

**REVISED
AGENDA
OF THE SIMPSONVILLE CITY COUNCIL
BUSINESS MEETING
April 13, 2021
6:30pm
City Hall – Council Chambers**

1. **CALL TO ORDER**..... Mayor Shewmaker
2. **ROLL CALL**..... City Clerk, Phyllis Long
3. **PLEDGE OF ALLEGIANCE**
4. **PRESENTATION** – Proclamation, National Donate Life Month – Mayor Shewmaker
5. **APPROVAL OF MINUTES** – March 9, 2021
6. **CITIZEN COMMENTS**
7. **BUSINESS**
 - a. 2nd Reading of TX-2021-01, Misc. Refinements to the City’s Zoning Ordinance.....Planning and Economic Development Director, Jason Knudsen
 - b. 1st Reading of AXZ-2021-01, Proposed Annexation/Rezoning of property at 215-231 Stenhouse Road.....Planner, Jon Derby
 - c. 1st Reading of AXZ-2021-02, Proposed Annexation/Rezoning of Morning Mist Farm, Phase 5 Entrance.....Planner, Jon Derby
 - d. 1st Reading of AXZ-2021-03, Proposed Annexation/Rezoning of property located on Stokes Road.....Planner, Jon Derby
 - e. Sanitation Proposal.....City Administrator, Dianna Gracely
 - f. Recycling Change.....City Administrator, Dianna Gracely
 - g. 1st Reading of Ordinance #2021-01, General Bond Ordinance..... City Administrator, Dianna Gracely
 - h. 1st Reading of Ordinance #2021-02, First Supplemental Ordinance.....City Administrator, Dianna Gracely
 - i. 1st Reading of Ordinance #2021-03, Installment Purchase Revenue Bonds..... City Administrator, Dianna Gracely

8. EXECUTIVE SESSION

For the discussion of a potential contract for the sale of real property owned by the City and for the receipt of legal advice concerning S.C. Code Ann. Sec. 5-15-50.

On coming out of Executive Session, Council may take action on items discussed in Executive Session.

9. ADJOURN

PLEASE NOTE: This Agenda is accurate as of the Friday immediately preceding the Council meeting but is subject to change until twenty-four (24) hours prior to the meeting. Please contact the City Clerk the day of the meeting for the latest agenda information.

ORDINANCE NO. AXZ-2021-03

AN ORDINANCE TO ADOPT A PETITION FOR ANNEXATION OF TAX MAP # 0297.00-01-019.00 BY Eduardo Mendoza, INTO THE CITY OF SIMPSONVILLE, SOUTH CAROLINA

WHEREAS, the South Carolina Code of Laws of 1976, as amended, Chapter 23 Title 5 provides for the process for municipalities to annex and rezone property; and

WHEREAS, the City of Simpsonville has enacted a Zoning Ordinance which governs amendments to the Official Zoning Map; and

WHEREAS, the hereinafter described property was advertised on January 29, 2021, and the City of Simpsonville Planning Commission held a public hearing on March 02, 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA, THAT:

- 1. ANNEXATION:** The attached Petition for Annexation and Rezoning into the City pursuant to South Carolina Code of Laws Section 5-3-150, wherein the property owners have signed a petition requesting annexation into the City of Simpsonville requesting the annexation of land depicted in the deeds contained in Book 2598 on Page 4390, of the official records of the Greenville County Register of Deeds and as depicted in Exhibit "A" attached hereto, is hereby made a part of this Ordinance and approved and the property described therein is hereby declared to be annexed into the City of Simpsonville.
- 2. ZONING CLASSIFICATION:** The Official Zoning Map of the City of Simpsonville is hereby amended to assign these properties as depicted in Exhibit "A", the zoning classification of R-LO, Residential Low-Density Neighborhood.
- 3. FUTURE LAND USE MAP DESIGNATION:** The Future Land Use Map of the City of Simpsonville is hereby amended to assign all property depicted in Exhibit "A", the future land use map designation of Low Intensity Neighborhood.
- 4. PROVISION SEVERAGE:** It is hereby declared to be the intention of the governing authority of this municipality that the sections, subsections, paragraphs, sentences, clauses and phrases are severable, and if any phrase, clause, sentence, paragraph, subsection, or section of this Ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court or competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining portions of this Ordinance so held to be invalid.
- 5. ORDINANCE SUPERSEDES PREVIOUS INCONSISTENT LEGISLATION:** All Ordinances or parts of Ordinances inconsistent herewith, which may have heretofore been passed by the Simpsonville City Council, are hereby repealed.

6. **DISTRICT ASSIGNMENT:** The within described property shall be assigned to City Council Ward Two (2).

7. **FLOOD RATE INSURANCE MAPS:** In accordance with the provisions of 44 CFR §64.4, in the event that the newly annexed area was previously located in a community participating in the NFIP Program, pending formal adoption of the amendment to its flood plain management regulations, the City hereby certifies that within the newly annexed area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly annexed area was previously located in a community not participating in the NFIP Program, upon annexation, and pending formal adoption of the amendments to its flood plain management regulations, the City certifies that it shall enforce within the newly annexed area, existing flood insurance policies which shall remain in effect until their date of expiration may be renewed, and new policies may be issued.

8. **METROPOLITAN SEWER SUBDISTRICT:** It is the intent of City Council that the area described herein to be annexed is currently served by Metropolitan Sewer Subdistrict (hereinafter "Metropolitan"). At the time of the passage of this Ordinance, it is the intent of the City that Metropolitan shall continue to provide sewer service to the annexed area. Therefore, Greenville County shall continue to collect the millage currently assessed by Metropolitan on the annexed area and to remit the same directly to Metropolitan until notified otherwise by the City.

This Ordinance shall be effective upon second and final reading by the City Council.

SIGNATURE OF MAYOR:

Paul Shewmaker

ATTEST:

APPROVED AS TO FORM:

Phyllis Long
City Clerk

David W. Holmes
City Attorney

First Reading: April 13, 2021
Second Reading: May 11, 2021

ORDINANCE NO. AXZ-2021-02

AN ORDINANCE TO ADOPT A PETITION FOR ANNEXATION OF LAND AT THE ENTRANCE TO MORNING MIST FARM, PHASE 5, OWNED BY MMF-V, LLC INTO THE CITY OF SIMPSONVILLE, SOUTH CAROLINA

WHEREAS, the South Carolina Code of Laws of 1976, as amended, Chapter 23 Title 5 provides for the process for municipalities to annex and rezone property; and

WHEREAS, the City of Simpsonville has enacted a Zoning Ordinance which governs amendments to the Official Zoning Map; and

WHEREAS, the hereinafter described property was advertised on January 27, 2021, and the City of Simpsonville Planning Commission held a public hearing on March 2, 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA, THAT:

1. **ANNEXATION:** The attached Petition for Annexation and Rezoning into the City pursuant to South Carolina Code of Laws Section 5-3-150, wherein the property owner has signed a petition requesting annexation into the City of Simpsonville requesting the annexation all that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being a portion of the property now or formerly of Morning Mist Farm, Phase 5 Subdivision and designated as 0.006 Acres on Bucklick Creek Court described more particularly below to wit:

BEGINNING at an iron pin located on the northern property line of Grantor N 78-50-18 W 197.79 feet from the joint rear corner of property of Grantor and Lot 297 of Morning Mist Farm Subdivision and running from said Point of Beginning S 11-09-42 29.42 feet to an iron pin in the right of way of Morning Mist Lane; thence with the right of way of Morning Mist Lane N 78-43-31 W 50 feet to a nail; thence continuing with said right of way 50.06 feet along curve to the left with a radius of 622.00 feet, chord bearing of N 76-25-10 W, and chord distance of 50.04 feet to an iron pin; thence turning and running N 11-09-42 E 27.20 feet to an iron pin in the northern property line of Grantor; thence turning and running along said property line S 78-50-18 E 100.00 feet to the Point of Beginning and as depicted in Exhibit "A" & "B", attached hereby declared to be annexed into the City of Simpsonville. Said portion contains 0.006 acres.

2. **ZONING CLASSIFICATION:** The Official Zoning Map of the City of Simpsonville is hereby amended to assign the property, depicted in Exhibit "A" & "B", the zoning classification of R-Mid, Residential-Medium Density District.

3. **FUTURE LAND USE MAP DESIGNATION:** The Future Land Use Map of the City of Simpsonville is hereby amended to assign all property depicted in Exhibit "A" & "B", the future land use map designation of Medium Intensity Neighborhood.

4. **PROVISION SEVERAGE:** It is hereby declared to be the intention of the governing authority of this municipality that the sections, subsections, paragraphs, sentences, clauses and phrases are severable, and if any phrase, clause, sentence, paragraph, subsection, or

section of this Ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court or competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining portions of this Ordinance so held to be invalid.

5. ORDINANCE SUPERSEDES PREVIOUS INCONSISTENT LEGISLATION: All Ordinances or parts of Ordinances inconsistent herewith, which may have heretofore been passed by the Simpsonville City Council, are hereby repealed.

6. DISTRICT ASSIGNMENT: The within described property shall be assigned to City Council Ward Six (6).

7. FLOOD RATE INSURANCE MAPS: In accordance with the provisions of 44 CFR §64.4, in the event that the newly annexed area was previously located in a community participating in the NFIP Program, pending formal adoption of the amendment to its flood plain management regulations, the City hereby certifies that within the newly annexed area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly annexed area was previously located in a community not participating in the NFIP Program, upon annexation, and pending formal adoption of the amendments to its flood plain management regulations, the City certifies that it shall enforce within the newly annexed area, existing flood insurance policies which shall remain in effect until their date of expiration may be renewed, and new policies may be issued.

8. METROPOLITAN SEWER SUBDISTRICT: It is the intent of City Council that the area described herein to be annexed is currently served by Metropolitan Sewer Subdistrict (hereinafter "Metropolitan"). At the time of the passage of this Ordinance, it is the intent of the City that Metropolitan shall continue to provide sewer service to the annexed area. Therefore, Greenville County shall continue to collect the millage currently assessed by Metropolitan on the annexed area and to remit the same directly to Metropolitan until notified otherwise by the City.

This Ordinance shall be effective upon second and final reading by the City Council.

SIGNATURE OF MAYOR:

Paul Shewmaker

ATTEST:

APPROVED AS TO FORM:

Phyllis Long
City Clerk

David W. Holmes
City Attorney

First Reading: April 13, 2021
Second Reading: May 11, 2021

ORDINANCE NO. AXZ-2021-01

AN ORDINANCE TO ADOPT A PETITION FOR ANNEXATION OF TAX MAP # 0574.05-01-014.05 & 0574.05-01-014.04 (215 & 219 STENHOUSE RD), 0574.05-01-014.07 & 0574.05-01-014.03 (223 & 225 STENHOUSE RD), 0574.05-01-014.00 (229 STENHOUSE RD), & 0574.05-01-014.02 (231 STENHOUSE RD) BY Alta Real Estate, INTO THE CITY OF SIMPSONVILLE, SOUTH CAROLINA

WHEREAS, the South Carolina Code of Laws of 1976, as amended, Chapter 23 Title 5 provides for the process for municipalities to annex and rezone property; and

WHEREAS, the City of Simpsonville has enacted a Zoning Ordinance which governs amendments to the Official Zoning Map; and

WHEREAS, the hereinafter described property was advertised on January 27, 2021, and the City of Simpsonville Planning Commission held a public hearing on March 02, 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA, THAT:

1. **ANNEXATION:** The attached Petition for Annexation and Rezoning into the City pursuant to South Carolina Code of Laws Section 5-3-150, wherein the property owners have signed a petition requesting annexation into the City of Simpsonville requesting the annexation of land depicted in the deeds contained in Book 2465 on Page 3469, Book 2364 on Page 3122, Book 1536 Page 532, Book 1536 Page 532, Book 2414 on Page 1500, & Book 2585 on Page 4001 of the official records of the Greenville County Register of Deeds and as depicted in Exhibit "A" attached hereto, is hereby made a part of this Ordinance and approved and the property described therein is hereby declared to be annexed into the City of Simpsonville.
2. **ZONING CLASSIFICATION:** The Official Zoning Map of the City of Simpsonville is hereby amended to assign these properties as depicted in Exhibit "A", the zoning classification of R-Hi, Residential High-Density Neighborhood.
3. **FUTURE LAND USE MAP DESIGNATION:** The Future Land Use Map of the City of Simpsonville is hereby amended to assign all property depicted in Exhibit "A", the future land use map designation of "High Intensity Neighborhood".
4. **PROVISION SEVERAGE:** It is hereby declared to be the intention of the governing authority of this municipality that the sections, subsections, paragraphs, sentences, clauses and phrases are severable, and if any phrase, clause, sentence, paragraph, subsection, or section of this Ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court or competent jurisdiction, such invalidity or unconstitutionality shall not effect any of the remaining portions of this Ordinance so held to be invalid.
5. **ORDINANCE SUPERSEDES PREVIOUS INCONSISTENT LEGISLATION:** All Ordinances or parts of Ordinances inconsistent herewith, which may have heretofore been passed by the Simpsonville City Council, are hereby repealed.

6. **DISTRICT ASSIGNMENT:** The within described property shall be assigned to City Council Ward Six (6).

7. **FLOOD RATE INSURANCE MAPS:** In accordance with the provisions of 44 CFR §64.4, in the event that the newly annexed area was previously located in a community participating in the NFIP Program, pending formal adoption of the amendment to its flood plain management regulations, the City hereby certifies that within the newly annexed area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly annexed area was previously located in a community not participating in the NFIP Program, upon annexation, and pending formal adoption of the amendments to its flood plain management regulations, the City certifies that it shall enforce within the newly annexed area, existing flood insurance policies which shall remain in effect until their date of expiration may be renewed, and new policies may be issued.

8. **METROPOLITAN SEWER SUBDISTRICT:** It is the intent of City Council that the area described herein to be annexed is currently served by Metropolitan Sewer Subdistrict (hereinafter "Metropolitan"). At the time of the passage of this Ordinance, it is the intent of the City that Metropolitan shall continue to provide sewer service to the annexed area. Therefore, Greenville County shall continue to collect the millage currently assessed by Metropolitan on the annexed area and to remit the same directly to Metropolitan until notified otherwise by the City.

This Ordinance shall be effective upon second and final reading by the City Council.

SIGNATURE OF MAYOR:

Paul Shewmaker

ATTEST:

APPROVED AS TO FORM:

Phyllis Long
City Clerk

David W. Holmes
City Attorney

First Reading: April 13, 2021
Second Reading: May 11, 2021

CITY OF SIMPSONVILLE, SOUTH CAROLINA

TITLE: ORDINANCE NO. TX-2021-01. AN ORDINANCE CONTAINING VARIOUS REFINEMENTS TO THE SIMPSONVILLE ZONING ORDINANCE.

BASIS FOR THE ORDINANCE: TITLE 6, CHAPTER 29, SOUTH CAROLINA CODE OF LAWS

ENACTING CLAUSE: NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA

CITATION OF ORDINANCE REPEALED: None

PROVISION OF ORDINANCE: See provision of ordinance below.

SECTION NUMBERS: See below.

EFFECTIVE DATE OF ORDINANCE: Upon final approval by Council after second reading and signing by the Mayor.

NAME OF PERSON REQUESTING INTRODUCTION OF ORDINANCE: Planning & Economic Development Director, Jason Knudsen.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA, AS FOLLOWS:

*NOTE: Language in section 1 of this ordinance that is ~~struck through~~ is language proposed to be deleted, underlined language is language proposed to be added, language that is not ~~struck through~~ or underlined is not to be changed, and *** represents sections of the Zoning Ordinance that have been skipped and remain unchanged.*

SECTION 1. That the City of Simpsonville Zoning Ordinance is hereby amended as follows:

3.1 Uses by Districts

3.1.5 Table of Allowed Uses

	R-E	R-Lo	R-Mid	R-Hi	R-OI	B-L	B-G	B-U	B-I
Commercial Sales and Services									
<u>Brewpub Beer/Wine</u>	---	---	---	---	---	---	C	C	---

<u>Micro-Distillery</u>	---	---	---	---	---	---	C	C	C

Industry, Warehousing, and Transportation									
<u>Brewery</u>	---	---	---	---	---	---	C	---	C

3.2 Conditional and Special Exception Use Standards

3.2.4 Dwelling, Attached Single-Family

A. Standards

4. Driveways shall not occupy more than 50 percent of the front yard. The driveway of each dwelling unit shall at a minimum be separated by a 3-foot-wide grass or landscaped strip extending at least 75 percent of the length of the driveway.

At their discretion, the Planning Commission may allow for driveways to occupy more than 50 percent of the front yard, not to exceed 20 feet in width, where additional vegetation is provided as streetscaping between buildings and adjacent to the roadway. The level of which the vegetation enhances the public realm and overall community appeal, as well as provides shading and cooling effects will be among the factors used by the Planning Commission to determine a sufficient level of vegetation.

3.2.27 Service, Construction

A. Special Exception Review Criteria*

* Administrative offices for construction services shall be permitted by right within the R-OI, B-L, B-G, B-U Districts. The storage of materials and/or vehicles is prohibited.

3.2.41 Brewery

A. Standards

1. A brewery shall be located at least 300 feet from any religious institution, child day care, school, or playground.
2. A brewery shall be located at least 100 feet from any residential zoning district or residential property.
3. Any such facility shall comply with all applicable State laws, including Title 61 of the S.C. Code of Laws and Chapter 7 of the S.C. Code of State Regulations.
4. Within the B-G District, a restaurant must be on-site and operated in conjunction with the brewery.

3.2.42 Brewpub Beer/Wine

A. Standards

1. A brewpub shall be located at least 300 feet from any religious institution, child day care, school, or playground.
2. A brewpub shall be located at least 100 feet from any residential zoning district or residential property.
3. Any such facility shall comply with all applicable State laws, including Title 61 of the S.C. Code of Laws and Chapter 7 of the S.C. Code of State Regulations.

3.2.43 Micro-Distillery

A. Standards

1. A micro-distillery shall be located at least 300 feet from any religious institution, child day care, school, or playground.
2. A micro-distillery shall be located at least 100 feet from any residential zoning district or residential property.
3. A micro-distillery within the B-G or B-U districts shall have retail sales on site.
4. Any such facility shall comply with all applicable State laws, including Title 61 of the S.C. Code of Laws and Chapter 7 of the S.C. Code of State Regulations.

3.3 Accessory Use/Structure Standards

3.3.9 Outdoor Dining

E. Outdoor music shall comply with Chapter 18, Article II, Division 3 of the Simpsonville Code of Ordinances

4.2 Building Design

4.2.6 Building Finish Materials

Exterior building materials shall draw upon the neighborhood pattern of finish materials. Exterior finishes shall primarily be wood, masonry, stone, high quality architectural metal or a combination thereof. The use of pressed wood, composite siding, vinyl siding, sheet metal sheathing, plain concrete block, plain concrete, corrugated metal, and other similar materials shall be prohibited in the exterior finish of buildings where visible from any public right-of-way. However, low maintenance materials may be used in the trim work not to exceed ten percent of the building's exterior wall area. The use of architectural metal shall not exceed 50 percent of the façade.

6.2 Administrative and Decision-Making Bodies

6.2.5 Board of Zoning and Building Appeals

- B. Membership. The Board shall consist of seven members appointed by City Council. A majority of the membership shall constitute a quorum. The City Council may, at its discretion, appoint not more than two alternate members to serve on the Board in the absence, for any cause, of any regular members. Alternate members shall be appointed in the same manner as regular members. None of the members shall hold any other public office or position in the City. Members must be a resident of the city or own and operate a business in the city that holds a current city business license.

8.3 Interpretation of Measurements

8.3.3 Distance Between Establishments

Where this Ordinance requires a minimum separation between specific uses or establishments, such distances shall be measured along the shortest straight line from lot line to lot line of such establishments, unless otherwise indicated.

Distances associated with alcohol sales are as follows. With respect to a church or a school, the distance shall be measured from the nearest entrance of the place of business by following the shortest route of ordinary

pedestrian or vehicular travel along the public thoroughfare to the nearest point of entrance to the grounds of the church or school, or any building in which religious services or school classes are held, whichever is the closer. The South Carolina Department of Revenue has determined that the grounds in use as part of the church or school is restricted to the grounds immediately surrounding the building or buildings which provide ingress or egress to such building or buildings and does not extend to the grounds surrounding the church which may be used for beautification, cemeteries, or any purpose other than such part of the land as is necessary to leave the public thoroughfare and to enter or leave such building or buildings. Only one entrance to the grounds of a church or school shall be considered, to wit: the entrance to the grounds nearest an entrance to the church or school building. Where no fence is involved, the nearest entrance to the grounds shall be in a straight line from the public thoroughfare to the nearest door. The nearest point of the grounds in use as part of a playground shall be limited to the grounds actually in use as a playground and the grounds necessary for ingress or egress to such grounds from the public thoroughfare.

8.5 Defined Terms

Building

Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

Comment: This excludes shipping containers (modified or not) and portable storage pods.

8.6 Description of Uses of Land and Buildings

Accessory Structure

A structure detached from a principal building located on the same lot and customarily incidental and subordinate to the principal building or use.

Comment: The accessory structure must be on the same lot as the principal structure unless this Ordinance specifically permits it to be located on another lot

This category excludes shipping containers (modified or not) and portable storage pods.

Brewpub Beer/Wine

A tavern, public house, restaurant, or hotel which produces beer/wine for sale on the premises.

Brewery

A building housing operation for the production of beer/wine.

Micro-distillery

A manufacturer who distills, blends, and bottles alcoholic liquors on the licensed premises in this State with an alcohol content greater than seventeen percent and who produces a maximum quantity of one hundred twenty-five thousand cases per year at the licensed premises.

