

ORDINANCE 97-7999

AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, SUPPLEMENTING ORDINANCE NO. 1451 OF THE CITY ENACTED ON MARCH 5, 1969, AS AMENDED AND SUPPLEMENTED; PROVIDING FOR THE ISSUANCE OF NOT EXCEEDING \$2,850,000 PUBLIC SERVICE TAX REVENUE BONDS, SERIES 1997, OF THE CITY TO FINANCE THE ACQUISITION AND CONSTRUCTION OF CERTAIN CAPITAL PROJECTS WITHIN THE CITY; PROVIDING FOR THE PAYMENT OF THE 1997 BONDS FROM THE PROCEEDS OF THE PUBLIC SERVICE TAX COLLECTED BY THE CITY; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF THE 1997 BONDS; PROVIDING FOR CONTINUING DISCLOSURE PURSUANT TO SEC RULE 15(c)2-12; DESIGNATING THE 1997 BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS UNDER SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE; AUTHORIZING THE APPROPRIATE OFFICERS OF THE CITY TO DEVELOP NECESSARY DOCUMENTS TO SELL THE BONDS AT PUBLIC SALE AND TO ADVERTISE FOR BIDS FOR THE BONDS; AUTHORIZING THE FINANCE DIRECTOR OF THE CITY TO MAKE CERTAIN CERTIFICATIONS ON BEHALF OF THE CITY REGARDING THE PRELIMINARY OFFICIAL STATEMENT FOR THE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS, AND FINDINGS;
ORDINANCE IS CONTRACT

SECTION 1.01. AUTHORITY FOR THIS ORDINANCE. This Ordinance is enacted pursuant to the provisions of Chapter 166, Florida Statutes, Chapter 1598, Laws of Florida, Acts of 1959, as amended, being the Charter of the Issuer, and other applicable provisions of law, and pursuant to Section 3.04(D) of Ordinance No. 1451 of the Issuer enacted on March 5, 1969, as amended and supplemented (collectively, the "Original Ordinance").

SECTION 1.02. DEFINITIONS. Unless the context otherwise requires, the terms defined in this section shall have the meanings specified in this section. Words importing singular number shall include the plural number in each case and vice

versa, and words importing persons shall include firms and corporations.

"Accreted Value" means, with respect to any Capital Appreciation Bonds, the amounts representing principal and interest on such Capital Appreciation Bonds from time to time at and prior to the maturity thereof in accordance with a schedule delivered at the original issuance of such Series of Bonds.

"Act" means Chapter 166, Florida Statutes, Chapter 1598, Laws of Florida, Acts of 1959, as amended, being the Charter of the Issuer, and other applicable provisions of law.

"Additional Parity Bonds" mean additional obligations issued in compliance with the terms, conditions and limitations contained herein and which shall have an equal lien on the Pledged Revenues as herein defined, and rank equally in all respects with the 1997 Bonds initially issued hereunder.

"Amortization Installment" with respect to any Bonds of a Series, means an amount so designated which is established for the Term Bonds of such Series, provided that (i) each such installment shall be deemed to be due on such interest or principal maturity date of each applicable year as is fixed by subsequent resolution of the Issuer and shall be a multiple of \$5,000, and (ii) the aggregate of such installments for such Series shall equal the aggregate principal amount of Term Bonds of such Series authenticated and delivered on original issuance.

"Authorized Investments" mean any obligations, deposit certificates, or other evidences of indebtedness legal for investment of municipal funds under Chapter 166.231, Florida Statutes, to the extent not inconsistent with the terms of any Credit Facility or with the formal investment policy of the Issuer.

"Bond Counsel" means a firm of attorneys which is nationally recognized as being experienced in matters relating to the validity of, and the state and federal income tax treatment of interest on, obligations of states and their political subdivisions and whose opinions are generally accepted by purchasers of municipal bonds, as selected by the Issuer.

"Bond Registrar" means the officer of the Issuer or such bank or trust company, located within or without the State of Florida, who shall maintain the registration books of the Issuer and who shall be responsible for the transfer and exchange of the 1997 Bonds and who also may be the paying agent for the 1997 Bonds and interest thereon.

"Bond Service Requirement" means, for any Bond Year, as applied to the 1997 Bonds of any Series, the sum of:

(1) the amount required to pay the interest becoming due on the Current Interest Paying Bonds during such Bond Year;

(2) the aggregate amount required to pay the principal becoming due on Current Interest Paying Bonds for such Bond Year; provided that, for purposes of this definition the stated maturity date of any Current Interest Paying Term Bonds shall be disregarded and the Amortization Installments applicable to such Current Interest Paying Term Bonds in such Bond Year shall be deemed to mature in such Bond Year; and

3) the aggregate amount required to pay the Maturity Amounts due on any Capital Appreciation Bonds maturing in such Bond Year; provided that for purposes of this definition, the stated maturity date of any Capital Appreciation Term Bonds shall be disregarded and the Amortization Installments applicable to such Capital Appreciation Term Bonds in such Bond Year shall be deemed to mature in such Bond Year.

In calculating the Bond Service Requirement for any period for any Series of Bonds, the Issuer shall deduct from the amounts calculated in subparagraphs (1) through (3) above any accrued or capitalized interest deposited into the applicable accounts of the Sinking Fund for such period from the proceeds of the sale of such 1997 Bonds or otherwise.

"Bond Year" means the annual period ended on a principal maturity date.

"Bonds" mean the Public Service Tax Revenue Bonds, Series 1997, herein authorized to be issued together with any Additional Parity Bonds hereafter issued under the terms, conditions and limitations contained herein.

"Capital Appreciation Bonds" mean Bonds, the interest on which (1) shall be compounded periodically, (2) shall be payable at maturity or redemption prior to maturity, and (3) shall be determined by reference to the Accreted Values.

"Consulting Engineer" means such qualified and recognized independent consulting engineer, having favorable repute or skill and experience with respect to the acts and duties to be provided to the Issuer, as shall be from time to time retained by the

Issuer to perform the acts and carry out the duties herein provided for such consultants.

"Council" means the City Council of the City of Naples, Florida, as the governing body of the Issuer.

"Credit Facility" means any policy of municipal bond insurance, irrevocable letter of credit, surety bond, or other insurance or financial product which guarantees timely payment of all or any portion of the principal of, premium, if any, and interest on all or any portion of the 1997 Bonds.

