the meaning of Section 265 of the Code.

Section 24. 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 fifteenth (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 25. In the event the offices of Mayor, City Clerk-Treasurer, City Council, or Commission shall be abolished, or any two (2) or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office, or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City, or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal function thereof, or by the office or officer upon whom such powers, obligations, and duties shall be imposed by law.

Section 26. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

Section 27. All ordinances and resolutions inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 28. *It is hereby ascertained and declared that the Projects are immediately needed for the preservation of the public peace, health, and safety and to remove existing hazards thereto. The Projects cannot be accomplished without the issuance of the 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.*

[Remainder of page intentionally left blank.]

PASSED: February 27, 2017

APPROVED:

By: _____
Virginia Hillman Young, Mayor

ATTEST:

Angela Nicholson, City Clerk-Treasurer

APPROVED AS TO LEGAL FORM:

Stephen Cobb, City Attorney

CERTIFICATE

STATE OF ARKANSAS)

COUNTY OF PULASKI) SS

CITY OF SHERWOOD)

I, Angela Nicholson, City Clerk-Treasurer within and for the City aforesaid, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2137 of the Ordinance to of the City of Sherwood, Arkansas, entitled: **“AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF HOTEL AND RESTAURANT GROSS RECEIPTS TAX BONDS FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF CAPITAL IMPROVEMENTS; TO PLEDGE COLLECTIONS OF A 2% HOTEL AND RESTAURANT GROSS RECEIPTS TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; TO PRESCRIBE OTHER MATTERS RELATING TO THE BONDS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES;”** passed by the City Council of said City on February 27, 2017, said Ordinance now appearing of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office on this _____ day of _____, 2017.

Angela Nicholson, City Clerk-Treasurer