ORDINANCE #TX-2021-01

Page 7 of 7

SIGNATURE OF MAYOR:

Paul Shewmaker

ATTEST:

APPROVED AS TO FORM:

Phyllis Long
City Clerk

David W. Holmes
City Attorney

FIRST READING: March 09, 2021

SECOND READING: April 13, 2021

WHEREAS, April is National Donate Life Month , a special time to recognize the need for organ donation; and

WHEREAS, National Donate for Life are on the front lines every day seeking new sign ups to donate organs and tissue; and

WHEREAS, there are currently 99,000 people awaiting kidney transplants alone; and

WHEREAS, each year 3,500 people die waiting on a kidney; and

WHEREAS, of the 17,000 people needing a liver, only 5,000 are available nationwide; and

WHEREAS, it is a misconception that the donor bears the costs of harvesting the organ, in truth the costs is born by the recipients and insurance;

NOW, THEREFORE, I, Paul Shewmaker, Mayor, City of Simpsonville, by virtue of the authority vested in me by the Constitution and laws of Simpsonville and South Carolina, do hereby proclaim April 2021 as National Donate Life Month.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, in the year of our Lord 2021, and of the City of Simpsonville, South Carolina.

Paul Shewmaker
Mayor, City of Simpsonville

GENERAL BOND ORDINANCE

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA ACCOMMODATIONS TAX AND HOSPITALITY TAX REVENUE BONDS, AND OTHER MATTERS PERTAINING THERETO; PRESCRIBING THE FORM OF BONDS ISSUED HEREUNDER; PLEDGING LOCAL ACCOMMODATIONS TAXES AND LOCAL HOSPITALITY TAXES AND OTHER FUNDS TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING.

May 11, 2021

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE,
SOUTH CAROLINA, AS FOLLOWS:

ARTICLE I

FINDINGS AND DETERMINATIONS

Section 1.01 Findings and Determinations. As an incident to the enactment of this ordinance (the "**Ordinance**") and the issuance of the Bonds (as defined below) provided for herein, the City Council of the City of Simpsonville (the "**Council**"), the governing body of the City of Simpsonville, South Carolina (the "**City**"), finds that the facts set forth in this **Article I** exist, and the following statements are in all respects true and correct:

(a) The City is a body politic and corporate and a municipal corporation organized under the laws of the State of South Carolina (the "**State**") located in Greenville County, South Carolina, and as such, possesses all powers granted to municipalities by the Constitution and general laws of the State.

(b) The City, pursuant to Title 6, Chapter 1, Articles 5 and 7 of the Code of Laws of South Carolina, 1976, as amended, imposed a local accommodations tax (the "**Accommodations Tax**") and a local hospitality tax (the "**Hospitality Tax**") by Ordinance No. 2000-02 enacted on October 17, 2000, as amended.

(c) Article X, Section 14, of the Constitution of the State of South Carolina, 1895, as amended (the "**Constitution**"), provides that a political subdivision may incur indebtedness payable solely from a revenue-producing project which source does not involve revenues from any tax or license. Pursuant to Section 6-1-760 utilizing the procedures of Title 6, Chapter 17 of the Code of Laws of South Carolina, 1976, as amended (collectively, the "**Enabling Act**"), the City may issue revenue bonds (i) to defray the cost of tourist-related projects as enumerated in Title 6, Chapter 1, Articles 5 and 7 of the Code of Laws of South Carolina, 1976, as amended, secured by a pledge of the Pledged Fee Revenues (as defined below) and (ii) to refund obligations issued for such purposes.

(d) On June 30, 2016, pursuant to a General Bond Ordinance (the "**2012 Ordinance**") enacted on March 27, 2012 by the Council and a Second Supplemental Ordinance enacted on June 28, 2016 by the Council, the City issued its \$7,216,000 Accommodations Tax and Hospitality Tax Revenue Refunding Bond, Series 2016 (the "**Series 2016 Bond**") for the purpose of refunding certain outstanding accommodations tax and hospitality tax revenue bonds of the City. The Series 2016 Bond is the only bond outstanding under the 2012 Ordinance.

(e) The City now desires (i) to currently refund all of the outstanding principal amounts of the Series 2016 Bond, pursuant to this Ordinance and the Enabling Act by pledging its Pledged Fee Revenues hereunder and (ii) on the redemption date of the Series 2016 to terminate and repeal the 2012 Ordinance.

(f) It is now in the best interest of the City for the Council to provide for the issuance and sale of Bonds of the City pursuant to the aforesaid provisions of the Constitution and laws of the State.

[End of Article I]

ARTICLE II

DEFINITIONS AND INTERPRETATIONS

Section 2.01 Defined Terms. The terms defined in this **Section 2.01** (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Ordinance shall have the respective meanings specified in this **Section 2.01**.

"Accreted Value" shall mean, except as otherwise provided by a Supplemental Ordinance, with respect to any Capital Appreciation Bond an amount equal to the principal amount of the Capital Appreciation Bond (determined on the basis of the original principal amount per \$5,000 at maturity thereof) plus the amount, assuming semiannual compounding of earnings, which would be produced on the investment of the principal amount, beginning at the dated date of the Capital Appreciation Bond and ending at the maturity date thereof, at a yield which, if produced until maturity, will produce \$5,000 at maturity. The Accreted Value of any Capital Appreciation Bond shall mean, as of any Valuation Date, the amount set forth for that date in the Supplemental Ordinance authorizing Capital Appreciation Bonds, and as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from the preceding Valuation Date to the next succeeding Valuation Date, and (2) the difference between the Accreted Values for such preceding and succeeding Valuation Dates.

"Accountant" shall mean any independent certified public accountant or firm of accountants selected by the City and who or which is experienced in the auditing of municipal entities.

"Authorized Representative" shall mean the Mayor or the City Administrator and any other Person or Persons designated to act on behalf of the City by written certificate of the City Administrator furnished to the Trustee.

"Balloon Indebtedness" shall mean indebtedness in the form of Bonds 25% or more of the principal payments of which are due in a single year, which portion of the principal is not required by the instrument authorizing the issuance of such indebtedness to be amortized by redemption prior to such maturity date.

"Bond" or **"Bonds"** shall mean all bonds and other obligations of the City issued pursuant to and under the authority of **Sections 3.02, 3.03 and 3.04** hereof but excluding Junior Bonds and bond anticipation notes not secured by Pledged Fee Revenues, and Outstanding from time to time.

"Bond Counsel" shall mean any attorney or firm of attorneys of nationally recognized standing in the matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"Bond Holders," "Bondholders," "Holders," or the term **"Registered Holders,"** or any similar term, shall mean the registered owner of any Outstanding Bond or Bonds.

"Bond Redemption Account" shall mean the account by that name established in the Debt Service Fund.

"Books of Registry" shall mean the registration books maintained by the Trustee as bond registrar in accordance with **Section 4.04** hereof.

“Capital Appreciation Bonds” shall mean any Bonds as to which interest is payable only at the maturity, prior redemption or acceleration of the Bonds. For the purposes of (i) receiving payment of the redemption price of a Capital Appreciation Bond that is redeemed prior to maturity, (ii) receiving payment of a Capital Appreciation Bond if the principal of all Bonds of a Series is declared immediately due and payable following an Event of Default as provided in **Section 10.02** hereof, or (iii) computing the principal amount of Bonds held by the Holder of a Capital Appreciation Bond in giving any notice, consent, request, or demand pursuant to the Ordinance, or for any purpose whatsoever including, without limitation, for transfer and exchange, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value on the date set for redemption, or the date of declaration, or the date of computation of the principal amount or on the date of transfer or exchange, as the case may be, or in any other case, on the analogous date as of which the principal amount is intended to be calculated.

“Capital Lease” shall mean any lease of property which, in accordance with generally accepted accounting principles, has been or should be capitalized on the lessee’s balance sheet or for which the amount of the asset and liability thereunder as if so capitalized should be disclosed in a note to the balance sheet.

“City” shall mean the City of Simpsonville, South Carolina, a body politic and corporate and a municipal corporation organized and existing under the laws of the State.

“City Administrator” shall mean the City Administrator of the City or the Acting City Administrator or Interim City Administrator, as the case may be, or his or her designee.

“Clerk” shall mean the City Clerk or, in his or her absence, any Assistant or Acting Clerk of the City.

“Code” shall mean the Internal Revenue Code of 1986, as amended, any successor provision of law, and regulations promulgated thereunder.

“Completion Date” shall mean the date of completion of construction of any Project as that date shall be certified in writing to the Trustee.

“Construction Fund” shall mean any fund established with and maintained with the Trustee and funded with certain of the proceeds of the sale of any Series of Bonds and intended to defray Project Costs in connection therewith and the Costs of Issuance in connection with that Series of Bonds, all as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

“Costs of Issuance” shall mean all items of expense, directly or indirectly payable or reimbursable by or to the City and related to the authorization, sale, and issuance of Bonds; including, but not limited to, printing costs; costs of preparation and reproduction of documents; filing and recording fees; initial fees and charges of any Trustee or Custodian; legal fees and charges; fees and disbursements of financial advisors, consultants and professionals; costs of credit ratings; fees and charges for preparation, execution, transportation, and safekeeping of Bonds; costs and expenses of refunding of Bonds; premiums or other charges for insurance or other credit enhancement for the payment of Bonds; financing charges; accrued interest with respect to the initial investment of proceeds of Bonds; and any other cost, charge or fee in connection with the original issuance of Bonds.

“Council” shall mean the City Council, and any successor governing body of the City.

“Custodian” shall mean any bank, trust company, national banking association, or national association selected by the City as a depository of moneys or securities pursuant to this Ordinance.

“Debt Service Fund” shall mean the fund established by the provisions of **Section 6.01(b)** hereof designed to provide for the payment of the principal of, premium, if any, and interest on the Bonds (excluding Junior Bonds), as they respectively fall due.

“Debt Service Reserve Fund” shall mean the fund established by the provisions of **Section 6.01(c)** hereof intended to meet any possible deficiencies in the Debt Service Fund and to be maintained in the amounts, if any, and in separate accounts if established with respect to a Series of Bonds as set forth in the Supplemental Ordinance providing for the issuance of that Series of Bonds. A separate account within the Debt Service Reserve Fund shall be established for each Series of Bonds for which there is a Debt Service Reserve Fund Requirement.

“Debt Service Reserve Fund Requirement” shall mean that amount, if any, with respect to each Series of Bonds as set forth in the Supplemental Ordinance providing for the issuance of that Series of Bonds. This amount may be satisfied by the delivery of a surety bond in accordance with **Section 6.04** hereof.

“Default” or **“Event of Default”** shall mean any of those defaults specified in and defined by **Article X** hereof.

“Enabling Act” shall mean Section 6-1-760 utilizing the procedures of Title 6, Chapter 17 of the Code of Laws of South Carolina 1976, as amended, and as such may be further amended from time to time.

“Fiscal Year” shall mean the period of twelve (12) calendar months, beginning on the first day of July of each year and ending with the 30th day of June of the following year, until changed to a different twelve-month period by ordinance of the Council.

“Interest Account” shall mean the account by that name established in the Debt Service Fund.

“Investment Obligations” shall mean (i) obligations issued or guaranteed by the United States of America or its agencies, or to the payment of which the full faith and credit of the United States of America is pledged; (ii) general obligations of the State or its political units; (iii) interest bearing deposits in savings and loan associations to the extent that they are insured by an agency of the federal government; (iv) certificates of deposit issued by a bank or trust company (including the Trustee), where the certificates of deposit are collaterally secured by securities of the type described in (i) and (ii) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest; provided, however, that collateral shall not be required to the extent the certificates of deposit are insured by an agency of the federal government; (v) repurchase agreements when collateralized by securities of the type described in (i), (ii), (iii), or (iv) above; (vi) no load open-end or closed-end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the investment company or investment trust in which the investment is made (a) is limited to obligations described in items (i), (ii), or (v) above, and (b) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to that end, values its assets by the amortized cost method; (vii) the South Carolina Pooled Investment Fund established pursuant to the provisions of Chapter 6, Title 6, of the Code of Laws of South Carolina, 1976, as

amended; or (viii) any other investments now or hereafter permitted under Section 6-5-10 of the Code of Laws of South Carolina, 1976, as amended.

“Junior Bond Debt Service” shall mean such fund authorized by **Section 6.01** hereof to be established in a Supplemental Ordinance with respect to Junior Bonds.

“Junior Bonds” shall mean bonds secured by a pledge of Pledged Fee Revenues junior and subordinate in all respects to the pledge securing the Bonds authorized by **Sections 3.02, 3.03 and 3.04** hereof.

“Mayor” shall mean the Mayor of the City, or in his or her absence, the Mayor Pro Tempore of the City.

“Ordinance” shall mean this General Bond Ordinance as from time to time amended or supplemented by one or more Supplemental Ordinances.

“Outstanding Bonds” or **“Outstanding”** shall mean all Bonds which have been duly authenticated and delivered by the Trustee hereunder except:

(a) Bonds theretofore cancelled by the Trustee or theretofore delivered by the Trustee for cancellation;

(b) Bonds (or portions thereof) deemed to have been redeemed within the meaning of **Sections 5.03 and 5.05** hereof;

(c) Bonds in lieu of which others have been authenticated, unless proof satisfactory to the Trustee is presented to the Trustee that the Bonds are held by *bona fide* purchasers as that term is defined in Article 8 of the South Carolina Uniform Commercial Code, as amended, in which case the Bond or Bonds so replaced and the Bond or Bonds authenticated and delivered therefor shall both be deemed Outstanding; and

(d) Bonds (or portions thereof) deemed to have been paid within the meaning of **Section 9.01** hereof.

“Person” shall mean natural persons, firms, associations, corporations, and public bodies.

“Pledged Fee Revenue Fund” shall mean the fund of that name created by **Section 6.01** hereof.

“Pledged Fee Revenues” shall mean the Accommodations Taxes and the Hospitality Taxes collected by the City.

“Principal Account” shall mean the account by that name established within the Debt Service Fund.

“Principal and Interest Requirements” with respect to any Bonds shall mean the amount required to pay principal of (whether at maturity or pursuant to mandatory redemption requirements applicable thereto), redemption premium, if any, and interest (exclusive of funded interest) on the Bonds during the period of time for which Principal and Interest Requirements are being calculated; provided (i) with respect to Balloon Indebtedness, the amount of the principal which would be payable in such period shall be computed as if such principal were amortized from the date of incurrence thereof over a period of 20 years (or, if the term thereof is less than 20 years, over a period equal to such term) on a level debt

service basis at an interest rate equal to the rate borne by such Balloon Indebtedness on the date calculated, except that if the date of calculation is within 12 months of the actual maturity of such Balloon Indebtedness, the full amount of principal payable at maturity shall be included in such calculation; (ii) the interest on Variable Rate Indebtedness shall be calculated at one hundred percent (100%) of the average rate borne by the Variable Rate Indebtedness during the preceding twelve (12) months, or if the Variable Rate Indebtedness is yet to be incurred, at one hundred percent (100%) of the average rate such Variable Rate Indebtedness would have borne during the preceding twelve (12) months based on the applicable index or other method of determining the interest rate under the terms of the Supplemental Ordinance providing for the incurrence of the Variable Rate Indebtedness; (iii) interest as used in this definition shall include interest on Capital Appreciation Bonds accruing, but not payable, during the period of time for which Principal and Interest Requirements are being calculated; and (iv) there shall be excluded from such calculation of interest due on any Bonds the amount of any interest rate subsidy receivable by the City from the United States Treasury or other governmental unit pursuant to Section 54AA, 1400U-2 or 6431 of the Code or any successor or similar interest rate subsidy program established under the Code.

“Project” or **“Projects”** shall mean, as applicable, tourist-related project or projects allowed under Title 6, Chapter 1, Articles 5 and 7 of the Code of Laws of South Carolina, 1976, as amended.

“Project Costs” shall mean costs incurred in connection with a Project, the repayment to the City of any funds expended in the acquisition or construction of any Project, and shall include, without limiting the costs permitted under the Enabling Act and Title 6, Chapter 1, Articles 5 and 7 of the Code of Laws of South Carolina, 1976, as amended, the following items to the extent they relate to a Project: (i) all direct costs of such Project described in the plans and specifications for such Project; (ii) all costs of planning, designing, acquiring, constructing, financing and placing such Project in operation; (iii) the cost of any lands or interests therein and all of the properties deemed necessary or convenient for the maintenance and operation of such Project; (iv) all engineering, legal and financial costs and expenses; (v) all expenses for estimates of costs and of revenues; (vi) costs of obtaining governmental and regulatory permits, licenses and approvals; (vii) all fees of special advisors and consultants associated with one or more aspects of such Project; (viii) all amounts required to be paid by this Ordinance or any Supplemental Ordinance authorizing the issuance of Bonds into the Debt Service Fund or Debt Service Reserve Fund upon the issuance of any Series of Bonds; (ix) the payment of all principal, premium, if any, and interest, when due, of any Bonds of any Series or other evidences of indebtedness issued to finance a portion of the cost of such Project, whether at the maturity thereof or at the due date of interest or upon redemption thereof; (x) interest on Bonds of any Series prior to and during construction of such Project for which such Bonds were issued, and for such additional periods as the City may reasonably determine to be necessary for the placing of such Project in operation.

“Purchaser” shall mean, with respect to any Series of Bonds, the initial purchaser of that Series of Bonds.

“Record Date” shall mean, with respect to any Series of Bonds, (i) the fifteenth (15th) day (whether or not a business day) of the calendar month immediately preceding an interest payment date in the event that the interest payment date is the first day of a month, (ii) the last day (whether or not a business day) of the calendar month immediately preceding each interest payment date in the event that the interest payment date is the fifteenth (15th) day of a month, or (iii) any other day as may be provided in the Supplemental Ordinance authorizing the issuance of that Series; provided, however, that in the case of a default in the payment of interest due on a Series of Bonds, the Trustee shall establish a special record date for payment of the defaulted interest, notice thereof to be mailed by first-class mail, postage prepaid, by the Trustee to the Holder of that Series of Bonds not less than ten (10) days prior to the special record date.

“Serial Bonds” shall mean Bonds which are not Term Bonds.

“Series” or **“Series of Bonds”** or **“Bonds of a Series”** shall mean all Bonds designated as being of the same series, issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

“State” means the State of South Carolina.

“Supplemental Ordinance” shall mean any ordinance enacted by the Council providing for the issuance of Bonds and any ordinance enacted by the Council pursuant to and in compliance with the provisions of **Article XI** hereof amending or supplementing the provisions of the Ordinance.

“Term Bond” or **“Term Bonds”** shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the Bond Redemption Account in the Debt Service Fund or the Junior Bond Debt Service Fund as mandatory redemption requirements.

“Trust Estate” shall mean the Pledged Fee Revenues and funds which have been pledged and assigned as security for payment of the Bonds and such funds which may be subsequently pledged, including the initial deposit of proceeds, future deposits, and investment earnings on all such monies, but shall include any deposits in a Debt Service Reserve Fund only in favor of the Holders of the Bonds of such Series to which such Debt Service Reserve Fund has been pledged as security for such Series of Bonds.

“Trustee” shall mean any bank, trust company, national banking association, or national association selected by the City and any successor Trustee appointed in accordance with **Section 7.01** hereof, and any co-trustee appointed pursuant to **Section 7.13** hereof.

“Valuation Date,” with respect to any Capital Appreciation Bonds, shall have the meaning ascribed to the term in the Supplemental Ordinance authorizing the issuance of the Capital Appreciation Bonds.

“Variable Rate Indebtedness” shall mean indebtedness in the form of Bonds that bears interest at a variable, adjustable or floating rate or indebtedness in the form of Bonds the interest on which is not established at the time of incurrence at a fixed or constant rate until its maturity.

Section 2.02 General Rules of Interpretation.

(a) Articles, sections, and paragraphs mentioned by number are the respective articles, sections, and paragraphs of this Ordinance so numbered.

(b) Except as otherwise expressly provided or unless the context otherwise requires, words importing persons include firms, associations, and corporations, and the masculine includes the feminine and the neuter.

(c) Words importing the redemption or redeeming or calling for redemption of a Bond do not include or connote the payment of the Bond at its stated maturity or the purchase of the Bond.

(d) Words importing the singular number include the plural number and *vice versa*.

[End of Article II]

ARTICLE III

AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.01 Authorization of Bonds. There is hereby authorized to be issued Bonds of the City to be known as "*Accommodations Tax and Hospitality Tax Revenue Bonds*," or as otherwise designated in the Supplemental Ordinance authorizing any Series of Bonds, which Bonds may be issued pursuant to the Ordinance and in accordance with the terms, conditions, and limitations set forth herein, in Series, in the amounts, and from time to time as the Council may from time to time deem to be necessary or advisable for any corporate purpose of the City for which Bonds may be issued under the Ordinance and the Enabling Act.

Section 3.02 General Provisions for Issuance of Bonds.

(a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this **Article III**. Each Supplemental Ordinance shall designate the Bonds provided for thereby by an appropriate Series designation and by any further particular designations, if any, as the Council deems appropriate; and shall, unless or except as is otherwise set forth herein, also specify (i) the authorized principal amount of the Series of Bonds; (ii) the purpose or purposes for which the Bonds of the Series are being issued, which shall be one or more of the purposes set forth in **Sections 3.03** and **3.04** hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in **Section 3.03** hereof, the Project for which the Bonds are being issued; (iv) if the Bonds of the Series are being issued for a purpose specified in **Section 3.03** hereof, an estimate of the Project Costs to be financed by the Series of Bonds; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the mandatory redemption amounts and due dates, if any, for the Term Bonds of the Series; (vii) the interest rate or rates of the Bonds of the Series, or the manner of determining the rate or rates, the initial interest payment date therefor, and the subsequent interest payment dates; (viii) the denominations of, and manner of numbering and lettering, the Bonds of the Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of the Series, the period or periods, if any, during which premiums or prices shall be payable, and the terms and conditions, if any, of redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the paying agents therefor; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application, and investment, if any, of the proceeds of the sale or other disposition, which use, application and investment shall not be inconsistent with the provisions hereof; (xii) whether there will be a Debt Service Reserve Fund Requirement for such Series; (xiii) any other provisions which may be required to be included therein by other provisions of the Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent with the provisions of the Ordinance.

(b) Bonds of a Series may be executed and delivered to the Trustee by the City and authenticated and delivered by the Trustee to the City or upon its order upon compliance with **Section 3.03**, **3.04**, or with respect to Junior Bonds, **Section 3.05** hereof.