"Credit Facility Issuer" means each insurance company, bank, or other organization which has provided a Credit Facility or Reserve Account Credit Facility in connection with the issuance of any Series of Bonds or any particular 1997 Bonds within a Series.

"Current Interest Paying Bonds" mean Bonds, the interest on which shall be payable on a periodic basis.

"Debt Service" means, for any period or at any time, the principal of, premium, if any, and interest on the 1997 Bonds for that period or at that time, whether due at maturity or redemption or otherwise.

"Defeasance Obligations" mean:

(1) Federal Securities; and

(2) obligations described in Section 103(a) of the Code, provision for the payment of the principal of, premium, if any, and interest on which shall have been made by the irrevocable deposit with a bank or trust company (which is a member of the FDIC and which has a combined capital, surplus and undivided profits of not less than \$25,000,000) acting as a trustee or escrow agent for holders of such obligations, of securities described in subparagraph (1) above, the maturing principal of and interest on which, when due and payable, will provide sufficient moneys, without reinvestment, to pay when due the principal of, premium, if any, and interest on such obligations, and which securities described in subparagraph (1) above are not available to satisfy any other claim, including any claim of the trustee or escrow agent or of any person claiming through the trustee or escrow agent or to whom the trustee or escrow agent may be obligated, including in the event of the insolvency of the trustee or escrow agent or proceedings arising out of such insolvency and which are rated "AAA" by Moody's and "AAA" by S&P.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30 or such other annual period as may be prescribed by law from time to time for the Issuer.

"Holder of Bonds" or "Bondholders" or any similar term shall mean any person who shall be the Registered Owner of any such 1997 Bond or 1997 Bonds, or his transferee.

"Independent Certified Public Accountants" mean such firm of certified public accountants, as shall be retained by the Issuer for the purpose of auditing the books and records relating to the Pledged Revenues and performing such other functions as are specified in this Ordinance.

"Interest Payment Date" means, with respect to any Series of Bonds, the semiannual or other periodic dates on which interest is payable on the Current Interest Paying Bonds, as determined by subsequent resolution of the Council adopted at or prior to the time of issuance of such 1997 Bonds.

"Issuer" or "City" means the City of Naples, Florida.

"Maturity Amount" means, with respect to any Capital Appreciation Bond, the Accreted Value at the maturity thereof.

"Maximum Bond Service Requirement" means, as of any particular date of calculation, the greatest amount of aggregate Bond Service Requirements for the then current or any future Bond Year.

"Ordinance" means this ordinance together with any ordinance or resolution amendatory or supplemental thereto.

"Outstanding Parity Bonds" mean the Issuer's outstanding Utility Service Tax Revenue Certificates, Series 1971; Public Service Tax Refunding Revenue Bonds, Series 1989, and Public Service Tax Refunding Revenue Bonds, Series 1993.

"Pledged Revenues" mean (a) the Public Service Tax, and (b) the moneys and investment income therefrom held in the funds and accounts created by the Ordinance.

"Public Service Tax" (formerly known as "Utilities Services Taxes") means the taxes levied and collected on certain utilities services furnished in the Issuer, under the authority of Section 166.231, Florida Statutes (formerly Section 167.431, and pursuant to an ordinance enacted on September 27, 1967, as amended and supplemented.

"Rating Agency" means Fitch Investors Service, Inc. ("Fitch"), Moody's Investors Service, Inc. ("Moody's"), or Standard and Poor's Corporation ("S&P") or any thereof, and their successors, if any is then maintaining a rating on any Series of Bonds.

"Record Date" means, for any Series, the fifteenth day of the month (whether or not a business day) prior to an Interest Payment Date for such 1997 Bonds, or such other date as may be specified by subsequent resolution of the Council.

"Registered Owner" or "Holder" means the owner of any 1997 Bond or 1997 Bonds as shown on the registration books of the Issuer maintained by the Bond Registrar.

"Reserve Account Credit Facility" means a policy of insurance, an irrevocable letter of credit, surety bond or other insurance or financial product which provides for payment of amounts equal to all or a portion of the Reserve Account Requirement in the event of an insufficiency of moneys in the Sinking Fund to pay principal of and interest on any Series or installment of the 1997 Bonds, and which meets the criteria set forth in Section 5.02 hereof.

"Reserve Account Credit Facility Costs" mean the amounts the Issuer is required to pay a Credit Facility Issuer as a result of a draw thereunder or otherwise pursuant to such Reserve Account Credit Facility or any related agreement.

"Reserve Account Credit Facility Coverage" means the amount then available to be paid to the Paying Agent under the terms of the Reserve Account Credit Facility at any particular time.

"Reserve Account Requirement" means the amount required to be on deposit (or available for draw under a Reserve Account Credit Facility) in the Reserve Account, being an amount equal to the Maximum Bond Service Requirement.

"Serial Bonds" mean the Bonds of a Series which shall be stated to mature in annual installments.

"Series" mean an amount of 1997 Bonds designated by the Issuer as a single series, which may be issued in one or more installments.

"Table of Accreted Values" means the table showing the Accreted Value of Capital Appreciation Bonds at (i) original issuance, (ii) each Interest Payment Date, and (iii) at maturity, as approved by the Issuer prior to the issuance of any Capital Appreciation Bonds.

"Term Bonds" mean the Bonds of a Series which shall be stated to mature on one date and which shall be subject to mandatory redemption by operation of the Bond Amortization Fund.

"1997 Bonds" mean the Public Service Tax Revenue Bonds, Series 1997 issued pursuant to this Ordinance.

"1997 Project" means the acquisition and construction of certain capital improvements in the City, in accordance with the report, plans, and specifications of the City's independent consultants on file or to be filed with the City, or such other improvements as may hereafter be approved by the Council in accordance with the Act.

"1997 Project Costs" means, but shall not necessarily be limited to: the cost of the 1997 Project; the acquisition of any lands or interests therein or any other properties deemed necessary or convenient therefor; engineering, accounting, and legal fees and expenses; expenses for plans, specifications and surveys; expenses for estimates of costs and of revenues; the fees of fiscal agents, financial advisors and consultants; administrative expenses; the capitalization of interest on the 1997 Bonds for a period of time not to exceed six (6) months after the issuance thereof; the establishment of reasonable reserves for the payment of the Debt Service Requirement for the 1997 Bonds; discount upon the sale of the 1997 Bonds; the expenses and costs of issuance of the 1997 Bonds; the cost of purchasing any municipal bond insurance with respect to the 1997 Bonds or the reserve account therefor; such other expenses as may be necessary or incidental to the financing authorized by this Ordinance, or the 1997 Project; and reimbursement to the City for any sums expended for the foregoing purposes and including in particular any costs, fees or expenses incurred or any deposit required in connection with any action of eminent domain for purposes of acquiring all or any portion of the 1997 Project.

"1997 Project Fund" means the fund authorized, created and established by the City, pursuant to this Ordinance for the payment of 1997 Project Costs.

SECTION 1.03. FINDINGS. It is hereby ascertained, determined and declared that:

A. The City finds it necessary and in the best interests of the health, safety, and welfare of the inhabitants of the City to undertake the 1997 Project. The City is authorized pursuant to the provisions of the Act to undertake the 1997 Project.

B. The City is without adequate, currently available funds to pay the 1997 Project Costs, and it is necessary and desirable and in the best interests of the City that it borrow the moneys necessary to accomplish the financing of the 1997 Project. The City is authorized pursuant to the provisions of the Act, particularly Section 166.111, Florida Statutes, to borrow moneys necessary to pay the cost of the 1997 Project.

C. The City currently receives the Pledged Revenues, and the Pledged Revenues are not pledged or encumbered to pay any obligations of the City other than the Outstanding Parity Bonds.

D. The Original Ordinance provides for the issuance of Additional Parity Obligations under the terms, limitations and conditions provided therein.

E. The City has complied or will comply with the terms, limitations and conditions contained in the Original Ordinance to the extent required therein and will, therefore, be legally entitled to issue the 1997 Bonds as Additional Parity Bonds.

F. Upon the issuance of the 1997 Bonds, the 1997 Bonds, and the Outstanding Parity Bonds shall be on a parity and rank equally, as to lien on and source and security for payment from, the Pledged Revenues.

G. The Pledged Revenues are estimated to be sufficient to pay, as the same become due and payable, the Bond Service Requirement on the 1997 Bonds and the Outstanding Parity Bonds, and to make all other payments required to be made by the provisions of this Ordinance and the Original Ordinance.

H. The principal of and interest on the 1997 Bonds and the Outstanding Parity Bonds, and all required sinking fund, reserve and other payments, shall be payable solely from the Pledged Revenues. Neither the City, nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the principal of and interest on the 1997 Bonds or the Outstanding Parity Bonds, or to make any of the required sinking fund, reserve or other payments required by this Ordinance, the 1997 Bonds or the Outstanding Parity Bonds, and neither the 1997 Bonds nor the Outstanding Parity Bonds shall constitute a lien upon the 1997 Project, or upon any properties owned by or situated within the City, except as provided herein with respect to the Pledged Revenues.

I. The City has proposed to obtain a policy of municipal bond insurance in connection with the issuance of the 1997 Bonds; and it is in the best interests of the City that such policy of

municipal bond insurance be purchased by the City in order to reduce the aggregate Bond Service Requirement with respect to the 1997 Bonds.

J. The City does not reasonably expect to issue tax-exempt obligations in excess of \$10 million aggregate principal amount during the calendar year ending December 31, 1997.

K. The 1997 Bonds will not be "private activity bonds", as defined in Section 141 of the Internal Revenue Code of 1986, as amended.

L. It is in the best interest of the City to advertise the 1997 Bonds for public sale for receipt of bids from prospective purchasers of the 1997 Bonds.

M. In order to enable the successful bidder for the 1997 Bonds to comply with Securities and Exchange Commission Rule 15c2-12 (the "Rule"), in connection with the offering and sale of the 1997 Bonds, it will be necessary for the Preliminary Official Statement relating to the 1997 Bonds to be "deemed final" (except for permitted omissions) by the Finance Director, as representative of the City.

N. The City's Bond Counsel and its Financial Advisors will be working with the City staff to prepare the Preliminary Official Statement for the 1997 Bonds.

O. It is necessary for the City to make certain covenants required by the Rule in connection with continuing disclosure of certain information relating to the 1997 Bonds and the City.

SECTION 1.04. ORDINANCE TO CONSTITUTE CONTRACT. In consideration of the acceptance of the 1997 Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such holders. The covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal holders of any and all of such 1997 Bonds, all of which shall be of equal rank and without preference priority or distinction of any of the 1997 Bonds over any other thereof, except as expressly provided therein and herein.

In consideration of the issuance of any Credit Facility or Reserve Account Credit Facility this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Credit Facility Issuer and the covenants and agreements herein shall be for the benefit, protection and security of any Credit Facility Issuer.

SECTION 1.05. DESIGNATION FOR BANK QUALIFICATION. The City does hereby designate the 1997 Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE II

AUTHORIZATION OF 1997 BONDS AND 1997 PROJECT; DESCRIPTION, DETAILS AND FORM OF 1997 BONDS

SECTION 2.01. AUTHORIZATION OF 1997 PROJECT. The City Council hereby authorizes the 1997 Project.

SECTION 2.02. AUTHORIZATION OF 1997 BONDS. Subject and pursuant to the provisions of the Original Ordinance and this Ordinance, obligations of the Issuer to be known as "Public Service Tax Revenue Bonds, Series 1997" are hereby authorized to be issued in the aggregate principal amount of not exceeding Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000).

SECTION 2.03. DESCRIPTION OF 1997 BONDS. The 1997 Bonds shall be issued in fully registered form without coupons; shall be issued as Serial Bonds, Term Bonds, Current Interest Paying Bonds, Capital Appreciation Bonds, or any combination thereof; shall be in the denomination or Maturity Amount of \$5,000 each or integral multiples thereof; shall bear interest at not exceeding the maximum rate authorized by applicable law, payable at such times, and shall mature on such dates and in such years, and in such amounts, all as are fixed by subsequent resolution of the Issuer adopted at or prior to the sale of the 1997 Bonds; shall be payable with respect to principal or Maturity Amount upon presentation and surrender at such bank or banks to be determined by the Issuer prior to the delivery of the 1997 Bonds; shall be payable in lawful money of the United States of America; and shall bear interest from such date, but not earlier than the date of the 1997 Bonds, as is fixed by a resolution of the Issuer adopted at or prior to the sale of the 1997 Bonds, payable, in the case of Current Interest Paying Bonds, by check or draft mailed on or before the Interest Payment Date to the Registered Owner at his address as it appears on the registration books on the Record Date; provided that, for any Registered Owner of one million dollars or more in principal amount of 1997 Bonds, such payment shall, at the written request and expense of such Registered Owner, be by wire transfer to a bank account within the continental United States or other medium acceptable to the Issuer and to such Registered Owner. If Term Bonds are issued,

Amortization Installments therefor shall be fixed in the subsequent resolution referred to above. If Capital Appreciation Term Bonds are issued, Amortization Installments with respect thereto (i) shall be in Maturity Amounts which are integral multiples of \$5,000 and (ii) shall aggregate in an amount equal to the aggregate Maturity Amount of the Capital Appreciation Term Bonds of such maturity.