Section 3.03 Conditions for the Issuance of Bonds.

(a) At any time and from time to time, one or more Series of Bonds (exclusive of the initial Series of Bonds issued hereunder or Bonds issued pursuant to the provisions of **Section 3.04** hereof) may be issued for any purposes as may be permitted by the Enabling Act upon compliance with the provisions of **Section 3.02** hereof and this **Section 3.03** (except where specifically provided otherwise in this **Section 3.03**) in any principal amounts as may be determined by the Council.

(i) There shall be filed with the Trustee a certificate of the City Administrator stating (A) either (1) that no Default exists in the payment of the principal of, premium, if any, or interest on any Bonds or Junior Bonds, and all mandatory redemption requirements, if any, required to have been made or satisfied shall have been made or satisfied, or (2) that the application of the proceeds of the sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure the Default or permit the making or satisfaction of the redemption requirements; and (B) either (1) that to the knowledge of the City Administrator, the City is not in Default in the performance of any other of its covenants and agreements contained in the Ordinance, or (2) setting forth the circumstances of each Default known to him.

(b) If a certificate filed pursuant to **Section 3.03(a)(i)** should disclose a Default or Defaults hereunder, which have not been cured, there shall be filed with the Trustee an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to **Section 3.03(a)(i)**, no Default deprives the Bondholders of the security afforded by the Ordinance in any material respect.

(c) For the issuance of Bonds (other than the initial Series of Bonds and Junior Bonds) issued hereunder to finance the Costs of the Project there shall be delivered to the Trustee a certificate of an Authorized Representative, which is not required to be based upon an audit of the City, to the effect that Pledged Fee Revenues deposited into the Pledged Fee Revenue Fund for any consecutive twelve-month period out of the last eighteen-month consecutive period immediately preceding the issuance date of the proposed Bonds (the "*Test Period*") are not less than 150% of the maximum annual Principal and Interest Requirements for all Series of Bonds then Outstanding and the additional Bonds then proposed to be issued (with adjustments, if any, for any Bonds that will be discharged upon the issuance of such additional Bonds). If new establishments have become subject to the Accommodations Tax or the Hospitality Tax during the Test Period, the annualized revenues may be included as if they were collected during the Test Period.

(d) The Bonds may be issued to secure funds to defray Project Costs or to refund any Bonds, Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing Projects.

(e) There shall be on deposit in the Debt Service Reserve Fund, if such is required by any Supplemental Ordinance, cash and securities (including any insurance policy, surety bond or letter of credit permitted by Supplemental Ordinance) as provided in **Section 6.04** hereof (inclusive of any proceeds of Bonds to be deposited in the Debt Service Reserve Fund), having an aggregate value not less than the Debt Service Reserve Fund Requirement, if any, with respect to each Series of Bonds to be then Outstanding and the Bonds then proposed to be issued.

Section 3.04 Issuance of Refunding Bonds. Upon compliance with the provisions of paragraphs (a), (b), (c) and (e) of **Section 3.03** hereof, the City by means of a Supplemental Ordinance enacted in compliance with the Enabling Act and any other statutory provisions authorizing the issuance of revenue refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds for the purpose of refunding (including by purchase) Bonds or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects, including amounts to pay principal, redemption premium, and interest to the date of the redemption (or purchase) of the refunded Bonds or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects, and the Costs of Issuance of the refunding Bonds and to fund any necessary reserves or other accounts. In addition, the City by means of a Supplemental Ordinance may issue refunding Bonds for the purpose of refunding Bonds or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects, without satisfying the conditions for the issuance of Bonds as contained in **Section 3.03(c)** hereof to the extent that the aggregate Principal and Interest Requirements with respect to the refunding Bonds is less

than the aggregate Principal and Interest Requirements with respect to the Bonds or any other notes, bonds or other obligations issued to finance or to aid in financing of Projects to be refunded.

Section 3.05 Issuance of Junior Bonds The City may at any time issue Junior Bonds in any amount as it may from time to time determine, payable from the Pledged Fee Revenues; provided that (a) such Junior Bonds are issued to secure funds to defray Project Costs, including obligations issued in the form of Capital Leases, or to refund Bonds, Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing Projects; (b) the pledge of Pledged Fee Revenues securing Junior Bonds shall at all times be subordinate and inferior to the pledge of Pledged Fee Revenues securing the Bonds such that Junior Bonds shall be payable from Pledged Fee Revenues held in the Pledged Fee Revenue Fund after provision has been made for all payments required to be made hereunder with respect to the Bonds, and (c) there shall be delivered to the Trustee a certificate of an Authorized Representative to the effect that Pledged Fee Revenues for the Test Period is not less than 100% of the greatest sum for any Fiscal Year obtained by adding the Principal and Interest Requirements for each Fiscal Year for all Series of Bonds plus the principal and interest requirements for the Junior Bonds proposed to be issued. If new establishments have become subject to the Accommodations Tax or the Hospitality Tax during the Test Period, the annualized revenues may be included as if they were collected during the Test Period.

[End of Article III]

ARTICLE IV

THE BONDS

Section 4.01 Execution.

(a) Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the City by the Mayor and City Administrator, acting jointly or individually, by their manual or facsimile signatures and attested by the Clerk of the City by his or her manual or facsimile signature.

(b) In case any officer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be that officer before the delivery of the Bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 4.02 Authentication. Upon compliance with the provisions of **Sections 4.03, 4.04, or 4.05** hereof, as applicable, and upon the written order of the City, the Trustee shall authenticate Bonds authorized to be issued hereunder. Except as otherwise set forth in a Supplemental Ordinance, only those Bonds as shall have endorsed thereon a certificate of authentication duly executed manually by the Trustee shall be entitled to any right or benefit under this Ordinance, and no Bond shall be valid or obligatory for any purpose unless and until the certificate of authentication shall have been duly executed by the Trustee. The executed certificate of the Trustee upon any Bond shall be conclusive evidence that the Bond has been authenticated and delivered. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series.

Section 4.03 Mutilated, Lost, Stolen, or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen, or destroyed, the City may execute and the Trustee may authenticate a new Bond having the same date, maturity, and denomination as that mutilated, lost, stolen, or destroyed; provided that, in the case of any mutilated Bond, it shall first be surrendered to the City and in the case of any lost, stolen, or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of the loss, theft, or destruction satisfactory to the City and the Trustee, together with indemnity satisfactory to them; provided that, in the case of a Holder which is a bank or insurance company, the agreement of the bank or insurance company to indemnify shall be sufficient. In the event any Bond shall have matured, instead of issuing a duplicate Bond, the City may pay it without surrender thereof. The City and the Trustee may charge the Holder of the Bond with their reasonable fees and expenses in this connection.

Section 4.04 Registration and Transfer of Bonds; Persons Treated as Owners.

(a) Each Bond shall be fully registered and transferable only upon the Books of Registry of the City which shall be kept for that purpose at the corporate trust office of the Trustee by the Registered Holder thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Trustee, duly executed by the Registered Holder or his duly authorized attorney, signature guaranteed. Upon the transfer of any Bond, the City shall issue, subject to the provisions of **Section 4.07** hereof, in the name of the transferee, a new Bond or Bonds of the same Series and of the same aggregate principal amount as the unpaid principal amount of the surrendered Bond.

(b) Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name it 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 of, premium, if any, and interest on any Bond shall be made only to or upon the order of the Holder thereof, or his duly authorized attorney, and neither the City nor the Trustee shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All the payments made in this manner shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums paid.

Section 4.05 Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds: (a) shall be in fully registered form without coupons; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof (or, in the case of Capital Appreciation Bonds, in denominations representing \$5,000 Accreted Value at maturity or integral multiple thereof); provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, the new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. The City may provide in any Supplemental Ordinance for a book-entry system for such Series of Bonds.

Section 4.06 Numbers, Date, and Payment Provisions.

(a) The Bonds shall be numbered and designated in any manner as the City, with the concurrence of the Trustee shall determine. Each Bond of a Series shall bear interest from the interest payment date immediately preceding the date of its authentication, unless authentication shall be upon an interest payment date, in which case, it shall bear interest from its authentication, or unless authentication shall precede the first interest payment date for the Bond, in which case it shall bear interest from the date of its delivery, or as otherwise provided in the Supplemental Ordinance authorizing their issuance; provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding interest payment date therefor, it shall bear interest from the next succeeding interest payment date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on the Bond is in default, it shall bear interest from the date to which interest on it has been paid or if no interest has been paid, the Bond shall bear interest from the date of delivery thereof or as otherwise provided in the Supplemental Ordinance authorizing the issuance of the Bond.

(b) The principal of and redemption premium, if any, on the Bonds and Accreted Value on any Capital Appreciation Bonds shall be payable when due in lawful money of the United States of America upon presentation and surrender of the Bonds at the office of the Trustee described in the Supplemental Ordinance authorizing the issuance of the Bonds. Except as otherwise set forth in a Supplemental Ordinance, payment of interest on Bonds other than Capital Appreciation Bonds shall be made by check or draft drawn upon the Trustee and mailed to the Registered Holder at his address as it appears upon the Books of Registry; provided that payment to any Bondholder owning \$1,000,000 or more of Bonds may be made by wire transfer to an account in the continental United States of America upon the written request and instructions provided by such Bondholder to the Trustee no later than the preceding Record Date. The Trustee shall maintain a record of the amount and date of any payment of principal or interest on the Bonds (whether at the maturity date or the redemption date prior to the maturity or upon the maturity thereof by declaration or otherwise).

Section 4.07 Exchange of Bonds. Bonds, upon surrender thereof at the office of the Trustee described in the Supplemental Ordinance authorizing the issuance of that Series of Bonds, with a written instrument of transfer satisfactory to the Trustee, duly executed by the Bondholder or his duly authorized

attorney, signatures guaranteed, may, at the option of the Bondholder thereof, and upon payment by the Bondholder of any charges which the Trustee may make as provided in **Section 4.08**, be exchanged for a principal amount of Bonds of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.08 Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the City shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of the Ordinance. All Bonds surrendered in any exchanges or transfers shall forthwith be cancelled by the Trustee. There shall be no charge to the Bondholder for the exchange or transfer of Bonds except that the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to the exchange or transfer. Neither the City nor the Trustee shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the next succeeding interest payment date or (ii) for a period of fifteen (15) days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.09 Temporary Bonds. Any Series of Bonds may be initially issued in temporary form, exchangeable for definitive Bonds to be delivered as soon as practicable and subject to the agreement of the City and the Purchaser. The temporary Bonds may be printed or typewritten, shall be of any denominations and may be numbered in any manner as may be determined by the City, and may contain reference to any of the provisions of the Ordinance as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered for cancellation at the office of the Trustee, and the Trustee shall deliver and exchange for the temporary Bonds an equal, aggregate principal amount of definitive Bonds having the same aggregate principal amount and in authorized denominations of the same Series, maturity or maturities, and interest rate or rates. Until exchanged, the temporary Bonds shall be entitled to the same benefits under the Ordinance as definitive Bonds under the Ordinance.

Section 4.10 Co-Registrars. In the Supplemental Ordinance authorizing the issuance of any Series of Bonds, the City may appoint a co-registrar in addition to the Trustee. The co-registrar shall be authorized to perform the duties and responsibilities of the Trustee set forth in **Sections 4.02 4.03, 4.04, and 4.07** hereof with respect to the authentication, registration and exchange of Bonds of that Series, the same as is the Trustee pursuant to those Sections. Any co-registrar shall be required to furnish to the Trustee the names and addresses of the transferors and transferees of any Bonds registered, transferred, or exchanged by it, and the numbers and other identifying symbols of any Bonds cancelled or exchanged by it, and shall comply with all reasonable instructions with respect to the performance of its duties and responsibilities that the Trustee shall give to it.

[End of Article IV]

ARTICLE V

REDEMPTION OF BONDS BEFORE MATURITY

Section 5.01 Redemption of Bonds. The Bonds of a Series shall be subject to redemption prior to their stated maturities upon the terms and conditions and at the dates and redemption price or prices or premium or premiums as shall be set forth or provided for in the Supplemental Ordinance pursuant to which that Series is issued, and upon the further terms and condition as are hereinafter set forth.

Section 5.02 Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in the order as is set forth or provided for in the Supplemental Ordinance providing for the issuance of that Series. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds having the same maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected as provided in the Supplemental Ordinance; provided, however, that the portion of any Bond of a denomination (or, in the case of Capital Appreciation Bonds, Accreted Value at maturity) of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of Bonds for redemption, the Trustee shall treat each Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount or Accreted Value at maturity of the Bond by \$5,000.

Section 5.03 Notice of Redemption. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing the issuance of the Bonds, the provisions of this **Section 5.03** apply to each Series of Bonds. In the event any of the Bonds or portions thereof are called for redemption, the Trustee shall give notice, in the name of the City, of the redemption of the Bonds to be redeemed, the redemption date, the principal amount of each Bond to be redeemed (if less than all), the redemption price, the place or places where amounts due upon redemption will be payable, and the numbers of the Bonds to be redeemed. The notice shall be given by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least thirty (30) days, but not more than sixty (60) days, prior to the date fixed for redemption to the Holder of each Bond or portion thereof to be redeemed at the address shown on the Books of Registry. Failure duly to give notice by mailing, or any defect in the notice, to the Holder of any Bond designated for redemption shall not affect the validity of any proceedings for the redemption of any other Bonds. All Bonds or portions thereof called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit with the Trustee on or before such redemption date; and the Bonds shall not be deemed to be Outstanding under the provisions of the Ordinance. If on the date fixed for redemption there is not on deposit with the Trustee funds for redemption, the Trustee shall send a notice to all Holders in the same manner as the notice of redemption canceling such notice of redemption.

If at the time of mailing of the notice of redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all of the Bonds called for redemption, which moneys are or will be available for redemption of Bonds, such notice will state that it is conditional upon the deposit of the redemption moneys with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

Section 5.04 Partial Redemption of Bond. In the event that only part of the principal sum of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of the Bond to the Trustee. Upon surrender of the Bond, the City shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the office of the Trustee, or send to the Holder by registered mail at his request, risk, and expense, a new fully executed Bond or

Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity, and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.05 Effect of Redemption. If a Bond is subject by its terms to prior redemption and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of the Bond (or of the principal amount thereof to be redeemed) at the then applicable redemption price or together with the then applicable premium, if any, and the interest to accrue to the redemption date on the Bond (or the principal amount thereof to be redeemed) are held on or before the date fixed for redemption for the purpose of payment by the Trustee or other paying agent for the Series of Bonds of which that Bond is one, then on the redemption date designated in the notice, the Bond (or the principal amount thereof to be redeemed) called for redemption shall become due and payable and interest on the Bond (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue.

Section 5.06 Cancellation. All Bonds which have been redeemed shall be cancelled and either maintained or destroyed by the Trustee and shall not be reissued. A counterpart of the certificate of destruction evidencing the destruction shall be furnished by the Trustee to the City upon the request of the City.

Section 5.07 Purchase of Bonds. The Trustee shall, if and to the extent practicable, endeavor to purchase Bonds or portions of Bonds at the written direction of the City at the time, in the manner, and at the price as may be specified by the City but in no event greater than the call price first to become available or then prevailing. The Trustee may so purchase Bonds with any moneys then held by the Trustee and available for the redemption or purchase of Bonds; provided, that any limitations or restrictions on redemption or purchases contained in the Ordinance shall be complied with. The expenses of purchase shall be deemed an expense of the Trustee under **Section 7.03** hereof. The Trustee shall incur no liability for any purchase made in accordance with this **Section 5.07** or for its inability to effect purchase in excess of the redemption price thereof.

[End of Article V]

ARTICLE VI

ESTABLISHMENT OF FUNDS; PAYMENTS THEREFROM; INVESTMENT OF MONEYS; SECURITY FOR THE BONDS

Section 6.01 Listing of Funds and Accounts. The following are the funds and accounts established by the Ordinance:

- (a) Pledged Fee Revenue Fund;
- (b) Debt Service Fund, including an Interest Account, Principal Account, and Bond Redemption Account;
- (c) Debt Service Reserve Fund; and
- (d) Construction Fund for each Series to the extent the Series of Bonds is issued for Project Costs.

One or more accounts may be established within any of the above funds as are reasonably necessary. It is intended by the Ordinance that the funds referred to in this **Article VI** (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in this **Article VI**. The initial implementation of this **Article VI** may, at the option of the City, be postponed until the occasion of initial issuance of Bonds pursuant to the Ordinance. Upon the issuance of any Junior Bonds, the Trustee shall then establish pursuant to the Supplemental Ordinance a Junior Bond Debt Service Fund. Any debt service due on Junior Bonds shall be paid after all deposits with respect to Bonds (exclusive of Junior Bonds) have been made into the funds described in (a) through (d) above.

Section 6.02 Pledged Fee Revenue Fund; Pledge of Trust Estate.

(a) There is hereby established a Pledged Fee Revenue Fund to be maintained by the City or a Custodian appointed by the City pursuant to **Section 7.14** hereof and into which shall be deposited all Pledged Fee Revenues, if any, as received by the City. Moneys in the Pledged Fee Revenue Fund shall be withdrawn, and allocation and use therefrom shall be made at the direction of the City but only in the manner specified in this **Article VI** and in the order of priority according to items (b) and (c) of **Section 6.01** hereof. Upon satisfaction on a Fiscal Year basis of all requirements for payments into the Debt Service Fund, the Debt Service Reserve Fund or the Junior Bond Debt Service Fund, all moneys remaining in the Pledged Fee Revenue Fund shall be used by the City for any lawful purpose.

(b) The Bonds shall be payable solely from the Trust Estate which includes Pledged Fee Revenues in the manner provided herein, and the Pledged Fee Revenues herein made applicable thereto are hereby irrevocably pledged to the payment of the Bonds, and to the payments into the various funds herein provided for, to the extent and in the manner provided for by the Ordinance. The Bonds (excluding Junior Bonds), including payment of the principal thereof, redemption premium, if any, and interest thereon, shall be equally and ratably secured hereunder by the Trust Estate without priority by reason of Series, number, date of enactment of Supplemental Ordinance providing for the issuance thereof, the purposes or Projects for which the Bonds are issued, the date, date of sale, execution, issuance or delivery of the Bonds, or otherwise, and without regard to which section hereof the Bonds are issued under, except as hereinafter otherwise expressly provided. The pledge securing the Bonds shall constitute a prior and paramount lien and charge on the Trust Estate, subject only to the provisions of the Ordinance

restricting or permitting the application thereof for the purposes and on the terms and conditions set forth in the Ordinance. The Pledged Fee Revenues and the other moneys and securities hereby pledged as part of the Trust Estate shall immediately be subject to such lien and the pledge without any physical delivery thereafter or further act, and such lien and the pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise, against the City, whether or not the parties have notice thereof.

(c) The covenants and agreements herein set forth to be performed by the City shall be for the equal and proportionate benefit, security, and protection of all Holders of the Bonds without preference, priority, or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds or any of the others for any reason or cause whatsoever, except as expressly provided herein or in the Bonds, and, except as aforesaid and with respect to Junior Bonds, all Bonds shall rank *pari passu* and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.03 Debt Service Fund.

(a) There is hereby established a Debt Service Fund to be maintained in trust by the Trustee, and within the Debt Service Fund there is hereby established a separate Interest Account, Principal Account, and Bond Redemption Account. This fund is intended to provide for the payment of the principal of, premium, if any, and interest on the Bonds (exclusive of Junior Bonds) as they respectively fall due. Payments into this fund shall be made in the manner prescribed by the Ordinance and all moneys in the Debt Service Fund shall be used solely to pay the principal of, redemption premium, if any, and interest on the Bonds, and for no other purpose; and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the Bonds. Earnings on investments of the Debt Service Fund shall become a part of the Debt Service Fund or at the written direction of an Authorized Representative and with an approving opinion of Bond Counsel be used for any lawful purpose related to the Project; provided, however, that by Supplemental Ordinance the City may provide that earnings on moneys in the Debt Service Fund representing capitalized interest on any Series of Bonds may, during the construction period of any Project financed by that Series of Bonds, be transferred to the Construction Fund established for that Series of Bonds.

(b) Each month there shall be transferred by the City from the Pledged Fee Revenue Fund to the Trustee for deposit into the Debt Service Fund sufficient moneys so as to comply with the following provisions for the payment of the Principal and Interest Requirements on the Bonds then Outstanding:

(i) On or before the fifteenth day of each month (provided, that payments with respect to interest on Bonds of a Series need not begin until the month following the month in which the Series is issued and delivered) into the Interest Account of the Debt Service Fund, that amount which, together with equal, successive, monthly deposits in the same amount, will, together with any other funds on deposit from whatever source in the Interest Account of the Debt Service Fund which will be applied to the next interest payment, provide sufficient funds to pay the aggregate amount of interest to become due on the Bonds on the next interest payment date. If any Bonds are issued with provision that the interest rate thereon is subject to adjustment from time to time, the City shall provide in the Supplemental Ordinance pursuant to which the Bonds are issued for any further and additional or alternate credits to the Interest Account as are necessary to provide for the payment of interest thereon when due, taking into account any other funds as will be available for that payment. In making the transfers required by this paragraph, any amounts credited to the Interest Account representing accrued interest received on the sale of Bonds, interest accruing during the month in which the credit is made from capitalized proceeds of Bonds, and any other transfers and credits otherwise made or required to be made to the Interest Account shall be taken into consideration and allowed for.

(ii) On or before the fifteenth day of the month which precedes the first principal payment date on any Serial Bond by twelve (12) months, or if the first installment of principal of Serial Bonds of that Series shall become due in less than twelve (12) months from the date on which the Series is issued and delivered to the Purchaser thereof, then on or before the fifteenth day of the month immediately succeeding the month in which the Bonds of that Series are issued and delivered, and in any event prior to the date upon which the installment of principal falls due, and on or before the fifteenth day of each succeeding month thereafter, into the Principal Account of the Debt Service Fund, that amount which, together with equal, successive, monthly deposits in the same amount, will, together with any other funds on deposit from whatever source in the Principal Account of the Debt Service Fund which will be applied to the payment of principal next to become due, provide sufficient funds to pay the aggregate amount of the principal of Serial Bonds to become due on the next principal payment date.