SECTION 2.04. EXECUTION OF 1997 BONDS. The 1997 Bonds shall be executed in the name of the Issuer by the Mayor and attested by the City Clerk and the corporate seal of the Issuer or a facsimile thereof shall be affixed thereto or reproduced thereon. The 1997 Bonds shall be approved as to form and correctness by the City Attorney. The facsimile signatures of such officers may be imprinted or reproduced on the 1997 Bonds. The Bond Registrar's Certificate of Authentication shall appear on the 1997 Bonds. The authorized signature for the Bond Registrar shall be either manual or facsimile; provided, however, that at least one of the signatures, including the authorized signature for the Bond Registrar, appearing on the 1997 Bonds shall at all times be a manual signature. In case any one or more of the officers who shall have signed or sealed any of the 1997 Bonds shall cease to be such officer of the Issuer before the 1997 Bonds so signed and sealed shall have been actually sold and delivered, such 1997 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such 1997 Bonds had not ceased to hold such office. Any 1997 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such 1997 Bonds shall hold the proper office, although at the date of such 1997 Bonds such person may not have held such office or may not have been so authorized.

SECTION 2.05. NEGOTIABILITY. The 1997 Bonds shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida, and each successive Registered Owner, in accepting any of the 1997 Bonds, shall be conclusively deemed to have agreed that such 1997 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the laws of the State of Florida.

SECTION 2.06. REGISTRATION. The 1997 Bonds shall be issued only as fully registered bonds without coupons. There shall be a Bond Registrar, which may be either the Issuer itself, or a bank or trust company located within or without the State of Florida. The Issuer, if it chooses to have a bank act as such Bond Registrar shall, not later than the proposed date of sale of the 1997 Bonds, by resolution designate such bank to serve as the bond registrar, paying agent, and transfer agent. The Bond Registrar shall be responsible for maintaining the books for the

registration of and for the transfer of the 1997 Bonds and, if a bank is so designated, in compliance with an agreement to be executed between the Issuer and such bank as Bond Registrar. Such agreement shall set forth in detail the duties, rights, and responsibilities of the parties to the agreement.

Upon surrender to the Bond Registrar for transfer or exchange of any 1997 Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, the Bond Registrar shall deliver in the name of the transferee or transferees a new fully registered 1997 Bond or 1997 Bonds of authorized denominations of the same maturity for the aggregate principal amount which the Registered Owner is entitled to receive.

All 1997 Bonds presented for transfer, exchange, redemption or payment (if so required by the Issuer or the Bond Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Issuer or the Bond Registrar, duly executed by the registered holder or by his duly authorized attorney.

The Issuer and the Bond Registrar may charge the bondholder a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such transfer after the delivery of the 1997 Bonds. The Bond Registrar or the Issuer may also require payment from the bondholder of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new 1997 Bond shall be delivered.

Interest shall be paid on such dates as are set forth in a subsequent resolution to the Registered Owner whose name appears on the books of the Bond Registrar as of 5:00 p.m. (local Florida time) on the Record Date.

New 1997 Bonds delivered upon any transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the 1997 Bonds surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the 1997 Bonds surrendered.

The Issuer and the Bond Registrar may treat the Registered Owner of any 1997 Bond as the absolute owner thereof for all purposes, whether or not such 1997 Bond shall be overdue, and shall not be bound by any notice to the contrary. The person in whose name any 1997 Bond is registered may be deemed the owner

thereof by the Issuer and the Bond Registrar, and any notice to the contrary shall not be binding upon the Issuer or the Bond Registrar.

Notwithstanding the foregoing provisions of this Section 2.06, the Issuer reserves the right, on or prior to the delivery of the 1997 Bonds, to amend or modify the foregoing provisions relating to registration of the 1997 Bonds in order to comply with all applicable laws, rules, and regulations of the United States Government and the State of Florida relating thereto or to provide for a system of book-entry registration for the 1997 Bonds.

SECTION 2.07. DISPOSITION OF 1997 BONDS PAID OR REPLACED.

Whenever any 1997 Bond shall be delivered to the Bond Registrar for cancellation, upon payment of the principal amount thereof or for replacement or transfer or exchange, such 1997 Bond shall either be retained by the Bond Registrar for a period of time specified in writing by the Issuer or, at the option of the Issuer, shall be cancelled and destroyed by the Bond Registrar and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Issuer.

SECTION 2.08. 1997 BONDS MUTILATED, DESTROYED, STOLEN OR LOST. In case any 1997 Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new 1997 Bond of like tenor as the 1997 Bonds so mutilated, destroyed, stolen, or lost, in exchange and substitution for such mutilated 1997 Bond, upon surrender and cancellation of such mutilated 1997 Bond or in lieu of and substitution for the 1997 Bond destroyed, stolen or lost, and upon the holder furnishing the Issuer proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expense as the Issuer and Bond Registrar may incur. All 1997 Bonds so surrendered shall be cancelled by the Issuer or the Bond Registrar, as its agent. If any such 1997 Bonds shall have matured or be about to mature, instead of issuing a substitute 1997 Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such 1997 Bond be lost, stolen or destroyed, without surrender thereof.

Any such duplicate 1997 Bonds issued pursuant to this section shall constitute original, additional, contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed 1997 Bonds be at any time found by anyone and such duplicate 1997 Bonds shall be entitled to equal and proportionate benefits and rights as to lien, source and security for payment, pursuant to this Ordinance, from the pledged funds,

as hereinafter pledged, to the same extent as all other 1997 Bonds issued under this Ordinance.

SECTION 2.09. TEMPORARY 1997 BONDS. Until 1997 Bonds in definitive form of any series are ready for delivery, the Issuer may execute, and upon its request in writing, the Bond Registrar shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, lithographed or typewritten 1997 Bonds in temporary form, substantially of the tenor of the 1997 Bonds hereinbefore described and with appropriate omissions, variations and insertions. The 1997 Bonds in temporary form will be in such principal amounts as the Issuer shall determine.

Until exchanged for 1997 Bonds in definitive form, such 1997 Bonds in temporary form shall be entitled to the lien and benefit of this Ordinance. The Issuer shall, without unreasonable delay, prepare, execute and deliver to the Bond Registrar and thereupon upon the presentation and surrender of the 1997 Bonds in temporary form to the Bond Registrar the Bond Registrar shall authenticate and deliver, in exchange therefor, 1997 Bonds of the same maturity, in definitive form in the authorized denominations, and for the same aggregate principal amount, as the 1997 Bonds in temporary form surrendered. The expense of such exchange shall be paid by the Issuer and no charge therefor shall be made no charge therefor to any Registered Owner.

SECTION 2.10. BOND ANTICIPATION NOTES. In anticipation of the delivery of the 1997 Bonds and receipt of the proceeds thereof, the Issuer may issue 1997 Bond Anticipation Notes, in the aggregate principal amount or original issuance not to exceed the aggregate principal amount of such 1997 Bonds authorized. Any Bond Anticipation Notes shall be considered to be subordinate Bonds for the purposes of, and shall be entitled to the benefits and protections of, this Ordinance, junior and subordinate to the rights of the Registered Owners of any outstanding Bonds. Provisions regarding the form of such Bond Anticipation Notes and the security for any Bond Anticipation Notes shall be set forth in a separate resolution of the Council adopted at or prior to the time of sale of such Bond Anticipation Notes.

SECTION 2.11. PROVISIONS FOR REDEMPTION. The 1997 Bonds or any portions thereof shall be subject to redemption prior to their respective stated dates of maturity, by operation of the Bond Amortization Account or at the option of the Issuer, at such times and in such manner as shall be determined by subsequent resolution prior to the sale thereof. Interest shall cease to accrue on any 1997 Bonds duly called for prior redemption on the redemption date, if payment thereof has been duly provided.

Notice of such redemption shall, at least thirty (30) days prior to the redemption date, (i) be filed with the Paying Agents, and (ii) be mailed, postage prepaid, to all owners of 1997 Bonds to be redeemed at their addresses as they appear of record on the books of the Bond Registrar as of forty-five (45) days prior to the date of redemption. The privilege of transfer or exchange of any of the 1997 Bonds so called for redemption is suspended for a period commencing 15 days preceding the mailing of the notice of redemption and ending on the date fixed for redemption.

Such notice shall be dated and shall state (a) the redemption date, (b) the redemption price, (c) the identification and respective principal amount of 1997 Bonds to be redeemed, if less than all 1997 Bonds are to be redeemed, (d) the place where the 1997 Bonds are to be surrendered for payment of the redemption price and (e) that on the redemption date (I) the redemption price will become due and payable under any 1997 Bond or portion thereof called for redemption and (II) interest on each such 1997 Bond shall cease to accrue from and after such date.

In addition to the foregoing notice, further notice shall be given as set out below, but no defect in any such notice nor any failure to give all or any portion of any notice shall in any manner defeat the effectiveness of a call for redemption with respect to a Registered Owner as to which notice is given as prescribed above.

Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus: (i) the date of original execution and delivery of the 1997 Bonds; (ii) the rate of interest borne by each 1997 Bond being redeemed; (iii) the maturity date of each 1997 Bond being redeemed; and (iv) any other descriptive information needed to identify accurately the 1997 Bonds being redeemed.

Each further notice of redemption shall be sent at least 30 days before the redemption date by registered or certified mail or overnight delivery service (at the expense of the addressee) to all registered securities depositories then in the business of holding substantial amounts of obligations of types such as the 1997 Bonds (such depositories now being The Depository Trust Company of New York, New York, Midwest Securities Trust Company of Chicago, Illinois, and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania) and to one or more national information services that disseminate notices of redemption of obligations such as the 1997 Bonds (such as Financial Information, Inc.'s Financial Daily Called Bond Service, Interactive Data Corporation's Bond Service, Kenny Information

Service's Called Bond Service and Standard & Poor's Called Bond Record).

On the date designated for redemption, notice having been mailed and moneys for payment of the redemption price having been deposited with the Paying Agent for the account of the Registered Owner of a 1997 Bond or portion thereof to be redeemed, all as provided in this Ordinance, interest on such 1997 Bond or portion thereof shall cease to accrue, such 1997 Bond or portion thereof shall cease to be entitled to any lien, benefit or security under this Ordinance, and the Registered Owner of such 1997 Bond or portion thereof shall have no rights with respect thereto except to receive the redemption price from the account established therefor.

SECTION 2.12. FORM OF 1997 BONDS. The text of the 1997 Bonds shall be substantially in the form set forth as Exhibit A hereto, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted prior to the issuance thereof, or as may be necessary to comply with applicable laws, rules and regulations of the United States Government and the State of Florida in effect upon the issuance thereof.

ARTICLE III

APPLICATION OF 1997 BOND PROCEEDS

SECTION 3.01. APPLICATION OF PROCEEDS OF 1997 BONDS. All moneys received from the sale of the 1997 Bonds shall be deposited by the Issuer in a special account in a bank or trust company and applied by the Issuer as follows:

A. All interest accrued on the 1997 Bonds to the date of delivery shall be deposited in the Sinking Fund and used for the payment of interest on the 1997 Bonds.

B. A sum which, together with other legally available funds of the Issuer deposited in the Reserve Account on the date of delivery of the 1997 Bonds, will equal the Reserve Requirement shall be deposited into the Reserve Account hereinafter created and established.

C. To the extent not paid or reimbursed therefor by the original purchaser of the 1997 Bonds, the Issuer shall pay all costs and expenses in connection with the preparation, issuance

and sale of the 1997 Bonds, including a Credit Facility and a Reserve Account Credit Facility.

D. All remaining sums shall be deposited into a special fund designated as the 1997 Project Fund, hereby created and established, and shall be used only for the purpose of paying 1997 Project Costs.