(iii) On or before the fifteenth day of the twelfth (12th) month prior to the date upon which a mandatory redemption of Term Bonds of a Series falls due, or if the first mandatory redemption requirement on Term Bonds of that Series shall fall due in less than twelve (12) months from the date on which that Series is issued and delivered to the Purchaser thereof, then on or before the fifteenth day of the month immediately succeeding the month in which the Bonds of that Series are issued and delivered, and in any event prior to the date upon which any mandatory redemption requirement falls due, and on or before the fifteenth day of each succeeding month thereafter, an amount such that, if the same amount were credited to the Bond Redemption Account on the fifteenth day of each month thereafter and prior to the next date upon which a mandatory redemption requirement falls due on the Term Bonds of that Series, the aggregate of the amount so credited to the Bond Redemption Account for the purpose of redeeming the Term Bonds of that Series would on the latter date be equal to the amount (excluding accrued interest) required to redeem the principal amount of those Term Bonds required by the sinking fund installment then falling due on the Term Bonds of that Series. At any time before Bonds of a Series subject to redemption from amounts deposited pursuant to this paragraph have been selected for redemption, or after the redemption date thereof, the City may, in lieu of making all or any portion of a payment with respect to that Series of Bonds required by this paragraph, deliver to the Trustee for cancellation Bonds of that Series subject to redemption from amounts so paid, in which event the payments required by this paragraph shall be reduced by the applicable redemption price of the Bonds delivered for cancellation. The Trustee shall apply the moneys credited to the Bond Redemption Account as mandatory redemption requirements to the retirement of the Term Bonds of each Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of that Series of Bonds, without further authorization or direction, on each mandatory redemption date with respect to the Term Bonds of that Series or, if directed in writing by an Authorized Representative, semiannually on both the redemption date and the date six (6) months prior to the redemption date, so that the aggregate amount applied will equal the amounts required to be credited to the Bond Redemption Account as mandatory redemption requirements for the Term Bonds of that Series on the mandatory redemption date by the Supplemental Ordinance providing for the issuance thereof; provided, however, that if the last mandatory redemption requirement for the Term Bonds becomes due on the stated maturity date thereof, the amount of the mandatory redemption requirement may be applied to the payment thereof at maturity. The Trustee shall, if so directed in writing by the City, apply the moneys credited to the Bond Redemption Account as mandatory redemption requirements for the retirement of the Term Bonds of a Series to the purchase of the Bonds at a purchase price (including accrued interest and any brokerage or other charge) not to exceed the redemption price then applicable upon the redemption of those Bonds from mandatory redemption requirements, plus accrued interest, in which event the principal amount of the Bonds

required to be redeemed on the next ensuing mandatory redemption date shall be reduced by the principal amount of the Bonds purchased; provided, however, that no Bonds of the Series shall be purchased during the interval between the date on which notice of redemption of the Bonds from mandatory redemption requirements is given and the mandatory redemption date set forth in the notice, unless the Bonds so purchased are Bonds called for redemption in the notice or are purchased from moneys other than those credited to the Bond Redemption Account with respect to the mandatory redemption requirements.

In the event that moneys in the Bond Redemption Account, other than moneys credited thereto as mandatory redemption requirements, are to be applied to the retirement of one or more Series of Bonds, the City may direct in writing the Trustee within thirty (30) days of the deposit of the moneys to apply the moneys to the purchase of Bonds of that Series and may direct from which of the Series of Bonds purchases may be made and may elect that all purchases shall be made from only one Series or from more than one Series. The price payable on any purchase shall not exceed the highest redemption price applicable at the time or any time thereafter with respect to the Series of Bonds. Any moneys not applied to the purchase of Bonds shall be applied to the redemption of Bonds of any Series then subject to redemption from those moneys. In the event that the moneys may be applied to the redemption of more than one Series of Bonds, the moneys shall be applied by the Trustee to the redemption of Bonds of each Series in proportion to which the principal amount of Bonds of each Series then Outstanding and subject to redemption from the moneys bears to the total principal amount of Bonds of all Series then Outstanding and subject to redemption from the moneys. The purchase or redemption of Term Bonds pursuant to this paragraph shall be credited against the mandatory redemption requirement of the Term Bonds in any order of the mandatory redemption dates as determined by the City in writing. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph. Neither the City nor the Trustee shall be required to redeem Bonds pursuant to this paragraph if the moneys available for redemption are less than \$50,000. The Trustee, in the name and on behalf of the City, shall give notice of all redemptions in accordance with the provisions of **Article V** hereof. Any purchase of Bonds pursuant to this paragraph may be made with or without tenders of Bonds at public or private sale; provided, however, the City shall direct the Trustee in writing in any method to be followed in purchasing Bonds. The accrued interest to be paid on the purchase or redemption of Bonds shall be paid from the Interest Account. All Bonds purchased or redeemed pursuant to this paragraph shall be cancelled and not reissued.

(iv) If, on any occasion when the payments required by paragraphs (i), (ii), and (iii), *supra*, are to be made, the sum total of the payments required by paragraphs (i), (ii), and (iii), *supra*, plus previous monthly payments and the remaining payments to be made prior to the next succeeding interest or principal and interest payment date, will not provide, together with any other funds in the Debt Service Fund to be applied to the payment of principal and interest, sufficient funds to meet the payment of the next succeeding installment of either principal (whether due at stated maturity or by mandatory redemption) or interest, or both, as the case may be, there shall be added to the payments to be made pursuant to paragraphs (i), (ii), and (iii), *supra*, with respect to any Series of Bonds, from the Pledged Fee Revenue Fund and the account, if any, in the Debt Service Reserve Fund established with respect to that Series of Bonds, in that order, a sum equal to the deficiency; the effect of this subparagraph (iv) being to ensure that moneys in the Debt Service Fund and the Pledged Fee Revenue Fund be applied equally and ratably to the payment of Bonds, without priority between Series, but that the moneys, if any, in the Debt Service Reserve Fund account established with respect to any Series of Bonds be applied solely to the payment of debt service on the Bonds of that Series.

(c) If at any time the amounts held by the Trustee in the funds established under this **Article VI** are sufficient to pay principal of, premium, if any, and interest on the Bonds then Outstanding to maturity or prior redemption, together with any amounts due the Trustee, the Trustee shall notify the City, and thereafter the Trustee shall apply the amounts in the funds to the payment of the principal of, premium, if any, and interest on the Bonds and any amounts due the Trustee and shall be required to pay over any excess moneys to the City.

Section 6.04 Debt Service Reserve Fund.

(a) There is hereby established a Debt Service Reserve Fund to be maintained in trust by the Trustee. The Supplemental Ordinance providing for the issuance of each Series of Bonds may provide for the establishment of a separate account, if any, within the Debt Service Reserve Fund with respect to the applicable Series of Bonds, and, if so established, shall specify the applicable Debt Service Reserve Fund Requirement with respect to that Series of Bonds. The Debt Service Reserve Fund account established with respect to any Series of Bonds is intended to ensure the timely payment of the principal of and interest on the Bonds of that Series and to provide for the redemption of Bonds of that Series at or prior to their stated maturities. Moneys in the Debt Service Reserve Fund account established with respect to any Series of Bonds shall be used for the following purposes, and the Trustee is authorized to use such moneys for the following purposes, and for no other:

(i) To prevent a Default in the payment of the principal of or interest on the Bonds of that Series, by reason of the fact that moneys in the Debt Service Fund are insufficient for those purposes.

(ii) To pay the principal of, interest on, and redemption premium, if any, of the Bonds of that Series in the event that all Outstanding Bonds of that Series be redeemed as a whole.

(iii) To effect partial redemption of the Bonds of that Series, provided that the redemption be undertaken in accordance with the provisions of the Ordinance permitting a partial redemption of Bonds and the balance remaining in the Debt Service Reserve Fund account following the partial redemption shall not be less than the Debt Service Reserve Fund Requirement, if any, with respect to the Bonds of that Series Outstanding following the partial redemption.

(iv) To effect the retirement of Bonds of that Series through purchase under the conditions herein prescribed.

(v) To pay the final installments of principal and interest of the Bonds of that Series provided that the balance remaining in the Debt Service Reserve Fund account following such payment shall not be less than the Debt Service Reserve Fund Requirement with respect to the Bonds of that Series Outstanding following such payment.

(b) Whenever the market value of the cash and securities in the Debt Service Reserve Fund account established with respect to any Series of Bonds as determined by the Trustee in accordance with **Section 6.13** hereof shall exceed the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds, the excess may be used at the written direction of an Authorized Representative (i) to repurchase and retire Bonds of that Series at prices not exceeding the call price first to become available or then prevailing; (ii) subject to the provisions of paragraph (h) of this **Section 6.04**, transferred to the Debt Service Fund to be applied to the payment of debt service on that Series of Bonds; or (iii) with an approving opinion of Bond Counsel, transferred to the City and applied for any lawful purpose. Purchases

of Bonds shall be effected by the City through the Trustee. Whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Trustee to cancel and destroy those Bonds and to deliver certificates evidencing that act to the City.

(c) Other than as provided in paragraphs (b), (e), (g) and (h) of this **Section 6.04**, withdrawals from the Debt Service Reserve Fund shall be made only to make available to the Trustee the moneys which it requires to effect payment of principal and interest and premium, if any, on the Bonds in accordance with this **Section 6.04**. Withdrawals shall be made not less than one (1) day nor more than five (5) days prior to the occasion when installments of principal and interest and premium, if any, become due or the applicable redemption or Bond purchase date, as applicable.

(d) Whenever the value of cash and securities (or the equivalent security permitted by Supplemental Ordinance) in the Debt Service Reserve Fund account established with respect to any Series of Bonds as determined by the Trustee in accordance with **Section 6.13** hereof shall be less than the Debt Service Reserve Fund Requirement, if any, with respect to that Series of Bonds due to decline in market value or a withdrawal pursuant to **Section 6.04(a)(i)**, there shall be deposited, from the Pledged Fee Revenue Fund after the payments required under **Section 6.03** have been made into the Debt Service Reserve Fund on or before the fifteenth day of each month into the Debt Service Reserve Fund account in an amount which, together with equal, successive, monthly deposits in the same amount, will provide cash and securities in the Debt Service Reserve Fund account of a value not less than the Debt Service Reserve Fund Requirement with respect to that Series within twelve (12) months next succeeding the determination.

(e) In lieu of the deposit of moneys into the Debt Service Reserve Fund account established with respect to any Series of Bonds to meet the Debt Service Reserve Fund Requirement with respect to that Series, the City may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds. The amount of moneys required to be deposited to the Debt Service Reserve Fund account shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any interest payment date on which moneys will be required to be withdrawn from the Debt Service Reserve Fund account and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund account.

(f) If the issuer of a surety bond, insurance policy, or letter of credit on deposit in the Debt Service Reserve Fund shall fail to meet the standard set forth with respect thereto in the Supplemental Ordinance, the City shall use reasonable efforts to replace the surety bond, insurance policy, or letter of credit with one issued by an issuer having a rating as described, but shall not be obligated to pay, or commit to pay, increased fees, expenses, or interest in connection with the replacement or to deposit Pledged Fee Revenues in the Debt Service Reserve Fund in lieu of replacing the surety bond, insurance policy, or letter of credit with another.

(g) If the City obtains a surety bond, insurance policy, or letter of credit after the deposit of moneys to the Debt Service Reserve Fund account established with respect to any Series of Bonds, excess moneys shall be transferred to the Construction Fund established for that Series of Bonds, or if one does not exist, to the Debt Service Fund and applied to pay debt service on that Series of Bonds; provided that, if, in an opinion of Bond Counsel addressed to the Trustee, the excess moneys do not constitute "proceeds" within the meaning of Section 148(d) of the Code, they shall be transferred to the City for use by the City in any lawful purposes.

(h) Earnings on investment of moneys held in the Debt Service Reserve Fund account established with respect to any Series of Bonds, shall be credited to and become a part of such Debt Service Reserve Fund account but whenever the value of the cash and securities in the Debt Service Reserve Fund account exceeds the Debt Service Reserve Fund Requirement with respect to that Series of Bonds, the excess shall be transferred to the Debt Service Fund or at the written direction of an Authorized Representative and with an approving opinion of Bond Counsel be used for any lawful purpose related to the Project; provided, however, that by Supplemental Ordinance authorizing the issuance of any Series of Bonds the City may provide that any excess may, during the construction period of any Project financed by that Series of Bonds, be transferred to the Construction Fund established for that Series of Bonds.

Section 6.05 Establishment of Construction Fund. There shall be created and established with the City or, at the City's option, the Trustee a Construction Fund with respect to each Series of Bonds (other than for Bonds issued to refund any obligations of the City) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the Costs of the Project and Costs of Issuance with respect to the Projects financed.

Section 6.06 Deposits into Construction Fund. On the occasion of the delivery of any Series of Bonds, other than refunding Bonds, such proceeds, as specified in a Supplemental Ordinance, shall be paid into the Construction Fund established for that Series as set forth in a Supplemental Ordinance authorizing their issue.

Section 6.07 Withdrawals from Construction Fund. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing the Construction Fund.

Section 6.08 Transfer of Surplus Construction Fund Moneys. All funds remaining in any Construction Fund established under a Supplemental Ordinance upon completion of the Projects intended to be financed thereby shall be transferred to the Interest Account, Principal Account or Bond Redemption Account of the Debt Service Fund as directed in writing by an Authorized Representative and shall be used only to pay the principal of, premium, if any, and interest on the Bonds or Junior Bonds of the Series issued under the terms of the Supplemental Ordinance or to acquire Outstanding Bonds or Junior Bonds of that Series at a price (exclusive of accrued interest) not exceeding the face amount thereof, or other lawful purpose.

Section 6.09 Investment of Funds.

(a) Any moneys held as part of any fund or account created under the Ordinance shall, at the written direction of and as specified by an Authorized Representative, be invested and reinvested by the Trustee or the Custodian of the fund, as the case may be, in Investment Obligations to the extent practicable. Any investments shall be held by or under the control of the Trustee or the Custodian of the fund, as the case may be, and shall be deemed at all times a part of those funds and the interest accruing thereon and any profit realized from investments shall be credited to the fund, and any loss resulting from investments shall be charged to the fund. The Trustee or the Custodian of the fund, as the case may be, is directed to sell and reduce to cash funds a sufficient amount of investments whenever the cash balance in the fund is insufficient to make any necessary transfers or withdrawals from the fund.

(b) No Investment Obligation in any fund or account may mature beyond the latest maturity date of any Bonds Outstanding at the time the Investment Obligation is deposited.

(c) An Authorized Representative may at any time give to the Trustee or the Custodian of the fund, as the case may be, written directions respecting the investment of any moneys required to be invested hereunder subject however to the provisions of this **Section 6.09** and the Trustee or the Custodian of the fund, as the case may be, shall then invest the money under this **Section 6.09** as so directed by an Authorized Representative. The Trustee or the Custodian of the fund, as the case may be, may request in writing direction or authorization of an Authorized Representative with respect to the proposed investment of money under the provisions of the Ordinance. Upon receipt of any request accompanied by a memorandum setting forth details of any proposed investment, an Authorized Representative will either approve the proposed investment or will give written directions to the Trustee or the Custodian of the fund, as the case may be, respecting the investment of the money and in the case of the directions, the Trustee or the Custodian of the fund, as the case may be, shall then, subject to the provisions of this **Section 6.09**, invest the money in accordance with the directions.

(d) An Authorized Representative may enter into or direct the Trustee or the Custodian, as the case may be, to enter into financial product agreements with respect to the Construction Fund, the Debt Service Fund, the Junior Bond Debt Service Fund and the Debt Service Reserve Fund provided the proceeds thereof are used for Project Costs; and provided, such financial product agreements must be in form and content acceptable to the Trustee or the Custodian, as the case may be in their sole discretion and the Trustee or the Custodian, as the case may be, may charge reasonable additional legal fees in connection therewith.

Section 6.10 Trustee's and Custodian's Own Bond Department. Subject to **Section 6.09(a)**, the Trustee and any Custodian may make any and all investments permitted under **Section 6.09** through their respective bond departments.

Section 6.11 Trustee's and Custodian's Right to Rely. The Trustee and any Custodian may conclusively rely upon any investment directions given by an Authorized Representative within the limitations set forth hereinabove received pursuant to this **Article VI** and shall not be liable or responsible for (a) any diminution in the value of any investments made pursuant to this **Article VI** or for any loss arising from any sale or other disposition thereof, (b) any violation of any statute or of any policy or rules or regulations of or applicable to the City or of the Internal Revenue Service with respect to "arbitrage bonds," or (c) any requirement to rebate excess earnings earned on any funds established hereunder as provided under the Code.

Section 6.12 Pooled Investment of Moneys Held in Funds. The moneys in the funds established under the Ordinance may be pooled with each other for investment purposes.

Section 6.13 Valuation.

(a) For the purpose of determining the amount on deposit in any fund or account, Investment Obligations in which money in the fund or account is invested shall be valued at the market value of the obligations.

(b) The Trustee shall value the Investment Obligations in the funds and accounts held by the Trustee established under the Ordinance as of each June 30, within 45 days of that date. The City shall value the Investment Obligations in all other funds and accounts established under the Ordinance as of each June 30, within 45 days of that date. In addition, the Investment Obligations held by the Trustee shall be valued by the Trustee at any time requested by the City on reasonable notice to the Trustee; provided, however, that the Trustee shall not be required to value the Investment Obligations more than once in any calendar quarter.

(c) Notwithstanding the above provisions of this **Section 6.13**, Investment Obligations on deposit in the Debt Service Reserve Fund shall be valued on the beginning of each calendar quarter at the market value thereof.

(d) For purposes of any valuation hereunder, the value of any surety bond, insurance policy, or letter of credit credited to the Debt Service Reserve Fund shall be the amount available to the Trustee or other beneficiary under the instrument as of the time of the calculation.

Section 6.14 Tax Covenant. No investment shall be made by the City of any of the funds set forth above which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code; provided, however, that this **Section 6.14** shall not prohibit the issuance of Bonds which are subject to federal income taxation upon their original issuance.

[End of Article VI]

ARTICLE VII

TRUSTEE AND CUSTODIANS

Section 7.01 **Appointment of Trustee.**

Upon the appointment of a Trustee, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by this Ordinance by executing and delivering to the City a written instrument of acceptance upon which the Trust Estate shall be vested in the Trustee.

The Trustee, including any successor Trustee shall, at the time of appointment, be a bank or trust company which is a member of the Federal Reserve System with a capital stock, surplus and undivided profits aggregating in excess of Five Hundred Million Dollars (\$500,000,000).

Section 7.02 **Duties and Obligations of the Trustee.** Prior to the occurrence of any Event of Default and after the curing of all such Events of Default that may have occurred, the Trustee shall perform such duties and only such duties of the Trustee as are specifically set forth in this Ordinance and no implied covenants or obligations shall be read into this Ordinance against the Trustee. Upon the occurrence and continuance of an Event of Default of which the Trustee is deemed to have knowledge, the Trustee shall use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The duties and obligations of the Trustee are further subject to the following terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay reasonable compensation to all attorneys, agents, receivers, and employees as may be reasonably employed in connection with the trusts hereof. The Trustee shall not be responsible for any misconduct or negligence of any agent or attorney appointed with due care by the Trustee. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the City) except that with respect to matters involving the exemption from federal income taxes of the interest on the Bonds, any attorneys shall be Bond Counsel. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon the opinion or advice.

(b) The Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the authentication certificate of the Trustee endorsed on the Bonds), or for the validity of the enactment by the Council of the Ordinance or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the City, except as herein expressly set forth; but the Trustee may require of the City full information and advice as to the performance of the covenants, conditions, and agreements aforesaid and as to the condition of the property conveyed hereby. The Trustee makes no representations as to the technical or financial feasibility of the Project, the compliance of the Project with the Enabling Act, or the tax-exempt status of the Bonds. The Trustee is not accountable for the use or application by the Borrower of any of the Bonds or the proceeds of the Bonds, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Ordinance.

(c) The Trustee may become the owner of Bonds, secured hereby with the same rights which it would have were it not Trustee. The Trustee may also engage in or be interested in any financial or other transaction with the City.

(d) The Trustee shall be protected in acting under the Ordinance upon any notice, request, consent, certificate, order, affidavit, letter, telegram, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to the Ordinance upon the request or authority or consent of any person who at the time of making the request or giving the authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and of Bonds issued in exchange therefor or in place thereof, regardless of whether or not any notation of making the request or giving the authority or consent is made on the Bond.

(e) As to the existence or non-existence of any act or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the City by an Authorized Representative as sufficient evidence of the facts therein contained and prior to the occurrence of a Default of which the Trustee has been notified as provided in subsection (g) of this **Section 7.02**, or of which by that subsection it is deemed to have notice, may also accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may, at its discretion, obtain any further evidence deemed necessary or advisable, but shall in no case be bound to obtain it. The Trustee may accept a certificate of the Clerk to the effect that an Ordinance in the form therein set forth has been enacted by the Council as conclusive evidence that the Ordinance has been duly enacted and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in the Ordinance shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful default.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any Default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made by **Article VI** hereof, unless the Trustee shall be specifically notified in writing of the Default by the City, or by the Holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding and all notices or other instruments required by the Ordinance to be delivered to the Trustee, must, in order to be effective, be delivered at the principal corporate trust office of the Trustee or at any other address as set forth in a Supplemental Ordinance, and in the absence of notice delivered, the Trustee may conclusively assume there is no Default except as aforesaid.

(h) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives, shall have the right fully to inspect any and all Projects, including all books, papers, and records of the City pertaining to the Bonds, and to make copies and take any memoranda from and in regard thereto as may be desired.

(i) The Trustee shall not be required to give any bond or surety in respect to the execution of the trusts and powers or otherwise in respect of the premises.

(j) Before taking any action hereunder, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

(k) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law or by the Ordinance. The Trustee shall be under no liability for interest on any moneys received hereunder except as may be agreed upon.

(l) The Trustee is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Bondholders under any provision of this Ordinance relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Ordinance.

(m) Whenever in the administration of this Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of an Authorized Representative.

(n) The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any ordinance, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document.

(o) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(p) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Ordinance and final payment of the Bonds.

(q) Except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(r) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(s) Whether or not expressly so provided, every provision of this Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this **Section 7.02**.

Section 7.03 Fees, Charges, and Expenses of Trustee. The Trustee shall be entitled to payment or reimbursement for reasonable fees for its services rendered hereunder, and all advances, counsel fees, and other expenses reasonably and necessarily made or incurred by the Trustee in connection with its services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefor, and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided, that if extraordinary services or extraordinary expenses are occasioned by the willful neglect or default of the Trustee, it shall not be entitled to compensation or reimbursement therefor.

In the event the Trustee incurs expenses or renders services in any proceedings under the Bankruptcy Code relating to the City, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the Bankruptcy Code.

As security for the performance of the obligations of the City under this **Section 7.03**, the Trustee shall have a lien, which it may exercise through a right of set off, prior to the Bonds upon all property or funds held or collected by the Trustee pursuant to this Ordinance for the payment of principal of, redemption premium, if any, and interest on the Bonds. The obligations of the City to make the payments described in this **Section 7.03** shall survive discharge of this Ordinance and payment in full of the Bonds.

Section 7.04 **Notice to Bondholders if Default Occurs.** If a Default occurs of which the Trustee is by **Section 7.02(g)** hereof required to take notice or if notice of Default be given as in **Section 7.02(g)** provided, then the Trustee shall give such notice to the City and the Trustee may give written notice thereof by first-class mail to the last known Holders of all Bonds then Outstanding shown by the Books of Registry.

Section 7.05 **Intervention by Trustee.** In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondholders, the Trustee may intervene on behalf of the Bondholders and shall do so if requested in writing by the Holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding. The rights and obligations of the Trustee under this **Section 7.05** are subject to the approval of a court of competent jurisdiction.

Section 7.06 **Merger or Consolidation of Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any conversion, sale, merger, consolidation, or transfer to which it is a party, *ipso facto*, subject to the approval of the City, shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed, or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 7.07 **Resignation by the Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving ninety (90) days written notice to the City, and by first-class mail to each Holder of Bonds then Outstanding shown by the Books of Registry, and the resignation shall take effect upon the appointment of a successor Trustee or successor temporary Trustee by the Bondholders or by the City. The notice to the City may be served personally or sent by registered or certified mail.

Section 7.08 **Removal of the Trustee.** The Trustee may be removed at any time after thirty (30) days' notice either (a) by an instrument or concurrent instruments in writing delivered to the Trustee and to the City and signed by the Holders of a majority in aggregate principal amount of all Bonds then Outstanding, or (b) unless a Default has occurred and is continuing, by written direction of an Authorized Representative of the City delivered to the Trustee.

Section 7.09 **Appointment of Successor Trustee by the City or the Bondholders.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed (a) by the City so long as the Bonds are not in Default, or (b) by the Holders of a majority in

aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by the Holders, or by their attorneys in fact, duly authorized. Every Trustee appointed pursuant to the provisions of this **Section 7.09** must meet all the requirements of **Section 7.01** hereof.

Section 7.10 Concerning Any Successor Trustee.

(a) Upon acceptance of appointment by the successor Trustee as provided in this **Section 7.10**, the City shall give notice of the succession of the Trustee to the trusts hereunder by first-class mail to the Holders at the addresses shown on the Books of Registry. Each Trustee appointed hereunder shall signify its acceptance of the duties and obligations imposed upon it by the Ordinance as Trustee by executing and delivering to the City a written acceptance of its duties and obligations.

(b) Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor and also to the City an instrument in writing accepting appointment hereunder, and thereupon the successor, without any further act, deed, or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties, and obligations of its predecessor; but the predecessor shall, nevertheless, on the written request of the City, or of its successor, and upon payment of all amounts due the predecessor pursuant to **Section 7.03** hereof, execute and deliver an instrument transferring to the successor Trustee all the estates, properties, rights, powers, and trusts of the predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in the successor the estate, rights, powers, and duties hereby vested or intended to be vested in the predecessor, any instruments in writing, shall, on request, be executed, acknowledged, and delivered by the City. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this **Article VII**, shall be filed or recorded by the successor Trustee in each recording office where the Ordinance shall have been filed or recorded.

Section 7.11 Trustee Protected in Relying upon Ordinances, Etc. The ordinances, resolutions, opinions, certificates, and other instruments provided for in the Ordinance may be accepted by the Trustee as conclusive evidence of the acts and conclusions stated therein and shall be full warrant, protection, and authority to the Trustee for the release of property, the withdrawal of cash, and the taking or refusing to take any other action hereunder.

Section 7.12 Successor Trustee as Trustee of Funds, Paying Agent, and Bond Registrar. In the event of a change in the office of Trustee, the predecessor Trustee which has resigned or has been removed shall cease to be trustee of the fund of which it is trustee, and paying agent for principal of and interest and premium, if any, on the Bonds and bond registrar, and the successor Trustee shall become such trustee, paying agent, and registrar, as the case may be.

Section 7.13 Trust Estate May Be Vested in Separate or Co-Trustee.

(a) It is the purpose of the Ordinance that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in those jurisdictions. It is recognized that in case of litigation under the Ordinance, and, in particular, in case of the enforcement of either on Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights, or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional institution which warrants all of the requirements of **Section 7.01** hereof as a co-trustee. The following provisions of this **Section 7.13** are adopted to these ends.

(b) In the event that the Trustee appoints an additional institution as a co-trustee (and the Trustee is hereby expressly granted that power), each and every remedy, power, right, claim, demand, cause of action, immunity, and estate expressed or intended by the Ordinance to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in the co-trustee but only to the extent necessary to enable the co-trustee to exercise the powers, rights, and remedies, and every covenant and obligation necessary to the exercise thereof by the co-trustee shall run to and be enforceable by either of them.

(c) Should any instrument in writing from the City be required by the co-trustee appointed by the Trustee for more fully and certainly vesting in and confirming to it the properties, rights, powers, trusts, duties, and obligations, any instruments in writing shall, on request, be executed, acknowledged, and delivered by the City. In case any co-trustee, or a successor to any, shall dissolve, become incapable of acting, resign, or be removed, all the estates, properties, rights, powers, trusts, duties, and obligations of the co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment as herein set forth of a new trustee or successor to the co-trustee.

Section 7.14 Appointment of Custodians. The Council may appoint a bank, trust company, national banking association, or national association as Custodian of the Pledged Fee Revenue Fund, if any, and the Custodian shall signify its acceptance of the powers, duties, and obligations conferred and imposed upon it by the Ordinance by executing and delivering to the City a written acceptance thereof.

Section 7.15 Duties and Obligations of Custodians. The recitals of fact made in the Ordinance and in the Bonds shall be taken as statements of the City, and no Custodian shall be deemed to have made any representation as to their correctness, nor shall any Custodian be deemed to have made any representation whatsoever as to the validity or sufficiency of the Ordinance or of the Bonds issued hereunder, nor shall any Custodian be under any responsibility or duty with respect to the issuance of the Bonds or the application of the proceeds thereof, except to the extent provided for herein, nor shall any Custodian be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in response to the Ordinance, or the Bonds issued hereunder, or to advance any of its own moneys, unless properly indemnified to its satisfaction, nor shall any Custodian be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default.

Section 7.16 Custodians Protected in Relying Upon Ordinances, Etc. All Custodians shall at all times be protected in acting upon any action, ordinance, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

Section 7.17 Resignation of Custodians. Any Custodian may at any time resign and be discharged of its duties and obligations hereunder by giving to the City written notice of such resignation, specifying a date (not less than ninety (90) days after the notice) when the resignation shall take effect, and by written notice thereof to the Trustee. The resignation shall take effect upon the date specified in the notice unless previously a successor shall have been appointed, as hereinafter provided, in which event, the resignation shall take effect immediately upon the appointment and qualification of the successor.

Section 7.18 Removal of Custodians. Any Custodian may be removed at any time by the City or by the Holders of not less than fifty percent (50%) of the principal amount of the Bonds at that time Outstanding. In the event any Custodian is removed pursuant to the provisions of this **Section 7.18**, notice thereof shall be given by the City to the Trustee.

Section 7.19 Appointment of Successor Custodians.

(a) In case any Custodian shall resign or be removed or become incapable of acting, or be adjudged bankrupt or insolvent, or a receiver of its property shall be appointed, or any public officer shall take charge or control of its property or affairs, a successor thereto shall be promptly appointed by the City. The successor shall, in all instances, be a bank, trust company, national banking association, or a national association, and shall have a combined capital and surplus of not less than \$100,000,000.

(b) Immediately following the appointment, the City shall give written notice of the appointment to the Trustee.

(c) If, in a proper case, no appointment of a successor Custodian shall be promptly made pursuant to paragraph (a) above, any Bondholder may make application to any court of competent jurisdiction for the appointment of a successor and the court may thereupon, after any notice as the court may prescribe, appoint a successor.

Section 7.20 Concerning Any Successor Custodians. Any successor Custodian appointed as provided hereunder shall execute and deliver to its predecessor, the Trustee and the City a written acceptance of appointment and, thereupon, the successor, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties, and obligations of its predecessor hereunder, with the same effect as if originally named as Custodian, and its predecessor shall be obligated to pay over, transfer, assign, and deliver all moneys, securities, or other property held by it to its successor, and, on the written request of the City, the Trustee, or the successor, shall execute, acknowledge, and deliver all instruments of conveyance and further assurance and do all other things as may be reasonably required for the vesting and confirming in the successor all the right, title, and interest of the predecessor in and to any property held by it.

Section 7.21 Merger of Custodians. Any bank or trust company into which any Custodian may be merged or with which it may be consolidated, or any bank or trust company resulting from any merger or consolidation to which it shall be a party, or any bank or trust company to which any Custodian may sell or transfer all or substantially all of its business, if the City approves, shall become the successor without the execution or filing of any paper or the performance of any other act.

[End of Article VII]

ARTICLE VIII

COVENANTS

Section 8.01 Condition of City's Obligation; Payment of Principal and Interest.

(a) Each and every covenant herein made, including all covenants made in the various sections of this **Article VIII**, is predicated upon the condition that any obligation for the payment of money incurred by the City shall not create a pecuniary liability of the City or a charge upon its general credit, but shall be payable solely from the Pledged Fee Revenues which are required to be set apart and transferred to the Debt Service Fund and the Debt Service Reserve Fund, which Pledged Fee Revenues are hereby specifically pledged to the payment thereof in the manner and to the extent in the Ordinance specified and nothing in the Bonds or in the Ordinance shall be considered as pledging any other funds or assets of the City other than the Trust Estate.

(b) The Bonds, together with interest thereon, shall be limited obligations of the City payable solely from the Trust Estate which includes the Pledged Fee Revenues required to be set apart and transferred to the Pledged Fee Revenue Fund for deposit to the Debt Service Fund and the Debt Service Reserve Fund, if any, and shall be a valid claim of the respective Holders thereof only against the Trust Estate to the extent provided in paragraph (a) of this **Section 8.01**. The Trust Estate is hereby pledged and assigned for the equal and ratable payment of the Bonds and shall be used for no other purposes than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly authorized in the Ordinance. The Bonds do not now and shall never constitute an indebtedness of the City within the meaning of any state constitutional provision or statutory limitation (other than Article X, Section 14, Paragraph 10 of the State Constitution authorizing obligations of political subdivisions payable solely from special sources not involving revenue from any tax or license), and shall never constitute nor give rise to a pecuniary liability of the City or a charge against the general credit or taxing powers of the City, the State or any of its agencies or political subdivisions. No recourse shall be had for the payment of the Bonds, or interest thereon, or any part thereof, against the several funds of the City, except from the Trust Estate in the manner and to the extent provided in the Ordinance. The Bonds, and interest thereon, shall not be a charge, lien, or encumbrance, legal or equitable, upon any property of the City or upon any income, receipts, or revenues of the City other than the Trust Estate that have been pledged to the payment thereof.

Section 8.02 Performance of Covenants; Authority of the City. The City covenants that it will faithfully perform at all times all covenants, undertakings, stipulations and provisions contained in the Enabling Act, in the Ordinance, in the Bonds executed, authenticated, and delivered hereunder, and in all proceedings pertaining thereto. The City covenants that it is duly authorized under the Constitution and laws of the State to issue the Bonds authorized hereby, to enact the Ordinance, and to pledge the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the enactment of the Ordinance has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 8.03 Instruments of Further Assurance. The City covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all Ordinances supplemental hereto and all further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning, and confirming unto the Trustee all and singular the Trust Estate pledged hereby to the payment of the principal of and interest and premium, if any, on the Bonds.

Section 8.04 **Inspection of Pledged Fee Revenues and Projects.** The City covenants and agrees that all books and documents in its possession relating to the Trust Estate and Projects shall at all times be open to inspection during normal business hours by any accountants or other agents as the Trustee may from time to time designate.

Section 8.05 **Fiscal Year.** Until changed to a different twelve-month period by the Council or by law, the City shall be operated on the basis of a Fiscal Year, which commences on the first day of July of each year and ends on the 30th day of June of the following year.

Section 8.06 **Annual Audited Financial Statements and Certificates.** The City shall provide the Trustee within two hundred ten (210) days after the close of the Fiscal Year a copy of its audited financial statements during the Fiscal Year. The audited financial statements shall be accompanied by a certificate of an Authorized Representative stating that the City is not in Default hereunder or describing the nature of any Default.

The City shall provide on an annual basis with the audited financial statements required above a certificate as to an Authorized Representative of the City. The Trustee may rely conclusively on any opinions and certificates delivered pursuant to this **Section 8.06**.

[End of Article VIII]

ARTICLE IX

DEFEASANCE OF BONDS

Section 9.01 **Defeasance of Bonds.**

(a) If all of the Bonds issued pursuant to the Ordinance shall have been paid and discharged, then the obligations of the City under the Ordinance, the pledge of the Trust Estate made hereby, and all other rights granted hereby shall cease and determine. Bonds shall be deemed to have been paid and discharged within the meaning of this **Article IX** under each of the following circumstances:

(i) If the Trustee shall hold, at the stated maturities of the Bonds, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or

(ii) If Default in the payment of the principal of the Bonds or the interest thereon shall have occurred, and thereafter tender of payment shall have been made, and the Trustee shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of the payment; or

(iii) If the City shall elect to redeem Bonds prior to their stated maturities, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided by **Section 5.03** hereof, and shall have deposited with an escrow agent, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America or other Investment Obligations, which are not subject to redemption by the issuer thereof prior to the date of redemption of the Bonds to be defeased, the principal of and interest on which, when due, will provide moneys, which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium or premiums, if any, due and to become due on and prior to the redemption date or dates, as the case may be; or

(iv) If there shall have been deposited with an escrow agent, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on the Bonds on the maturity thereof.

(b) In addition to the above requirements of paragraphs (i), (ii), (iii), or (iv) of subsection (a), in order for this Ordinance to be discharged, all other fees, expenses, and charges of the Trustee have been paid in full at that time.

Section 9.02 **Deposit of Moneys.** Any moneys which at any time shall be deposited with the Trustee or escrow agent by or on behalf of the City for the purpose of paying and discharging any Bonds shall be and are hereby assigned, transferred, and set over to the Trustee or the escrow agent in trust for the respective Holders of the Bonds, and the moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the Holders of the Bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Trustee or escrow agent to deposit the funds in the Pledged Fee Revenue Fund.

Section 9.03 **Election to Redeem Bonds.** The City covenants and agrees that any moneys which it shall deposit with the Trustee or escrow agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this **Article IX**, and whenever it shall have elected to

redeem Bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Trustee to cause notice of redemption to be given in its name and on its behalf.

[End of Article IX]

ARTICLE X

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 10.01 Events of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an “*Event of Default*” or “*Default*”:

- (a) Failure to pay when due any interest on any Bond; or
- (b) Failure to pay when due the principal of any Bond (or premium, if any), whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon any mandatory redemption date; or
- (c) Subject to the provisions of **Section 10.10**, failure in the performance or observance of any other of the covenants, agreements, or conditions on the part of the City in the Ordinance or in the Bonds contained; or
- (d) If a court having jurisdiction over the premises shall enter a decree or order for relief in respect of the City in an involuntary case under any applicable bankruptcy, insolvency, reorganization, or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of the City or for any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days; or
- (e) If the City shall commence a voluntary case under any applicable bankruptcy, insolvency, reorganization, or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of the City or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, shall admit in writing its inability to pay its debts that become due, or shall take any action in furtherance of any of the foregoing.

Section 10.02 Acceleration. Except as otherwise provided with respect to any Series of Bonds in the Supplemental Ordinance authorizing their issuance, upon the occurrence of an Event of Default, the Trustee may, and upon the written request of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the City, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and the principal and interest shall thereupon become and be immediately due and payable.

Section 10.03 Additional Remedies.

(a) Upon the happening and continuance of any Event of Default, the Trustee may, and upon the written request to the Trustee of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding shall, take one or more of the following actions as it may deem advisable:

- (i) By mandamus or other suit, action, or proceedings at law or in equity, enforce the rights of the Bondholders against the City, and any of its officers, agents, and employees, and require and compel the City, or any officer, agent, or employee to perform and carry out its or his duties and obligations under the Enabling Act and the Ordinance and its or his covenants or agreements with the Bondholders;

(ii) By action or suit in equity, require the City and the Council to account as if they were the trustee of an express trust;

(iii) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; and

(iv) Bring suit upon the Bonds.

(b) Upon the occurrence of an Event of Default, the Trustee shall have the power to proceed with any right or remedy granted by the Constitution and laws of the State, as it may deem best, including any suit, action, or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law. The rights herein specified are to be cumulative to all other available rights, remedies, or powers and shall not exclude any such rights, remedies, or powers.

Section 10.04 Rights of Bondholders.

(a) If an Event of Default shall have occurred, and if requested to do so by the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding, and if indemnified as provided in **Section 7.02(j)** hereof, the Trustee shall be obliged to exercise one or more of the rights and powers conferred by this **Article X** as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bondholders.

(b) No remedy by the terms of the Ordinance conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

(c) No delay or omission in exercising any right or power accruing upon any Default or Event of Default shall impair any right or power or shall be construed to be a waiver of any Default or Event of Default or acquiescence therein and every right and power may be exercised from time to time and as often as may be deemed expedient.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 10.05 Application of Moneys.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this **Article X** shall, after payment of the costs and expenses of the proceedings resulting in the collection of the moneys and of the expenses, liabilities, and advances incurred or made by the Trustee, be deposited in the Debt Service Fund and all moneys in the Debt Service Fund shall be applied as follows:

First – To the payment of the persons entitled thereto of all installments of interest then due on the Bonds exclusive of Junior Bonds, in the order of the maturity of the installments of interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due

on that installment, to the persons entitled thereto, without any discrimination or privilege; and

Second – To the payment of the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds exclusive of Junior Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of the Ordinance), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full principal of and premium, if any, on the Bonds due on any particular date, then to the payment ratably, according to the amount of the principal and premium, if any, due on such date, to the persons entitled thereto without any discrimination or privilege; and

Third – To the payment to the persons entitled thereto of interest at the rate of interest borne by the Bonds on all past due installments of principal and interest from their respective due dates and, if the amount available shall not be sufficient to pay in full the whole amount of interest so due, then to the payment ratably, according to the amount of interest then due, to the persons entitled thereto without any discrimination or privilege and without any distinction between interest on past due interest and interest on past due principal.

After payment of all amounts provided above, any amounts in the Junior Bond Debt Service Fund shall be applied in the same order as above but only to the Holders of Junior Bonds.

(b) Whenever moneys are to be applied pursuant to the provisions of this **Section 10.05**, the moneys shall be applied at the times, and from time to time, as the Trustee shall determine, having due regard to the amount of moneys available for application in the future. Whenever the Trustee shall apply funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which application is to be made and upon that date interest on the amounts of principal to be paid on that date shall cease to accrue. The Trustee shall give notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any date, and shall not be required to make payment to the Holder of any Bond until it shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

(c) Whenever all principal of, premium, if any, and interest on all Bonds have been paid under the provisions of this **Section 10.05** and all expenses and charges of the Trustee shall have been paid, any balance remaining in the Debt Service Fund shall be paid to the City.

Section 10.06 Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under the Ordinance or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall be for the equal benefit of the Holders of the Bonds then Outstanding.

Section 10.07 Rights and Remedies of Bondholders. No Bondholder shall have the right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Ordinance or for the execution of any trust hereof or for the appointment of a receiver or for any other remedy hereunder, unless all of the following conditions have first been satisfied: (i) a Default has occurred of which the Trustee has been notified as provided in **Section 7.02(g)** hereof, or of which by that subsection it is deemed to have notice, (ii) the Default or Event of Default shall occur and the Holders of at least fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding shall have made written request

to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute action, suit, or proceeding in its own name, (iii) the Trustee has been offered indemnity as provided in **Section 7.02(j)** hereof, and (iv) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its, his, or their own name or names; and the notification, request, and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of the Ordinance, and to any action or cause of action for the enforcement of this Ordinance, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of the Ordinance by its, his, or their action or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds then Outstanding. Nothing in the Ordinance contained shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on any Bond at and after the maturity thereof, or the obligation of the City to pay, but only from the Trust Estate, the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Holders thereof at the time, place, from the source, and in the manner provided in the Bonds.

Section 10.08 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under the Ordinance by the appointment of a receiver, by entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then the City and the Trustee shall be restored to their former positions and rights hereunder, and all rights and remedies and powers of the Trustee shall continue as if no proceedings had been taken.