The moneys on deposit in the 1997 Project Fund shall be withdrawn, used and applied by the City solely for the payment of the 1997 Project Costs and purposes incidental thereto, as described and set forth in this Ordinance and the Original Ordinance. All expenditures or disbursements from the 1997 Project Fund shall be made only after such expenditures or disbursements shall have been approved in writing by the City.

All funds on deposit in the 1997 Project Fund, which in the opinion of the City, are not immediately necessary for expenditure, as hereinabove provided, may be invested in Authorized Investments, maturing at such time or times as such moneys will be needed for the purposes of the 1997 Project Fund. All income derived from such investments shall be retained in the 1997 Project Fund and used to pay 1997 Project Costs.

If, for any reason, the moneys on deposit in the 1997 Project Fund, or any part thereof, are not necessary for or are not applied to the payment of applicable 1997 Project Costs, then upon receipt of an opinion of Bond Counsel to the effect that such deposit and application shall not adversely affect the exclusion from gross income for federal income tax purposes of interest on such 1997 Bonds, the unapplied proceeds shall be applied and deposited by the City into the Sinking Fund to the extent of any deficiency therein, and thereafter applied in accordance with the Original Ordinance.

ARTICLE IV

1997 BONDS NOT DEBT OF ISSUER; PUBLIC SERVICE TAXES AND APPLICATION THEREOF

SECTION 4.01. 1997 BONDS NOT TO BE AN INDEBTEDNESS OF THE ISSUER. The 1997 Bonds shall not constitute indebtedness of the Issuer within the meaning of any constitutional, or statutory or charter limitation of indebtedness, but shall be payable solely from the Pledged Revenues as herein provided. No Holder or Holders of any 1997 Bonds issued hereunder shall ever have the right to compel the exercise of the ad valorem taxing power of

the Issuer, or taxation in any form on any real property therein, to pay the 1997 Bonds or the interest thereon. Neither the 1997 Bonds nor the interest thereon shall have or be a lien upon any property of the Issuer, other than the Pledged Revenues in the manner provided in this Ordinance and in the Original Ordinance, or any property of or located within the boundaries of the Issuer.

SECTION 4.02. 1997 BONDS SECURED BY PLEDGE OF PLEDGED REVENUES. The payment of the principal of and interest on and all reserves for the 1997 Bonds issued hereunder shall be secured forthwith equally and ratably by a lien upon the Pledged Revenues, as defined herein, on a parity with the lien thereon and pledge thereof in favor of the Holders of the Outstanding Parity Bonds. The Issuer does hereby irrevocably pledge such Pledged Revenues to the payment of the principal of and interest on the 1997 Bonds issued pursuant to this Ordinance.

The Issuer does further hereby covenant and agree that as long as any of the principal of or interest on any of the 1997 Bonds are outstanding and unpaid, or payment thereof not duly provided for, it will not repeal or amend or modify the Ordinance levying the Public Service Tax and will not reduce the rate of the Public Service Tax so as to impair or adversely affect in any manner the pledge of the Public Service Tax made herein and the rights of Holders of 1997 Bonds issued pursuant to this Ordinance. The Issuer shall be unconditionally and irrevocably obligated, as long as any of the 1997 Bonds are outstanding and unpaid to levy and collect the Public Service Tax at the maximum rate or rates now permitted by law to the full extent necessary to pay the principal of and interest on the 1997 Bonds and to make the other payments provided for herein.

The Issuer does further represent that it has power under the Act to irrevocably pledge the Pledged Revenues to the payment of the principal of and interest on the 1997 Bonds and that the pledge of the Pledged Revenues in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent resolution, ordinance or other proceeding of the Council of the Issuer, or by any subsequent act of the Legislature of Florida.

SECTION 4.03. APPLICATION OF REVENUES PURSUANT TO PROVISIONS OF ORIGINAL ORDINANCE. All Pledged Revenues and all moneys held in the funds and accounts established pursuant to the Original Ordinance shall be held and applied for the benefit of the Holders of the 1997 Bonds in the same manner as provided in Section 3.04 of the Original Ordinance, and all of the provisions of Section 3.04 shall be deemed to be applicable to the 1997 Bonds in the same manner as to the Outstanding Parity Bonds and

all other 1997 Bonds hereafter issued pursuant to the Original Ordinance.

ARTICLE V

COVENANTS OF THE ISSUER; EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. APPLICATION OF PROVISIONS OF ORIGINAL ORDINANCE. The 1997 Bonds shall for all purposes be considered to be issued under and pursuant to the provisions of the Original Ordinance, and all of the covenants of the Issuer contained in the Original Ordinance shall be deemed applicable to and for the benefit of the 1997 Bonds to the same extent as to the Outstanding Parity Bonds. The Holder of the 1997 Bonds shall have all of the rights and privileges of the Holder or holders of the Outstanding Parity Bonds.

SECTION 5.02 ADDITIONAL COVENANTS. In addition to the covenants and pledges contained in the Original Ordinance, the Issuer further covenants for the benefit of the holders of the 1997 Bonds that, so long as any of the 1997 Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Sinking Fund, created by the Original Ordinance, a sum sufficient to pay, when due, the entire principal of the 1997 Bonds remaining unpaid, together with interest accrued and to accrued thereon, the Issuer covenants with the holders of the 1997 Bonds issued pursuant to this Ordinance as follows:

A. **RESERVE FUND.** Moneys in the Reserve Fund shall be used only for the purpose of the payment of interest on or principal (including Amortization Installments) of the 1997 Bonds when the other moneys allocated to the Sinking Fund are insufficient therefor, and for no other purpose. Any withdrawals from the Reserve Fund or draws against a Reserve Account Credit Facility shall be restored or repaid from the first available moneys after all required current payments have been made into the Sinking Fund and accounts therein.

Upon the issuance of Additional Parity Bonds, additional cash or Authorized Investments shall be deposited into the Reserve Fund or additional Reserve Account Credit Facilities shall be purchased from the proceeds of such Additional Parity Bonds, or from other moneys of the Issuer available therefor, in order to make the Reserve Account value at the time of issuance thereof equal to the Reserve Account Requirement.