Section 10.09 Waivers of Events of Default. The Trustee may and shall waive any Event of Default hereunder and its consequences upon the written request of the Holders of a majority in aggregate principal amount of all Bonds then Outstanding; provided, however, that there shall not be waived any Default in the payment of (i) the principal of or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or (ii) any interest when due on any Bond, unless prior to the waiver, all arrears of interest, with interest at the rate of interest borne by the Bonds on overdue installments of interest, and all arrears of payments of principal then due (whether at the stated maturity thereof or upon proceedings for redemption) with interest as aforesaid on the arrears, and all expenses of the Trustee in connection with the Default shall have been paid or provided for, and in case of any waiver, or in case any proceeding taken by the Trustee on account of any Default shall have been discontinued or abandoned or determined adversely, then the City, the Trustee, and the Bondholders shall be restored to their former positions and rights hereunder respectively, but no waiver shall extend to any subsequent or other Default, or impair any right consequent thereon.

Section 10.10 Notice of Defaults; Opportunity of the City to Cure Defaults. No event under **Section 10.01(c)** hereof shall constitute an Event of Default until actual notice of the Default by registered or certified mail shall be given by the Trustee or by the Holders of not less than fifty-one percent (51%) of the aggregate principal amount of Bonds then Outstanding to the City, and the City shall have had thirty (30) days after receipt of the notice to correct the Default or cause it to be corrected, and shall not have corrected it or caused it to be corrected within the applicable period; provided, however, if the Default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the City as the case may be, within the applicable period, is diligently pursued, and the Default is corrected within ninety (90) days after the notice hereinabove specified has been received.

Section 10.11 Bond Insurer Acts in Lieu of Holders. If a bond insurer insures a particular Series of Bonds, then such bond insurer will act in lieu of the bondholders of such Series of Bonds for all

purposes hereunder, so long as the bond insurance policy insuring such Series of Bonds is in full force and effect and such bond insurer is not in payment default thereunder.

[End of Article X]

ARTICLE XI

AMENDING AND SUPPLEMENTING OF ORDINANCE

Section 11.01 Amending and Supplementing of Ordinance Without Consent of Holders of Bonds.

(a) The Council, from time to time and at any time and without the consent or concurrence of any Holder of any Bond, may enact an Ordinance amendatory hereof or supplemental thereto (i) for the purpose of providing for the issuance of Bonds or Junior Bonds pursuant to the provisions of **Article III** hereof, or (ii) if the provisions of the Supplemental Ordinance shall not materially adversely affect the rights of the Holders of the Bonds then Outstanding, for any one or more of the following purposes:

(1) To make any changes or corrections in the Ordinance as to which the City and the Trustee shall have been advised by counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or omission or mistake or manifest error contained in the Ordinance, or to insert in the Ordinance provisions clarifying matters or questions arising under the Ordinance as are necessary or desirable;

(2) To add additional covenants and agreements of the City for the purpose of further securing the payment of the Bonds;

(3) To surrender any right, power, or privilege reserved to or conferred upon the City by the terms of the Ordinance;

(4) To confirm as further assurance any lien, pledge, or charge or the subjection of the Trust Estate to any lien, pledge, or charge, created or to be created by the provisions of the Ordinance;

(5) To grant or confer upon the Bondholders any additional right, remedies, powers, authority, or security that lawfully may be granted to or conferred upon them, or to grant to or to confer upon the Trustee for the benefit of the Holders of the Bonds any additional rights, duties, remedies, powers, authority, or security;

(6) To modify any of the provisions of the Ordinance in any other respects provided that the modification shall not be effective until after the Bonds Outstanding at the time the Supplemental Ordinance is enacted shall cease to be Outstanding, or until the Holders thereof consent thereto pursuant to **Section 11.02** hereof, and any Bonds issued subsequent to any modification shall contain a specific reference to the modifications contained in the Supplemental Ordinance; and

(7) To make such additions, deletions or modifications as may be necessary to assure compliance with Section 148(f) of the Code relating to required rebate to the United States of America or otherwise as may be necessary to assure exemption from federal income taxation of interest on the Bonds.

(b) Except for Supplemental Ordinances providing for the issuance of Bonds or Junior Bonds pursuant hereto, the City shall not enact any Supplemental Ordinance authorized by the foregoing provisions of this **Section 11.01** unless in the opinion of counsel addressed to the Trustee and the City (which opinion may be combined with the opinion required by **Section 11.04** hereof) the enactment of the Supplemental Ordinance is permitted by the foregoing provisions of this **Section 11.01** and the provisions

of the Supplemental Ordinance do not adversely affect the rights of the Holders of the Bonds then Outstanding and will not affect any Bonds then Outstanding, the interest on which is not subject to federal or State income taxation.

Section 11.02 Amending and Supplementing of Ordinance With Consent of Holders of Bonds.

(a) With the consent of the Holders of not less than a majority in principal amount of the Bonds then Outstanding, the Council from time to time and at any time may enact an Ordinance amendatory hereof or supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, the Ordinance, or modifying or amending the rights and obligations of the City under the Ordinance, or modifying or amending in any manner the rights of the Holders of the Bonds then Outstanding; provided, however, that, without the specific consent of the Holder of each Bond which would be affected thereby, no Supplemental Ordinance amending or supplementing the provisions hereof or thereof shall: (i) change the fixed maturity date of any Bond or the dates for the payment of interest thereon or the terms of the redemption thereof, or reduce the principal amount of any Bond or the rate of interest thereon or the redemption price (or the redemption premium) payable upon the redemption or prepayment thereof; (ii) reduce the aforesaid percentage of Bonds, the Holders of which are required to consent to any Supplemental Ordinance amending or supplementing the provisions of the Ordinance; (iii) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby other than authorized Series with respect to Junior Bonds; (iv) authorize the creation of any pledge of the Trust Estate, prior, superior, or equal to the pledge of and lien and charge thereon created herein for the payment of the Bonds; or (v) deprive any Holder of the Bonds of the lien on the Trust Estate afforded by the Ordinance. Nothing in this paragraph contained, however, shall be construed as making necessary the approval of the Holders of the Bonds of the enactment of any Supplemental Ordinance authorized by the provisions of **Section 11.01** hereof.

(b) It shall not be necessary that the consents of the Holders of the Bonds approve the particular form of wording of the proposed amendment or supplement or of the Supplemental Ordinance effecting the amending or supplementing hereof pursuant to this **Section 11.02**. The City shall mail a notice at least once, not more than thirty (30) days after the effective date of any amendment or supplement, of the amendment or supplement postage prepaid, to each Holder of Bonds then Outstanding at his address appearing upon the Books of Registry and to the Trustee, but failure to mail copies of the notice to any of the Holders shall not affect the validity of the Supplemental Ordinance effecting the amendments or supplements or the consents thereto. Nothing in this paragraph contained, however, shall be construed as requiring the giving of notice of any amendment or supplement of the Ordinance authorized by **Section 11.01** hereof. No action or proceeding to set aside or invalidate any Supplemental Ordinance or any of the proceedings for its enactment shall be instituted or maintained unless the action or proceeding is commenced within sixty (60) days after the mailing of the notice required by this paragraph.

(c) The City shall not enact any Supplemental Ordinance authorized by the foregoing provisions of this **Section 11.02** unless in the opinion of counsel addressed to the Trustee, if any, and the City (which opinion may be combined with the opinion required by **Section 11.04** hereof) the enactment of the Supplemental Ordinance is permitted by the foregoing provisions of this **Section 11.02** and the provisions of the Supplemental Ordinance do not adversely affect the rights of the Holders of the Bonds then Outstanding and will not affect the Bonds then Outstanding, the interest on which is not subject to federal or State income taxation.

Section 11.03 Notation Upon Bonds; New Bonds Issued Upon Amendments. Bonds delivered after the effective date of any action taken as provided in this **Article XI** may bear a notation as

to the action, by endorsement or otherwise and in form approved by the City. In that case, upon demand of the Holder of any Bond Outstanding after the effective date and upon the presentation of the Bond for that purpose at the office of the Trustee, a suitable notation shall be made on the Bond. If the City shall determine, new Bonds, modified as in the opinion of the City upon the advice of counsel to conform to the amendments or supplements made pursuant to this **Article XI**, shall be prepared, executed, and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged without cost to the Holder for Bonds then Outstanding, upon surrender of the Outstanding Bonds.

Section 11.04 Effectiveness of Supplemental Ordinance. Upon the enactment (pursuant to this **Article XI** and applicable law) by the Council of any Supplemental Ordinance amending or supplementing the provisions of the Ordinance and the delivery to the Trustee of an opinion of Bond Counsel that the Supplemental Ordinance is in due form and has been duly enacted in accordance with the provisions hereof and applicable law and that the provisions thereof are valid and binding upon the City, or upon any later date as may be specified in the Supplemental Ordinance, (a) the Ordinance and the Bonds shall be modified and amended in accordance with the Supplemental Ordinance, (b) the respective rights, limitations of rights, obligations, duties, and immunities under the Ordinance of the City, the Trustee, and the Holders of the Bonds shall thereafter be determined, exercised, and enforced under the Ordinance subject in all respects to the modifications and amendments, and (c) all of the terms and conditions of any Supplemental Ordinance shall be a part of the terms and conditions of the Bonds and of the Ordinance for all purposes.

Section 11.05 Supplemental Ordinance Affecting Trustees. No Supplemental Ordinance changing, amending, or modifying any of the rights, duties, and obligations of any Trustee appointed by or pursuant to the provisions of the Ordinance may be enacted by the Council or be consented to by the Holders of the Bonds without written consent of the Trustee affected thereby.

[End of Article XI]

ARTICLE XII

MISCELLANEOUS

Section 12.01 Benefits of Ordinance Limited to the City, the Trustee, and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the City, the Trustee, and the Holders of the Bonds, any legal or equitable right, remedy, or claim under or by reason of or in respect to the Ordinance or any covenant, condition, stipulation, promise, agreement, or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Trustee, and the Holders from time to time of the Bonds as herein and therein provided.

Section 12.02 Ordinance Binding Upon Successors or Assigns of the City. All the terms, provisions, conditions, covenants, warranties, and agreements contained in the Ordinance shall be binding upon the successors and assigns of the City and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 12.03 No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the City contained in the Ordinance or the Bonds, against any member of the Council, any officer or employee, in his or her individual capacity, past, present, or future, of the City, either directly or through the City, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer, or employee, past, present, or future, of the City, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the City and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto; and that all personal liability of that character against every member, officer, and employee is, by the enactment of the Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the enactment of the Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers, and employees of the City under the provisions contained in this **Section 12.03** shall survive the completion of any Project and the termination of any Ordinance.

Section 12.04 Effect of Saturdays, Sundays and Legal Holidays. Whenever the Ordinance requires any action to be taken on a Saturday, Sunday, or legal holiday or bank holiday in the State or in any state where the corporate trust office of the Trustee is located, the action shall be taken on the first business day occurring thereafter. Whenever in the Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, or legal holiday or bank holiday in the State or in any state where the corporate trust office of the Trustee is located, the time shall continue to run until midnight on the next succeeding business day.

Section 12.05 Partial Invalidity.

(a) If any one or more of the covenants or agreements or portions thereof provided in the Ordinance on the part of the City, the Trustee, the Custodian or any paying agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then the covenant or covenants, or the agreement or agreements, or the portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in the Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of the Ordinance or of the Bonds, but the Holders of the

Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

(b) If any provisions of the Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 12.06 Law and Place of Enforcement of the Ordinance. The Ordinance shall be construed and interpreted in accordance with the laws of the State and all suits and actions arising out of the Ordinance shall be instituted in a court of competent jurisdiction in the State.

Section 12.07 Effect of Article and Section Headings and Table of Contents. The heading or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of the Ordinance.

Section 12.08 Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the City, and any part of any ordinance or resolution, inconsistent with the Ordinance are hereby repealed to the extent of the inconsistency.

Section 12.09 Effectiveness of this Ordinance. This Ordinance shall become effective upon its enactment provided, however, that it shall not be necessary for the City to establish the funds and accounts created in **Article VI** hereof prior to the issuance of any Bonds.

Section 12.10 Repeal of 2012 Ordinance. On the date of issuance of the Series of Bonds that refunds the Series 2016 Bond, the 2012 Ordinance is hereby repealed.

[End of Article XII]

Done in meeting duly assembled this 11th day of May, 2021.

CITY OF SIMPSONVILLE, SOUTH CAROLINA

Mayor

ATTEST:

City Clerk

First Reading: April 13, 2021
Second Reading: May 11, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

CERTIFIED COPY OF ORDINANCE

I, the undersigned, City Clerk of the City of Simpsonville, South Carolina, **DO HEREBY CERTIFY:**

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance which was given two readings on two separate days, with an interval of at least six days between the readings. The original of this Ordinance is duly entered in the permanent records of minutes of meetings of the City Council in my custody as such City Clerk.

That each of said meetings was duly called and all members of the City Council were notified of the same; that all of the membership were notified of each meeting and at least a quorum remained throughout the proceedings incident to the enactment of this Ordinance.

IN WITNESS WHEREOF, I have hereunto set my Hand this 11th day of May, 2021

City Clerk
City of Simpsonville, South Carolina

First reading: April 13, 2021
Second reading: May 11, 2021

ORDINANCE NO. 2021-02

FIRST SUPPLEMENTAL ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF A NOT EXCEEDING \$18,000,000 CITY OF SIMPSONVILLE, SOUTH CAROLINA ACCOMMODATIONS TAX AND HOSPITALITY TAX REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2021, AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the City Council of the City of Simpsonville (the "*Council*"), the governing body of the City of Simpsonville, South Carolina (the "*City*");

Section 1. Findings of Fact.

As an incident to the enactment of this ordinance, and the issuance of the bonds provided for herein, the Council finds that the facts set forth in this **Section 1** exist and the following statements are in all respects true and correct:

(a) On June 30, 2016, pursuant to a General Bond Ordinance (the "*2012 Ordinance*") enacted on March 27, 2012 by the Council and a Second Supplemental Ordinance enacted on June 28, 2016 by the Council, the City issued its \$7,216,000 Accommodations Tax and Hospitality Tax Revenue Refunding Bond, Series 2016 (the "*Series 2016 Bond*") for the purpose of refunding certain outstanding accommodations tax and hospitality tax revenue bonds of the City. The Series 2016 Bond is the only bond outstanding under the 2012 Ordinance

(b) On May 11, 2021, the Council enacted a General Bond Ordinance (the "*General Bond Ordinance*") providing for the issuance of Accommodations Tax and Hospitality Tax Revenue Bonds.

(c) The Council has determined that it is in the best interest of the City to issue one or more Series of Bonds for the purposes of (i) currently refunding the Series 2016 Bond currently outstanding in the principal amount of \$2,404,000 in order to achieve an interest rate savings, (ii) financing the costs of (A) downtown streetscape improvements along Main Street, South Main Street, Curtis Street and College Street; (B) improvements to City Park, including lighting and ball field improvements, and tennis court and basketball court resurfacing; (C) converting a portion of South Main Street into a "festival street" for pedestrian traffic; and (D) constructing improvements and extensions to the Swamp Rabbit Trail including from Fairview Road to Heritage Park (collectively, the "*Project*") and (iii) paying Costs of Issuance related thereto.

Section 2. Definitions. The terms defined above and in this **Section 2** and all words and terms defined in the General Bond Ordinance (the General Bond Ordinance, as from time to time amended or supplemented by Supplemental Ordinances, being defined as the "*Ordinance*") (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this Supplemental Ordinance have the respective meanings given to them in the Ordinance and in this **Section 2**.

"*2021 Construction Fund*" shall mean the Construction Fund established pursuant to **Section 8** hereof.

“2021 Debt Service Reserve Fund Account” shall mean the account, if any, established in the Debt Service Reserve Fund and maintained in the amount of the 2021 Debt Service Reserve Fund Requirement, if any, to provide funds to ensure the timely payment of the Principal and Interest Requirements with respect to the Series 2021 Bonds.

“2021 Debt Service Reserve Fund Requirement” shall mean an amount equal to the least of (i) 10% of the original proceeds of the Series 2021 Bonds, (ii) maximum annual Principal and Interest Requirements on the Series 2021 Bonds then outstanding for any Fiscal Year, or (iii) 125% of the average annual Principal and Interest Requirements of the Series 2021 Bonds then outstanding.

“Completion Date” shall be that date established pursuant to **Section 9** hereof.

“Continuing Disclosure Undertaking” means that certain Continuing Disclosure Undertaking relating to the Series 2021 Bonds, hereby authorized to be executed by the City Administrator on behalf of the City and dated the date of issuance and delivery of the Series 2021 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Escrow Agreement” shall mean the Escrow Agreement between the City and U.S. Bank National Association, the trustee of the Series 2016 Bond.

“Interest Payment Date” shall mean, with respect to the Series 2021 Bonds, January 1, 2022, and any January 1 or July 1 thereafter until the principal of the Series 2021 Bonds has been paid in full.

“Project” shall mean financing the costs of (i) downtown streetscape improvements along Main Street, South Main Street, Curtis Street and College Street; (ii) improvements to City Park, including lighting and ball field improvements, and tennis court and basketball court resurfacing; (iii) converting a portion of South Main Street into a “festival street” for pedestrian traffic; and (iv) constructing improvements and extensions to the Swamp Rabbit Trail including from Fairview Road to Heritage Park.

“Purchase Contract” shall mean the purchase contract or bond purchase agreement between the City and the Underwriter relating to the purchase by the Underwriter of the Series 2021 Bonds.

“Series 2021 Bonds” shall mean the City’s not exceeding \$18,000,000 Accommodations Tax and Hospitality Tax Revenue Refunding and Improvement Bonds, Series 2021 authorized to be issued hereunder in one or more Series.

“Underwriter” shall mean Raymond James & Associates, Inc., its successor and assigns.

Section 3. Authorization of Series 2021 Bonds, Maturities, Interest Rates, and Mandatory Redemption Provisions.

(a) There is hereby authorized to be issued one or more Series of Bonds designated “Accommodations Tax and Hospitality Tax Revenue Refunding and Improvement Bonds, Series 2021” (the **“Series 2021 Bonds”**) in the total principal amount of not exceeding Eighteen Million Dollars (\$18,000,000) for the purpose of (i) currently refunding all or a portion of the Series 2016 Bond, (ii) financing the Project, and (iii) paying the Costs of Issuance of the Series 2021 Bonds.

(b) The Series 2021 Bonds shall be issued as fully registered Bonds in the denominations of \$5,000 and integral multiples of \$5,000. The Series 2021 Bonds shall be dated as of their date of delivery, shall mature on January 1 in the years and in the principal amounts, and shall be subject to mandatory sinking fund redemption on such dates and in such amounts as approved by the City Administrator, upon

advice of the City's Municipal Advisor, provided that the aggregate principal amount may not exceed \$18,000,000 and the final maturity date shall not be later than January 1, 2046. The Series 2021 Bonds shall bear interest at such rates as named by the successful purchaser thereof at the sale thereof; provided that the net interest rate shall not exceed 5.0% per annum. The Series 2021 Bonds shall be numbered R-1 and upward.

(c) Principal of and premium, if any, on the Series 2021 Bonds when due, shall be payable at the corporate trust office of the Trustee, in the City of St. Paul, Minnesota. Interest on the Series 2021 Bonds shall be payable from the date of initial issuance of the Series 2021 Bonds. No accrued interest shall be due. Interest on the Series 2021 Bonds (calculated on the basis of a 360-day year of twelve 30-day months) shall be payable on each Interest Payment Date, in each case to the Holders as of the immediately preceding Record Date, interest to be paid by the Trustee by check or draft mailed to each Holder at his address as it appears on the Books of Registry maintained at the corporate trust office of the Trustee, in the City of St. Paul, Minnesota; provided that payment to a Holder of \$1,000,000 or more may be made by wire transfer to an account within the continental United States in accordance with written instructions filed with the Trustee no later than the Record Date.

(d) The Series 2021 Bonds shall be in substantially the form attached hereto as *Exhibit A*, with any necessary or appropriate variations, omissions, and insertions as are incidental to the series, numbers, denominations, maturities, interest rate or rates, redemption provisions, the purpose of issuance, and other details thereof or as are otherwise permitted or required by law or by the Ordinance, including this Supplemental Ordinance.

Section 4. Optional and Mandatory Redemption of Series 2021 Bonds.

(a) The Series 2021 Bonds shall be subject to redemption upon the terms directed by the City Administrator, upon advice of the City's Municipal Advisor, and such terms shall be included in the Purchase Contract.

(b) A portion of the Series 2021 Bonds (the "*Term Bonds*") may be subject to mandatory sinking fund redemption as set forth in the Purchase Contract. Such Term Bonds shall be payable from amounts accumulated in the Bond Redemption Account in the Debt Service Fund in amounts sufficient to redeem such Term Bonds in the years specified in the Purchase Contract.

At its option, to be exercised on or before the sixtieth (60th) day next preceding any mandatory redemption date, the Council may (i) deliver to the Trustee for cancellation Series 2021 Bonds of a maturity subject to mandatory redemption in part on such redemption date, in any aggregate principal amount desired or (ii) receive a credit in respect of its mandatory redemption obligation for any Series 2021 Bonds of a maturity subject to mandatory redemption in part on such redemption date, which, prior to such date, have been purchased or redeemed (otherwise than through the operation of the mandatory redemption requirement) by the Council and cancelled by the Trustee and not theretofore applied as a credit against any mandatory redemption obligation. Each such Series 2021 Bond so delivered or previously purchased or redeemed shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the City on such respective mandatory redemption obligations in chronological order, and the principal amount of such Series 2021 Bonds to be redeemed by operation of the mandatory redemption requirement shall be accordingly reduced.

Section 5. Book-Entry System; Recording and Transfer of Ownership of Series 2021 Bonds. Unless and until the book-entry-only system described in this **Section 5** has been discontinued, the Series 2021 Bonds will be available only in book-entry form in principal amounts of \$5,000 or any integral multiple thereof. The Depository Trust Company, New York, New York ("**DTC**"), will act as securities depository for the Series 2021 Bonds, and the ownership of one fully registered Series 2021 Bond for each maturity, each in the aggregate principal amount of such maturity, will be registered in the name of Cede & Co., as nominee for DTC.

So long as Cede & Co., as nominee of DTC, is the registered owner of the Series 2021 Bonds, references in this Supplemental Ordinance to the Bondholders or registered owners of the Series 2021 Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners. The City, the Trustee, the Registrar and the Paying Agent may treat DTC (or its nominee) as the sole and exclusive owner of the Series 2021 Bonds registered in its name for the purpose of payment of the principal of or interest or premium, if any, on the Series 2021 Bonds, giving any notice permitted or required to be given to Bondholders under the Ordinance, registering the transfer of Series 2021 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The City, the Trustee, the Registrar and the Paying Agent shall not have any responsibility or obligation to any DTC Participant, any person claiming a beneficial ownership interest in the Series 2021 Bonds under or through DTC or any DTC Participant, or any other person which is not shown on the registration books kept by the Registrar as being a Bondholder, with respect to the accuracy of any records maintained by DTC or any DTC Participant; the payment by DTC or any DTC Participant of any amount in respect of the principal of or interest or premium, if any, on the Series 2021 Bonds; any notice which is permitted or required to be given to Bondholders thereunder or under the conditions to transfers or exchanges adopted by the City or the Trustee; or any consent given or other action taken by DTC as a Bondholder.

While the book-entry system is used for the Series 2021 Bonds, the Trustee will give any notice of redemption or any other notice required to be given to holders of the Series 2021 Bonds only to DTC.

Neither the City, the Trustee, the Registrar nor the Paying Agent will have any responsibility or obligation to such DTC Participants, or the persons for whom they act as nominees, with respect to payments actually made to DTC or its nominee, Cede & Co., as registered owner of the Series 2021 Bonds in book-entry form, or with respect to the providing of notice for the DTC Participants, the Indirect Participants, or the Beneficial Owners of the Series 2021 Bonds in book-entry form.

For every transfer and exchange of a beneficial ownership interest in the Series 2021 Bonds, a Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. If for any such reason the system of book-entry-only transfers through DTC is discontinued, Series 2021 Bond certificates will be delivered as described in the Ordinance in fully registered form in denominations of \$5,000 or any integral multiple thereof in the names of Beneficial Owners or DTC Participants; provided, however, that in the case of any such discontinuance the City may within 90 days thereafter appoint a substitute securities depository which, in the City's opinion, is willing and able to undertake the functions of DTC upon reasonable and customary terms.

In the event the book-entry system is discontinued, the persons to whom Series 2021 Bond certificates are delivered will be treated as "Bondholders" for all purposes of the Ordinance, including the giving to the City or the Trustee of any notice, consent, request or demand pursuant to the Ordinance for any purpose whatsoever. In such event, the Series 2021 Bonds will be transferable to such Bondholders, interest on the Series 2021 Bonds will be payable as provided in **Section 3(c)** hereof.

Section 6. Use and Disposition of Series 2021 Bonds Proceeds.

Upon the delivery of the Series 2021 Bonds and receipt of the proceeds thereof, such proceeds and other available funds shall be disposed of as follows:

(a) such proceeds which, along with moneys contributed by the City, will equal the amount necessary to currently refund the Series 2016 Bond shall be deposited with the Trustee, as escrow agent for the Series 2016 Bond, pursuant to the terms of the Escrow Agreement, to currently refund the Series 2016 Bond on the redemption date provided for in the Escrow Agreement; and

(b) all remaining proceeds of the Series 2021 Bonds shall be deposited into the 2021 Construction Fund maintained by the Trustee to be utilized to pay Project Costs and Costs of Issuance of the Series 2021 Bonds.

The City shall enter into the Escrow Agreement with the Trustee, whereby the Trustee shall act as holder of an escrow account for the purpose of paying the redemption price and accrued interest on the redemption date set forth therein in order to currently refund the Series 2016 Bond. The execution of the Escrow Agreement by an Authorized Representative on behalf of the City is hereby approved and authorized.

Section 7. 2021 Debt Service Reserve Fund Account; 2021 Debt Service Reserve Fund Requirement. If as of the date of the initial delivery of the Series 2021 Bonds, the City Administrator, upon advice of the City's Municipal Advisor, determines that the 2021 Debt Service Reserve Fund needs to be established for the issuance of the Series 2021 Bonds, then the City Administrator shall provide the Trustee with a written direction to establish with the Trustee the 2021 Debt Service Reserve Fund on the date of original delivery of the Series 2021 Bonds for the benefit of the Holders of the Series 2021 Bonds pursuant to Section 7.04 of the Bond Resolution. The 2021 Debt Service Reserve Fund, if established, shall be held by the Trustee and maintained at the 2021 Reserve Requirement in accordance with the provisions of Section 6.04 of the General Bond Ordinance. The Trustee shall be entitled to rely upon any investment direction provided to it by an Authorized Representative as a certification to the Trustee that such investments constitute Investment Obligations permitted under the General Bond Ordinance. In the absence of written investment directions from an Authorized Representative, the Trustee shall hold the amounts in the 2021 Debt Service Reserve Fund uninvested in cash, without liability for interest.

Section 8. 2021 Construction Fund.

(a) There is hereby created and established the 2021 Construction Fund to be held by the Trustee, as the Custodian of the 2021 Construction Fund.

(b) Withdrawals from the 2021 Construction Funds shall be made only upon written certificate of an Authorized Representative. Except as set forth in paragraph (e) below, the City hereby authorizes the Trustee to disburse the moneys in the 2021 Construction Fund to the persons entitled thereto in accordance with instructions of an Authorized Representative in the form referred to below, only for the purpose of paying Costs of Issuance of the Series 2021 Bonds and Project Costs.

(c) Payments made from the 2021 Construction Fund shall be made by the Trustee only upon receipt of the certificate below described:

(1) A requisition signed by an Authorized Representative stating, with respect to each payment:

- (i) the amount to be paid;
- (ii) the nature and purpose of the obligation for which the payment is requested;
- (iii) the person to whom the obligation is owed or to whom a reimbursable advance has been made;
- (iv) that the obligation has been properly incurred and is a proper charge against the 2021 Construction Fund and has not been the basis of any previous withdrawal;
- (v) that it has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) which should be satisfied or discharged before payment of the obligation is made; and
- (vi) that the payment does not include any amount which is then entitled to be retained under any holdbacks or retainages provided for in any agreement.

(2) With respect to any requisition for payment for work, materials, or supplies, a certificate signed by an Authorized Representative certifying that, insofar as the obligation was incurred for work, materials, or supplies in connection with the acquisition, construction, or installation of the Project, the work was actually performed in a satisfactory manner, and the materials or supplies were actually used in or for the acquisition, construction, or installation or delivered to the Project for that purpose in accordance with the approved plans and specifications; and

(3) Copies of all bills, invoices, or statements for all expenses for which the disbursement is requested.

(d) In making any payment from the 2021 Construction Fund, the Trustee may rely on directions, requisitions, and certifications delivered to it pursuant to this **Section 8**, and the Trustee shall not have any liability with respect to making payments in accordance with directions, requisitions, and certifications or any liability with respect to the proper application hereof by the City. The Trustee shall be liable only for its own negligent and willful misconduct. Any requisition made from the 2021 Construction Fund shall be in substantially the form attached hereto as **Exhibit B**.

(e) Promptly after the Completion Date, the Trustee shall transfer any moneys held in the 2021 Construction Fund and not needed to pay Project Costs as set forth in a certificate of an Authorized Representative to the Debt Service Fund and such funds shall be used only to (i) pay the principal of, premium, if any, and interest on the Series 2021 Bonds; (ii) acquire outstanding Series 2021 Bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof; or (iii) apply to other lawful purposes as permitted under the Enabling Act, provided an opinion of Bond Counsel is provided to the Trustee that such disposition will not jeopardize the tax-exemption of interest on the Series 2021 Bonds.

Section 9. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by an Authorized Representative stating that except for amounts retained for Project Costs incurred but not then due and payable, the Project has been completed in accordance with the approved plans and specifications therefor and all labor, services, materials, and supplies used in construction and improvement have been paid for, all other facilities necessary in connection with the Project have been constructed, acquired, and installed in accordance with the

specifications therefor, and all costs and expenses incurred in connection therewith have been paid, and any other approvals or permits required by any government authority, for the use of the Project for its intended purposes have been obtained, including but not limited to, certificates that the construction and intended use of the Project are in compliance with all applicable zoning and building codes. Notwithstanding the foregoing, the certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of the certificate or which may subsequently come into being. It is the duty of the City to cause the certificate contemplated by this **Section 9** to be furnished as soon as the Project shall have been completed.

Section 10. Certain Findings and Determinations. The City finds and determines:

(a) This Supplemental Ordinance supplements the Ordinance, constitutes and is a “Supplemental Ordinance” within the meaning of the quoted term as defined and used in the General Bond Ordinance, and is enacted under and pursuant to the Ordinance.

(b) The Series 2021 Bonds constitute and are “**Bonds**” within the meaning of the quoted word as defined and used in the Ordinance.

(c) The Pledged Fee Revenues pledged under the Ordinance are not encumbered by any lien or charge thereon or pledge thereof, other than the lien and charge thereon and pledge thereof created by the General Bond Ordinance, as amended and supplemented, providing for payment and security of the Bonds.

(d) There does not exist an Event of Default, nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute an Event of Default under the Ordinance.

(e) The Series 2021 Bonds are being issued to currently refund all of the outstanding Series 2016 Bond, to defray the Project Costs and to pay Costs of Issuance related thereto.

(f) The estimated Project Costs is approximately \$16,000,000.

Section 11. Continuing Disclosure.

(a) Pursuant to Section 11-1-85 of the Code of Laws of South Carolina, 1976, as amended, the City has covenanted to file with a central repository for availability in the secondary bond market, when requested, an annual independent audit, within 30 days of its receipt of the audit; and event specific information within 30 days of an event adversely affecting more than five (5%) percent of its revenue or tax base. The only remedy for failure by the City to comply with the covenant in this **Section 11(a)** shall be an action for specific performance of this covenant. The City specifically reserves the right to amend this covenant to reflect any change in or repeal of Section 11-1-85, without the consent of any Bondholder.

(b) In addition, the City hereby covenants and agrees for the benefit of the Holders of the Series 2021 Bonds that it will execute and deliver the Continuing Disclosure Undertaking to the Underwriter on the date of delivery of the Series 2021 Bonds in substantially the form attached hereto as **Exhibit C**, and that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this Supplemental Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an Event of Default under the Ordinance; however, any Bondholder may take such actions as may be necessary and appropriate,

including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this paragraph.

Section 12. Award of Series 2021 Bonds; Official Statement.

(a) The Series 2021 Bonds are authorized to be sold to the Underwriter pursuant to the Purchase Contract, the form of which is to be approved by the City Administrator. The City Administrator is authorized to execute the Purchase Contract on behalf of the City provided the terms thereof are consistent with the terms hereof.

(b) The Council hereby authorizes the Preliminary Official Statement of the City relating to the Series 2021 Bonds, with any modification as the City Administrator approves; the Council hereby authorizes the distribution of the Preliminary Official Statement, in printed or electronic format, in connection with the sale of the Series 2021 Bonds, and hereby authorizes the City Administrator to deem it final within the meaning of S.E.C. Rule 15(c)(2) 12; the Council further authorizes the preparation and distribution of the final Official Statement, in printed or electronic format, following the sale of the Series 2021 Bonds; the City Administrator is hereby authorized and directed to deliver the Official Statement to the purchaser of the Series 2021 Bonds; and the City Administrator hereby authorizes the use of the Official Statement and the information contained therein in connection with the public offering and sale of the Series 2021 Bonds by the purchaser thereof.

(c) A copy of this First Supplemental Ordinance shall be filed with the minutes of this meeting.

(d) The Council hereby authorizes and directs all of the officers and employees of the City to carry out or cause to be carried out all obligations of the City under the Ordinance and to perform all other actions as they shall consider necessary or advisable in connection with the issuance, sale, and delivery of the Series 2021 Bonds.

Section 13. Tax Exemption of Series 2021 Bonds.

(a) The Series 2021 Bonds and the interest thereon shall be exempt from all State, county, municipal, school district, and all other taxes or assessments in the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, or transfer taxes.

(b) The City shall not take, or permit or suffer to be taken, any action with respect to the gross proceeds of the Series 2021 Bonds which would cause the Series 2021 Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

Section 14. Interested Parties. To the extent that the Ordinance confers upon or gives or grants to any Person any right, remedy or claim under or by reason of the Ordinance, such Person is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

Nothing in the Ordinance expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City and the Registered Holders of the Series 2021 Bonds, any right, remedy or claim under or by reason of the Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in the Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City and the Registered Holders of the Series 2021 Bonds.

Section 15. Additional Provisions. As supplemented herein, the General Bond Ordinance remains in full force and effect and shall govern the issuance of the Series 2021 Bonds.

Section 16. Additional Documents. The Mayor, the City Administrator, the Finance Director and the City Clerk are fully authorized and empowered to take any further action and to execute and deliver any closing documents or agreements as may be necessary and proper to effect the refunding of the Series 2016 Bond and the delivery of the Series 2021 Bonds in accordance with the terms and conditions hereinabove set forth, and the action of the officers or any one or more of them in executing and delivering any documents, in the form as he, she, or they shall approve, is hereby fully authorized.

Section 17. Section Headings; Table of Contents. The headings and titles of the several sections hereof, and any Table of Contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this First Supplemental Ordinance.

Section 18. Notices.

(a) All notices, certificates, or other communications hereunder or under the Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the City:

City of Simpsonville
118 North East Main Street
Simpsonville, South Carolina 29681
Attention: City Administrator

If to the Trustee:

U.S. Bank National Association
1441 Main Street, Suite 775
Mail Code: EX-SC-WMSC
Columbia, South Carolina 29201
Attention: Corporate Trust Department

(b) The City, the Trustee and any Custodian may, by written notice given to the other parties, designate any further or different addresses to which subsequent notice, certificates, or other communications shall be sent.

Section 19. Bond Insurance. Upon the recommendation of the Underwriter and the City's Municipal Advisor, the City Administrator is authorized to accept a premium for a municipal bond insurance policy with respect to the Series 2021 Bonds and a surety bond to satisfy the 2021 Debt Service Reserve Fund Requirement, if any. Proceeds of the Series 2021 Bonds may be used to pay the premiums for the municipal bond insurance policy and the surety bond. The City Administrator is authorized to execute and deliver on behalf of the City one or more insurance agreements between the City and the bond insurer (the "*Insurance Agreement*") setting forth certain covenants of the City; providing for the procedure for payment of principal and interest when due under the municipal bond insurance policy; providing for all matters related to the surety bond; and granting certain rights to the bond insurer and the

Trustee with respect thereto. An event of default under the Insurance Agreement shall constitute an event of default under this First Supplemental Ordinance. In the event of any conflict between the General Bond Ordinance, this First Supplemental Ordinance and the Insurance Agreement, the Insurance Agreement shall control. The Insurance Agreement, if entered into, will be fully effective as if stated herein.

Section 20. **Effective Date.** This First Supplemental Ordinance shall become effective immediately upon its enactment.

Done in meeting duly assembled this 11th day of May, 2021.

CITY OF SIMPSONVILLE, SOUTH CAROLINA

Mayor

ATTEST:

City Clerk

First Reading: April 13, 2021
Second Reading: May 11, 2021

EXHIBIT A

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
CITY OF SIMPSONVILLE
ACCOMMODATIONS TAX AND HOSPITALITY TAX
REVENUE REFUNDING AND IMPROVEMENT BONDS
SERIES 2021

NO. R-__ \$ _____

		ORIGINAL DATE	
		OF ISSUE	
<u>INTEREST RATE</u>	<u>MATURITY DATE</u>		<u>CUSIP</u>

REGISTERED HOLDER: _____

PRINCIPAL SUM: _____ and NO/100 DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that the City of Simpsonville, South Carolina (hereinafter called the "City"), a body politic and corporate and a municipal corporation organized and existing under the laws of the State of South Carolina (the "State"), is justly indebted, and, for value received, hereby promises to pay, but only from the Pledged Fee Revenues (as hereinafter defined) pledged to the payment hereof, to the Registered Holder, or registered assigns, hereof on the Maturity Date set forth above, the Principal Sum set forth above (unless this bond be subject to redemption and shall have been duly called for previous redemption and payment of the redemption price made or provided for), and to pay interest on the Principal Sum from the date hereof or from the January 1 or July 1 next preceding the date of authentication to which interest shall have been paid, unless the date of authentication is a January 1 or July 1 to which interest shall have been paid, in which case from that date, interest being payable to the maturity hereof on January 1 and July 1 of each year (those dates being hereinafter referred to as the "Interest Payment Dates"), commencing _____ 1, 20__, at the Interest Rate per annum specified above (calculated on the basis of a 360-day year of twelve 30-day months), until payment of the Principal Sum.

The interest so payable and to be punctually paid or duly provided for on any Interest Payment Date will be paid to the person in whose name this bond is registered at the close of business on the fifteenth day (whether or not a business day) of the calendar month next preceding the Interest Payment Date (the "Regular Record Date"), mailed to the Registered Holder hereof by U.S. Bank National Association (the "Trustee") at his address as it appears on the registration books (the "Books of Registry") of the Trustee or at any other address as is furnished in writing by the Registered Holder to the Trustee; provided that payment to any Registered Holder of \$1,000,000 or more of the Series 2021 Bonds (as hereinafter defined) may be made by wire transfer to an account in the continental United States in accordance with written instructions filed thereto no later than the Record Date. The principal of and

premium, if any, of this bond, when due, shall be payable upon presentation and surrender of this bond at the corporate trust office of the Trustee in the City of St. Paul, State of Minnesota. Both the principal of and interest on this bond are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF SECTION 6-1-760 UTILIZING THE PROVISIONS OF TITLE 6, CHAPTER 17 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED (COLLECTIVELY, THE "*ENABLING STATUTE*"), AND DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN ANY STATE CONSTITUTIONAL PROVISIONS (OTHER THAN ARTICLE X, SECTION 14, PARAGRAPH 10 OF THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA, 1895, AS AMENDED, AUTHORIZING OBLIGATIONS PAYABLE SOLELY FROM SPECIAL SOURCES PERMITTED THEREIN) OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWERS OF THE CITY ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND.

This bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments of the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except estate, transfer or certain franchise taxes.

It is hereby certified and recited that all acts, conditions, and things required by the Constitution and laws of the State to exist, to happen, and to be performed precedent to or in the issuance of this bond exist, have happened, and have been done and performed in regular and due time, form, and manner, and that the amount of this bond, and the issue of which this bond is one, does not exceed any constitutional or statutory limitation thereon.

This bond shall not be entitled to any benefit under the Ordinance (as hereinafter defined) or become valid or obligatory for any purpose until it shall have been authenticated by the execution of the Certificate of Authentication which appears hereon by an authorized officer of the Trustee as Bond Registrar.

This bond is one of a series of bonds (the "*Series 2021 Bonds*") of like tenor and effect, except as to number, denomination, date of maturity, rate of interest, date of authentication, registered owner, and redemption provisions, aggregating _____ Dollars (\$_____) issued pursuant to a General Bond Ordinance enacted by the City Council of the City on May 11, 2021 and a First Supplemental Ordinance enacted by the City Council of the City on May 11, 2021 (collectively, the "*Ordinance*"), and under and in full compliance with the Constitution and statutes of the State, including particularly Section 14, Paragraph 10 of Article X of the Constitution of the State of South Carolina, 1895, as amended, and the Enabling Statute, to obtain funds to (i) currently refund the Series 2016 Bond; (ii) defray Project Costs; and (iii) pay Costs of Issuance related thereto (all as defined in the Ordinance).

The Series 2021 Bonds which mature subsequent to January 1, 20__, shall be subject to redemption prior to maturity, at the option of the Council, on and after January 1, 20__, as a whole or in part at any time, and, if in part, in the maturities as designated by the Council (but only in integral

multiples of \$5,000 denomination) and by lot within a maturity, at the redemption price of par, together, in each case, with the interest accrued on the principal amount to the date fixed for redemption.

The Series 2021 Bonds maturing on January 1, _____, are also subject to mandatory sinking fund redemption, prior to maturity, at par plus accrued interest to the redemption date on January 1, _____, and each January 1 thereafter, to and including January 1, _____, in the following principal amounts on the dates specified below:

<u>Year</u>	<u>Principal Amount</u>
-------------	-------------------------

*Final maturity.

The Series 2021 Bonds to be redeemed in compliance with the mandatory redemption requirements shall be selected by lot by the Trustee.

In the event any of the Series 2021 Bonds shall be called for redemption, notice of redemption shall be given by first-class mail, not less than thirty (30) days and not more than sixty (60) days prior to the redemption date, to the Registered Holder of each Series 2021 Bond to be redeemed in whole or in part at the address shown on the Books of Registry. Failure to give notice by mail, or any defect in any notice so mailed, to the Registered Holder of any Series 2021 Bond shall not affect the validity of the proceedings for redemption of any other Series 2021 Bonds. Interest on the Series 2021 Bonds or portion thereof to be redeemed shall cease to accrue from and after the redemption date specified in the notice, unless the City defaults in making due provisions for the payment of the redemption price thereof.

All principal, interest, or other amounts due hereunder shall be payable only to the Registered Holder hereof. The City designates the Trustee as the Bond Registrar and directs the Trustee as Bond Registrar to maintain the Books of Registry for the registration or transfer of this bond. This bond may not be transferred except by the Registered Holder hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Trustee as Bond Registrar duly executed by the Registered Holder of this bond or his duly authorized attorney. Any purported assignment in contravention of the foregoing requirements shall be, as to the City, absolutely null and void. The person in whose name this bond shall be registered shall be deemed and regarded as the absolute owner hereof for all purposes, and payment of the principal of and interest on this bond shall be made only to or upon the order of the Registered Holder or his legal representative. All payments made in this manner shall be valid and effective to satisfy and discharge the liability of the City upon this bond to the extent of the sum or sums paid. No person other than the Registered Holder shall have any right to receive payments, pursue remedies, enforce obligations, or exercise or enjoy any other rights under this bond against the City. Notwithstanding the foregoing, nothing herein shall limit the rights of a person having a beneficial interest in this bond as against a person (including the Registered Holder) other than the City, as in the case where the Registered Holder is a trustee or nominee for two or more beneficial owners of an interest in this bond.