Notwithstanding the foregoing, the Issuer at any time may substitute a Reserve Account Credit Facility for all or any portion of the cash and Authorized Investments on deposit or required to be deposited in the Reserve Fund; provided the Credit Facility Issuer of such Reserve Account Credit Facility has a claims paying ability in the top two rating categories of Moody's Investor Services and Standard & Poor's, and subject only to such conditions and approvals as may be imposed by the Credit Facility Issuer providing such Reserve Account Credit Facility or by any Credit Facility Issuer having a Credit Facility or Reserve Account Credit Facility in effect as to any 1997 Bonds.

The Authorized Investments and Investment Earnings on deposit in the Reserve Fund shall be valued annually, or more frequently if required by a Credit Facility Issuer, as of the last day of the Fiscal Year at their fair market value exclusive of unpaid accrued interest. Any Reserve Account Credit Facilities shall be valued at the amount of the Reserve Account Credit Facility Coverage. If and whenever the Reserve Account value exceeds the Reserve Account Requirement on all then Outstanding Bonds, such excess may be withdrawn and applied, first, to pay any Reserve Account Credit Facility Costs and thereafter then into the Revenue Fund. Deficiencies in the Reserve Account value resulting from a decline in market value of the Authorized Investments, a draw on a Reserve Account Credit Facility, or a withdrawal therefrom shall be restored no later than twelve (12) months from the date of such valuation, draw, or withdrawal.

SECTION 5.03. TAX COMPLIANCE. The Issuer covenants that it will restrict the use of the proceeds of the 1997 Bonds in such manner and to such extent, if any, as may be necessary so that the 1997 Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor or any other officer having responsibility for the issuance of the 1997 Bonds shall give an appropriate certificate of the Issuer, for inclusion in the transcript of proceedings for the 1997 Bonds, setting forth the reasonable expectations of the Issuer regarding the amount and use of all the proceeds of the 1997 Bonds, the facts, circumstances, and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the 1997 Bonds. Each such officer is further authorized to make or effect any election, selection, choice, consent, approval, or waiver on behalf of the Issuer with respect to the 1997 Bonds as the Issuer is permitted or required to make or give under the federal income tax laws, for the purposes of assuring, enhancing, or protecting favorable tax treatment or characterization of the 1997 Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate

amount or payments of penalties thereon, or making payments in lieu thereof, or obviating such amounts or payments, as determined by such officer. Any such action of such officer shall be in writing and signed by the officer.

The Issuer covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the 1997 Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the 1997 Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate or penalty payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate or penalty payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

SECTION 5.04. EVENTS OF DEFAULT. It shall be an event of default under this Ordinance if the Issuer shall:

(1) fail to deposit with the Paying Agent on the due date thereof sufficient funds to pay maturing principal, Amortization Installments and interest on the 1997 Bonds;

(2) fail to deposit or pay within ten (10) days after the due date thereof any other required deposit or payment under this Ordinance; or

(3) fail to comply with any other covenant made in this Ordinance, which failure shall continue for more than thirty (30) days.

SECTION 5.05. REMEDIES. Any Holder of 1997 Bonds issued under the provisions hereof or any trustee acting for the Holders of such 1997 Bonds may by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the laws of the State of Florida, or granted and contained herein, and may enforce and compel the performance of all duties herein required or by any applicable statutes to be performed by the Issuer or by any officer thereof, including, but not limited to, the duty of the Issuer to remedy any event of default herein prescribed.

Nothing herein, however, shall be construed to grant to any holder of such 1997 Bonds any lien on any property of or within the corporate boundaries of the Issuer.

SECTION 5.06. PAYMENT FROM PLEDGED REVENUES. The Issuer will duly and punctually pay or cause to be paid from the Pledged Revenues as provided herein, the principal of, and interest and premium, if any, on the 1997 Bonds.

ARTICLE VI

MISCELLANEOUS PROVISIONS

SECTION 6.01. SALE OF 1997 BONDS; PRELIMINARY OFFICIAL STATEMENT. The 1997 Bonds shall be issued and sold at public sale in accordance with the provisions of the Act and the requirements of this Ordinance. The Finance Director in consultation with and upon the advice of the City Attorney, the Financial Advisor, Bond Counsel and other professionals involved in the issuance of the 1997 Bonds, is authorized to publicly advertise for sealed bids from prospective purchasers of the 1997 Bonds.

The proper officers or agents of the Issuer are hereby authorized to assist in the preparation of the preliminary and final official statements for the 1997 Bonds. Any preliminary official statement distributed by the Issuer to prospective purchasers for the 1997 Bonds shall be sufficient to be, and shall be, "deemed final" (except for permitted omissions) in accordance with Securities and Exchange Commission Rule 15c2-12. The Finance Director of the Issuer is hereby authorized to determine and to certify or otherwise represent when such official statement shall be "deemed final" by the Issuer as of its date, in accordance with such Rule.

SECTION 6.02. VALIDATION AUTHORIZED. If, in the opinion of the City Attorney and Bond Counsel it is deemed necessary to validate the 1997 Bonds, the City Attorney is hereby authorized and directed to institute appropriate proceedings for the validation of the 1997 Bonds and the proper officers of the Issuer are hereby authorized to verify on behalf of the Issuer any pleadings in such proceedings.

SECTION 6.03. NOTICES TO CREDIT FACILITY ISSUER; CREDIT FACILITY ISSUER DEEMED SOLE BONDOWNER AND A PARTY IN INTEREST. Whenever a Credit Facility Issuer shall be providing a Credit

Facility or Reserve Account Credit Facility with respect to any 1997 Bonds issued hereunder, such Credit Facility Issuer shall be entitled to receive and shall be provided by certified mail all notices and reports which are required herein to be prepared and to be sent or made available to Registered Owners of such 1997 Bonds and a full transcript of any proceedings relating to the execution of any supplemental ordinance or resolution hereto. Notwithstanding any other provisions of this Ordinance to the contrary, the Credit Facility Issuer shall be deemed to be the sole Registered Owner of all 1997 Bonds insured by it for purposes of exercising rights, consents or remedies granted under this Ordinance. For any amendment or modification of this Ordinance for which a Credit Facility Issuer shall consent in replacement of the Registered Owners, notice of such amendment or modification along with a copy of such supplemental resolution or ordinance shall be sent to each Rating Agency at least twenty (20) days prior to the adoption of such amendment or modification.

Any provision of this Ordinance to the contrary notwithstanding, if under any provision hereof any action is to be taken only with the consent or approval of a Credit Facility Issuer, and if at the time such consent or approval would otherwise be called for, such Credit Facility Issuer is not in compliance with its payment obligations of or is contesting its obligations under its Credit Facility, then the rights of such Credit Facility Issuer to any consent or approval hereunder shall be suspended while any such noncompliance or contest is ongoing.