Neither the City nor the Trustee, as Bond Registrar, shall be required (a) to exchange or transfer the Series 2021 Bonds (i) from the Regular Record Date to the next succeeding Interest Payment Date or (ii) for a period of fifteen (15) days following any selection of Series 2021 Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption or (b) to transfer any Series 2021 Bonds called for redemption.

The principal of, premium, if any, and interest on the Series 2021 Bonds are payable solely from the Pledged Fee Revenues (as defined in the Ordinance). The pledge of and lien on the Pledged Fee Revenues made to secure the payment of the Series 2021 Bonds has priority over all other pledges of and liens on the Pledged Fee Revenues except the pledge and lien in favor of bonds issued or to be issued under the Ordinance on a parity with the Series 2021 Bonds.

No recourse shall be had for the payment of the principal of, premium, if any, and interest on the Series 2021 Bonds against the several funds of the City, except in the manner and to the extent provided in the Ordinance, nor shall the credit or taxing power of the City be deemed to be pledged to the payment of the Series 2021 Bonds. The Series 2021 Bonds shall not be a charge, lien, or encumbrance, legal or equitable, upon any property of the City or upon any income, receipts, or revenues of the City, other than the Pledged Fee Revenues that have been pledged to the payment thereof, and this bond is payable solely from the Pledged Fee Revenues pledged to the payment thereof, and the City is not obligated to pay the same except from the Pledged Fee Revenues.

Whenever the terms of this bond require any action be taken on a Saturday, Sunday, or legal holiday or bank holiday in the State or in any state where the corporate trust office of the Trustee is located, the action shall be taken on the first business day occurring thereafter.

The Ordinance contains provisions defining terms; sets forth the terms and conditions upon which the covenants, agreements, and other obligations of the City made therein may be discharged at or prior to the maturity of this bond with provisions for the payment thereof in the manner set forth in the Ordinance; and sets forth the terms and conditions under which the Ordinance may be amended or modified with or without the consent of the Registered Holder of this bond. Reference is hereby made to the Ordinance, to all the provisions of which any Registered Holder of this bond by the acceptance hereof thereby assents.

IN WITNESS WHEREOF, THE CITY OF SIMPSONVILLE, SOUTH CAROLINA, has caused this bond to be signed in its name by the Mayor and City Administrator, and attested by the City Clerk.

CITY OF SIMPSONVILLE, SOUTH CAROLINA

Mayor

City Administrator

Attest:

City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue designated herein and issued under the provisions of the within-mentioned Ordinance.

**U.S. BANK NATIONAL ASSOCIATION
as Bond Registrar**

Authorized Agent

Date of Authentication: _____

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common
TEN ENT - as tenants in entireties
JT TEN - as joint tenants
with right of survivorship and not as
tenants in common

UNIF GIFT MIN ACT - _____
(Cust)

Custodian _____
(Minor)

under Uniform Gifts to Minors Act _____
(State)

Additional abbreviations may also be used, though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ (Social Security No. or other Identifying Number of Assignee _____) the within Bond of the **CITY OF SIMPSONVILLE, SOUTH CAROLINA**, and does hereby irrevocably constitute and appoint _____ to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

DATED: _____

Signature Guaranteed: _____

NOTICE: Signature must be guaranteed by an institution who is a participant in the Securities Transfer Agent Medallion Program ("**STAMP**") or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

FORM OF REQUISITION

\$ _____

**City of Simpsonville, South Carolina
Accommodations Tax and Hospitality Tax
Revenue Refunding and Improvement Bonds
Series 2021**

Requisition No.: _____

Total Requisition Amount: \$ _____

With regard to the General Bond Ordinance enacted on May 11, 2021 and the First Supplemental Ordinance enacted on May 11, 2021, (collectively, the "**Bond Ordinance**") by the City Council of the City of Simpsonville, South Carolina (the "**City**"), authorizing the issuance of \$ _____ Accommodations Tax and Hospitality Tax Revenue Refunding and Improvement Bonds, Series 2021, of the City, the following information is submitted with respect to the Project Costs or the Costs of Issuance (as defined in the Bond Ordinance):

- (a) The amount to be paid: \$ _____.
- (b) The nature or purpose of the obligation for which this payment is requested is:

_____.

(c) The name and address of the person, firm or corporation to whom such obligation is owed or to whom a reimbursable advance has been made and the manner of payment of such obligation or reimbursable advance:

_____.

(d) This obligation has been properly incurred and is a proper charge against the 2021 Construction Fund and has not been the basis of any previous withdrawal.

(e) The City has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) which should be satisfied or discharged before payment of such obligation is made.

(f) This payment does not include any amount which is currently entitled to be retained under any holdbacks or retainages provided for in any agreement.

With respect to a Project Cost, this obligation was incurred for work, material or supplies in connection with the acquisition, construction or installation of the Project (as defined in the Bond Ordinance); and such work was actually performed in a satisfactory manner and such materials or supplies were actually used in or for such acquisition, construction or installation or delivered to the Project for that purpose in accordance with the approved plans and specifications.

Attached is the written bill, invoice or statement for all expenses for which the disbursement is requested from the party providing the items or services for which payment is to be made.

CITY OF SIMPSONVILLE, SOUTH CAROLINA

By: _____
Authorized Representative

Dated: _____

EXHIBIT C

CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “*Disclosure Undertaking*”) is executed and delivered by the City of Simpsonville, South Carolina (the “*Issuer*”), pursuant to Securities and Exchange Commission Rule 15c2-12 (the “*Rule*”) and in connection with the issuance of \$ _____ City of Simpsonville, South Carolina Accommodations Tax and Hospitality Tax Revenue Refunding and Improvement Bonds, Series 2021 (the “*Bonds*”). The Bonds are being issued pursuant to a General Bond Ordinance enacted by the City Council of the Issuer on May 11, 2021, as supplemented by the First Supplemental Ordinance enacted by the City Council of the Issuer on May 11, 2021 (collectively, the “*Ordinance*”). The Issuer represents, covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Undertaking. This Disclosure Undertaking is being executed and delivered by the Issuer for the benefit of the Holders and Beneficial Owners and in order to assist the Participating Underwriters in complying with the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Ordinance, which apply to any capitalized term used in this Disclosure Undertaking unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 hereof.

“*Beneficial Owner*” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“*Dissemination Agent*” shall mean the Issuer or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

“*Financial Obligation*” shall mean (a) a debt obligation; (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) a guarantee of (a) or (b). The term financial obligation does not include municipal securities as to which a final official statement has been otherwise provided to the Municipal Securities Rulemaking Board (the “*MSRB*”) under the Rule.

“*Holder*” or “*Holder of the Bonds*” shall mean the registered owners of the Bonds.

“*Listed Events*” shall mean any of the events listed in Section 5(a) hereof.

“*National Repository*” shall mean the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access (“*EMMA*”) system at www.emma.msrb.org or any successor National Repository as determined by the Securities and Exchange Commission.

“*Official Statement*” shall mean the official statement of the Issuer dated _____, 2021, prepared in connection with the issuance of the Bonds.

“*Participating Underwriter*” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“Repository” shall mean the National Repository and the State Depository, if any.

“Rule” shall mean Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of South Carolina.

“State Depository” shall mean any public or private repository or entity designated by the State as a state information depository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Undertaking, there is no State Depository.

SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than seven (7) months after the end of the Issuer’s fiscal year (currently, June 30) commencing with the report for the fiscal year ending June 30, 2021, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 hereof. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by cross-reference other information as provided in Section 4 hereof; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Issuer’s fiscal year changes, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5.

(b) Not later than fifteen (15) business days prior to the date specified in subsection (a) above for providing the Annual Report to Repositories, the Issuer shall provide the Annual Report to the Dissemination Agent, if such is appointed. If the Issuer is unable to provide to the Repositories an Annual Report by the date required in subsection (a) above, the Issuer shall send a notice to the National Repository, the Municipal Securities Rulemaking Board and the State Depository, if any, in a timely manner in substantially the form attached as Schedule I.

(c) The Dissemination Agent, if any, shall:

(i) determine each year prior to the date for providing the Annual Report the method for submitting the Annual Report to the National Repository and the State Depository, if any; and

(ii) (if the Dissemination Agent is other than the Issuer) file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Undertaking, stating the date it was provided and listing all the Repositories to which it was provided.

SECTION 4. Content of Annual Reports. The Issuer’s Annual Report shall contain or include by reference the Issuer’s complete audited financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the Issuer’s audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a) hereof, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

The tables, or information similar to the tables but presented in an alternate or consolidated format, under the following headings of the Official Statement for the fiscal year then ended shall also be filed with or as a part of the Annual Report:

1. "Hospitality Tax Receipts" and
2. "Historical Debt Service Coverage."

Such information shall be provided for the Fiscal Year then ended. No projected information is required to be provided.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities which have been submitted to the National Repository or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify each such other document so included by reference.

The Issuer may discharge its undertaking described above by transmitting the documents referred to above to any entity and by any method authorized by the Securities and Exchange Commission.

SECTION 5. Reporting of Significant Events.

Unless otherwise required by the Securities and Exchange Commission pursuant to the provisions of this Section 5, the Issuer shall give or cause to be given, to the Repositories, notice of the occurrence of any of the following events with respect to the Bonds, in a timely manner not in excess of ten (10) business days after the occurrence thereof:

1. principal and interest payment delinquencies;
2. non-payment related defaults, if material;
3. unscheduled draws on debt service reserves reflecting financial difficulties;
4. unscheduled draws on credit enhancements reflecting financial difficulties;
5. substitution of credit or liquidity providers or their failure to perform;
6. adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. modifications to rights of Holders of the Bonds, if material;
8. bond calls, if material, and tender offers;
9. defeasances;
10. release, substitution or sale of property securing repayment of the Bonds, if material;
11. rating changes;
12. bankruptcy, insolvency, receivership or similar event of the obligated person;
Note to Section 5(12): For the purposes of the event described in Section 5(12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.
13. consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than

14. pursuant to its terms, if material;
appointment of a successor or additional trustee, or the change of name of a trustee, if material;
15. incurrence of a "financial obligation" of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of financial obligations of the obligated person, any of which affect security holders, if material; or
16. default, event of acceleration, termination event, modification of terms or other similar events under a financial obligation of the obligated person, any of which reflect financial difficulties.

SECTION 6. Termination of Reporting Obligation. The Issuer's obligations under this Disclosure Undertaking shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Undertaking, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Undertaking. The initial Dissemination Agent shall be the Issuer.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Undertaking, the Issuer may amend this Disclosure Undertaking, and any provision of this Disclosure Undertaking may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws, to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Undertaking shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Undertaking or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Undertaking. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Undertaking, the Issuer shall have no obligation under this Disclosure Undertaking to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Undertaking, any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Undertaking. A default under this Disclosure Undertaking shall not be deemed an event of default under the Ordinance or the Bonds, and the sole remedy under this Disclosure Undertaking in the event of any failure of the Issuer to comply with this Disclosure Undertaking shall be an action to compel performance.

SECTION 11. Beneficiaries. This Disclosure Undertaking shall inure solely to the benefit of the Issuer, the Dissemination Agent, if any, the Participating Underwriter, Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

CITY OF SIMPSONVILLE, SOUTH CAROLINA

City Administrator

Date: _____, 2021

SCHEDULE I

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: CITY OF SIMPSONVILLE, SOUTH CAROLINA

Name of Bond Issue: \$ _____ Accommodations Tax and Hospitality Tax Revenue
Refunding and Improvement Bonds, Series 2021

Date of Issuance: _____, 2021

CUSIP Prefix:

NOTICE IS HEREBY GIVEN that the above-named Issuer has not provided an Annual Report with respect to the above-named Bonds. The Issuer anticipates that the Annual Report will be filed by _____.

CITY OF SIMPSONVILLE, SOUTH CAROLINA

City Administrator

Date: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

CERTIFIED COPY OF ORDINANCE

I, the undersigned City Clerk of the City of Simpsonville, South Carolina (the "*City*"), do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given two readings on two separate days, with an interval of at least six days between the readings, and received approval, by the City Council of the City (the "*Council*") at its meetings of April 13, 2021 and May 11, 2021, at which meetings a quorum of members of the Council were present and voted, and an original of which ordinance is filed in the permanent records of the Council.

IN WITNESS WHEREOF, I have hereunto set my Hand this 11th day of May, 2021.

City Clerk
City of Simpsonville, South Carolina

First Reading: April 13, 2021
Second Reading: May 11, 2021

CITY OF SIMPSONVILLE, SOUTH CAROLINA

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATING TO THE PROVISION OF MUNICIPAL FACILITIES; CONSENTING TO AND APPROVING THE ISSUANCE OF NOT EXCEEDING \$14,000,000 SIMPSONVILLE MUNICIPAL FACILITIES CORPORATION INSTALLMENT PURCHASE REVENUE BONDS, SERIES 2021, BY THE SIMPSONVILLE MUNICIPAL FACILITIES CORPORATION (THE "*CORPORATION*") TO PROVIDE FUNDING TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING, EQUIPPING, AND INSTALLING VARIOUS MUNICIPAL FACILITIES; CONSENTING TO AND APPROVING THE EXECUTION OF A BASE LEASE AGREEMENT BY AND BETWEEN THE CITY AND THE CORPORATION; CONSENTING TO AND APPROVING THE EXECUTION OF A MUNICIPAL FACILITIES PURCHASE AND OCCUPANCY AGREEMENT (THE "*FACILITIES AGREEMENT*") RELATING THERETO BY AND BETWEEN THE CITY AND THE CORPORATION; CONSENTING TO THE FORM OF A TRUST AGREEMENT TO BE ENTERED INTO BY THE CORPORATION AND THE TRUSTEE FOR THE BONDS; AND TOGETHER THEREWITH AN ASSIGNMENT TO THE TRUSTEE OF CERTAIN RIGHTS TO PAYMENT AND OTHER RIGHTS OF THE CORPORATION, UNDER THE FACILITIES AGREEMENT; AND MAKING PROVISION FOR ALL OTHER MATTERS RELATING TO THE FOREGOING.

May 11, 2021

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE,
SOUTH CAROLINA IN MEETING DULY ASSEMBLED:**

ARTICLE I

FINDINGS OF FACT

SECTION 1.01. *Findings of Fact.* As an incident to the enactment of this Ordinance, the City Council of the City of Simpsonville (the "**Council**"), the governing body of the City of Simpsonville, South Carolina (the "**City**"), finds that the facts set forth in this Article exist, and the statements made with respect thereto are true and correct.

(a) Simpsonville Municipal Facilities Corporation, a South Carolina nonprofit corporation (the "**Corporation**"), has been or will be incorporated for the purpose of supporting certain activities of the City.

(b) It is proposed that the Corporation will acquire, construct, install, furnish and equip a municipal complex consisting of a new City Hall, police department facilities, fire department headquarters, fire station, municipal courts and related parking (collectively, the "**Project Facilities**") and provide financing to the City for miscellaneous parking lots near and adjacent to the Project Facilities and other costs related thereto (the "**Ancillary Facilities**").

(c) In order to effectuate the financing of the Project Facilities and the Ancillary Facilities, the City will be requested to enter into a Base Lease Agreement (the "**Base Lease**") with the Corporation, pursuant to which it will lease to the Corporation the real property on which the Project Facilities will be constructed (the "**Real Property**") and the Corporation will enter into a Municipal Facilities Purchase and Occupancy Agreement (the "**Facilities Agreement**") with the City pursuant to which the Corporation will agree to cause the Project Facilities to be acquired, constructed, installed, furnished and equipped, and, further, pursuant to which the City will purchase from the Corporation the Project Facilities and pending such purpose will be entitled to occupy and use the Project Facilities pending completion of the payment therefor.

(d) In order to provide funds for the payment of costs of the Project Facilities and the Ancillary Facilities, it is proposed that the Corporation arrange for the issuance of not exceeding \$14,000,000 Simpsonville Municipal Facilities Corporation Installment Purchase Revenue Bonds (the "**Bonds**") under and by the terms of a Trust Agreement (the "**Trust Agreement**") by and between the Corporation and U.S. Bank National Association, as trustee. The Ancillary Facilities will not be situated on the Real Property and will not be subject to the Base Lease or the Facilities Agreement.

ARTICLE II

**AUTHORIZATION OF AND CONSENT TO
FINANCING DOCUMENTS**

SECTION 2.01. *Base Lease and Facilities Agreement.* The forms, terms and provisions of the Base Lease and the Facilities Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Base Lease and the Facilities Agreement were set out in this Ordinance in their entirety. The Mayor is hereby authorized, empowered and directed to execute, acknowledge and deliver and the City Clerk is hereby authorized, empowered and directed to attest the Base Lease and the Facilities Agreement to the Corporation. The

Base Lease and the Facilities Agreement are to be in substantially the forms now before this meeting and hereby approved, or with such changes therein as may be deemed necessary by the persons executing the same, upon advice of counsel, to accomplish the purposes of the transactions contemplated therein and in this Ordinance and as shall not be inconsistent with or contrary to such purposes. The execution of the Base Lease and the Facilities Agreement shall constitute conclusive evidence of the persons executing the same of their approval of any and all such changes.

SECTION 2.02. *Consent to the Trust Agreement.* The Council hereby consents to and approves the Trust Agreement in the form now before this meeting, with such changes as may be hereafter made as shall be in furtherance of the transactions contemplated therein and in this Ordinance and as shall not be inconsistent with or contrary to the matters contemplated herein. The Council hereby further consents to the execution and delivery of the Trust Agreement by the parties thereto. In the event it is determined to be necessary to execute and deliver an assignment in a document separate from the Trust Agreement, the Council hereby consents to and approves the execution and delivery of such an assignment by the Corporation.

SECTION 2.03. *Consent to and Approval of Actions of the Corporation and the Bonds.* The Council hereby consents to the undertaking by the Corporation respecting the Project Facilities and the issuance of the Bonds. The Council hereby consents to and approves the issuance, sale, execution and delivery of the Bonds in the aggregate principal amount of not exceeding \$14,000,000, to provide for the payment of (i) the costs of the Project Facilities; (ii) Base Lease Rent (defined in the Base Lease), which will be used by the City to finance the costs of the Ancillary Facilities; and (iii) the costs of issuance of the Bonds and all expenses in connection therewith. The Council also agrees to accept the Project Facilities at such time as the Bonds are retired.

SECTION 2.04. *Use of Proceeds of the Bonds.* The proceeds of the Bonds, net of underwriter's discount, shall be applied, as provided in the Trust Agreement, to provide the amounts necessary to (i) pay the costs of the Project Facilities; (ii) pay Base Lease Rent to be used to finance the costs of the Ancillary Facilities; and (iii) pay costs of issuance of the Bonds. The Project Facilities and Ancillary Facilities are described generally in the Trust Agreement and the Facilities Agreement, as may be amended from time to time.

ARTICLE III

CONSENT TO SALE OF THE BONDS

SECTION 3.01. *Bond Purchase Agreement.* The City hereby delegates to the Mayor and to the City Administrator, acting jointly or individually, the authority to select an underwriter or underwriters to arrange for the placement and sale of the Bonds, upon the recommendation of the municipal advisor to the City. The City hereby authorizes the Mayor and the City Administrator, acting jointly or individually, upon advice of counsel to the City, to execute a Bond Purchase Agreement (the "*Bond Purchase Agreement*") among the City (if the City is a party), the Corporation and the underwriter or underwriters related to the sale of the Bonds.

SECTION 3.02. *Official Statement.* The Council hereby approves the use by the Corporation of a Preliminary Official Statement in connection with the offer and sale of the Bonds, provided that prior to distribution of the Preliminary Official Statement, the City Administrator shall receive the advice of counsel in connection therewith. After the acceptance of an offer to purchase the Bonds from the underwriter or underwriters, the Council hereby approves the use and distribution by the Corporation of a final Official Statement.

SECTION 3.03. *Sale and Award of the Bonds.* The Mayor and the City Administrator, acting jointly or individually, are each hereby authorized, empowered and directed to accomplish the purposes of the transactions contemplated in this Ordinance and as shall not be inconsistent with or contrary to such purposes. The City hereby authorizes, approves and ratifies the actions of the Corporation, in conjunction with the Mayor or the City Administrator, as the case may be, in negotiating the terms of the Bonds.

ARTICLE IV

GENERAL AUTHORIZATION

SECTION 4.01. *General Authorization.* The Mayor, the City Administrator, the City Clerk, the Finance Director, the City Attorney and the officials of the City, acting jointly or individually, are each hereby authorized to execute and deliver such documents, agreements and certificates and take such actions as are required or contemplated under the Bond Purchase Agreement, the Base Lease, the Facilities Agreement, the Trust Agreement and other documents related hereto as are required to comply with the terms thereof.

SECTION 4.02. *Effective Date.* This Ordinance shall take effect immediately upon its second reading and no further authorization is required to execute and deliver all documents, agreements and certificates required to effect the sale, issuance and delivery of the Bonds. This Ordinance shall be construed liberally to effect the intent of the Council.

ENACTED this 11th day of May, 2021

CITY OF SIMPSONVILLE, SOUTH CAROLINA

Mayor

Attest:

City Clerk

First reading: April 13, 2021
Second reading: May 11, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

CERTIFICATE OF ORDINANCE

I, the undersigned, City Clerk, **DO HEREBY CERTIFY:**

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance which was given two readings on two separate days, with an interval of at least six days between the readings. The original of this Ordinance is duly entered in the permanent records of minutes of meetings of the City Council, in my custody as such City Clerk.

That each of said meetings was duly called, and all members of the City Council were notified of the same; that a quorum of the membership remained throughout the proceedings incident to the enactment of this Ordinance.

IN WITNESS WHEREOF, I have hereunto set my Hand this 11th day of May, 2021.

CITY OF SIMPSONVILLE, SOUTH CAROLINA

City Clerk

First reading: April 13, 2021
Second reading: May 11, 2021