Except as expressly provided herein to the contrary, neither the Issuer, the Bond Registrar, nor the Paying Agent shall take the Credit Facility into effect in determining whether the rights of Registered Owners are adversely affected by actions taken pursuant to the terms and provisions of this Ordinance.

The Credit Facility Issuer shall be included as a party in interest and as a party entitled to (i) notify the Paying Agent, the Bond Registrar or any trustee or the Issuer to intervene in judicial proceedings that affect the 1997 Bonds or the security therefor. The trustee, the Bond Registrar, the Paying Agent and the Issuer shall be required to accept notice of default from the Credit Facility Issuer.

SECTION 6.04. DEFEASANCE. Notwithstanding the foregoing provisions of this Ordinance, if, at any time, the Issuer shall have paid, or shall have made provision for payment of, the principal, interest and redemption premiums, if any, with respect to any 1997 Bonds, then, and in that event, the pledge of and lien on the Pledged Revenues in favor of the Registered Owners of such 1997 Bonds shall be no longer in effect. For purposes of

the preceding sentence, deposit of noncallable Defeasance Obligations, the principal and interest on which will be sufficient, without reinvestment, in the opinion of an Independent Certified Public Accountant to make timely payment of the principal of, interest, and redemption premiums, if any, on such 1997 Bonds designated to be defeased, and receipt of an opinion of Bond Counsel to the effect that such deposit has no adverse effect on the exclusion from gross income for federal income tax purposes of interest on the 1997 Bonds, in irrevocable trust with a banking institution or trust company, for the sole benefit of the Registered Owners of such 1997 Bonds, shall be considered "provision for payment". Nothing herein shall be deemed to require the Issuer to call any of the 1997 Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption. Notwithstanding the foregoing, amounts paid by a Credit Facility Issuer shall not be deemed paid for the purposes of this Section 6.04 and shall remain due and owing hereunder until paid in accordance with this Ordinance.

SECTION 6.05. NO RECOURSE. No recourse shall be had for the payment of the principal of, premium, if any, and interest on the 1997 Bonds, or for any claim based thereon or on this Ordinance, against any present or former member or officer of the Council or any person executing the 1997 Bonds.

SECTION 6.06. MODIFICATION OR AMENDMENT. (a) No material modification or amendment of this Ordinance or of any resolution or ordinance amendatory hereof or supplemental hereto, may be made without the consent in writing of the Registered Owners of fifty-one percent (51%) or more in principal amount of the 1997 Bonds then Outstanding and affected by such modification or amendment.

(b) The Issuer, from time to time and at any time and without the consent or concurrence of any Registered Owners of any 1997 Bonds, may adopt a resolution or ordinance amendatory hereof or supplemental hereto, if the provisions of such supplemental or amendatory resolution or ordinance shall not adversely affect the rights of the Registered Owners of the 1997 Bonds then Outstanding, for any one or more of the following purposes:

(1) to make any changes or corrections in this Ordinance which the Issuer shall have been advised by legal counsel are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or omission or mistake or manifest error contained herein, or to insert in this Ordinance such provisions clarifying

matters or questions arising hereunder as are necessary or desirable;

(2) to add additional covenants and agreements of the Issuer for the purpose of further securing the payment of the 1997 Bonds;

(3) to surrender any right, power or privilege reserved to or conferred upon the Issuer by the terms hereof;

(4) to confirm by further assurance any lien, pledge or charge created or to be created by the provisions hereof;

(5) to grant to or confer upon the Registered Owners any additional right, remedies, powers, authority or security that lawfully may be granted to or conferred upon them;

(6) to assure compliance with the Code;

(7) to provide such changes which, in the opinion of the Issuer, based upon such certificates and opinions of the Independent Consultant, Independent Certified Public Accountant, Bond Counsel, financial advisors or other appropriate advisors as the Issuer may deem necessary or appropriate, will not materially adversely affect the security of the Registered Owners, including, but not limited to, such changes as may be necessary in order to adjust the terms hereof so as to facilitate the issuance of other types of obligations, including, but not limited to, bonds, notes, certificates, warrants or other evidences of indebtedness, which are junior and subordinate to the 1997 Bonds; or

(8) to modify any of the provisions of this Ordinance in any other respects, provided that such modification shall not be effective (a) with respect to the 1997 Bonds Outstanding at the time such amendatory or supplemental resolution or ordinance is adopted or (b) shall not be effective (i) until the 1997 Bonds Outstanding at the time such amendatory or supplemental resolution or ordinance is adopted shall cease to be Outstanding, or (ii) until the Registered Owners thereof consent thereto.

(c) The foregoing provisions of Sections 6.06(a) and (b) notwithstanding, (1) no consent of any Registered Owners shall be required with respect to modification or amendment as to which modification or amendment the Credit Facility Issuer has provided its prior written consent, (2) no modification or amendment shall

be effective without the prior written consent to such modification or amendment of the Credit Facility Issuer, and (3) no modification or amendment shall permit a change in the maturity of such 1997 Bonds, a reduction in the rate of interest thereon, a reduction in the amount of the principal obligation represented thereby or a reduction in the redemption premium required to be paid in connection with any optional redemption thereof; nor shall any modification or amendment either affect the unconditional promise of the Issuer to pay the principal of and interest on the 1997 Bonds, as the same shall become due, from the Pledged Revenues, or reduce the percentage of Registered Owners of 1997 Bonds above required to consent to such material modifications or amendments, without the consent of the Registered Owners of all such 1997 Bonds.

A notice and a copy of any amendment or modification shall be sent to each of the Rating Agencies at least twenty (20) days prior to the execution or adoption thereof.

SECTION 6.07. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the 1997 Bonds issued hereunder.

SECTION 6.08. ORDINANCE CAPTIONS AND HEADINGS. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

SECTION 6.09. SECONDARY MARKET DISCLOSURE.

A. INFORMATION TO BE PROVIDED TO THE PUBLIC. The City hereby covenants with the Registered Owners of any and all of the 1997 Bonds to make public the information set forth in subsections (1), (2), (3) and (4) below. Such undertaking is made to comply with Rule 15c2-12 of the Securities and Exchange Commission and is intended to be construed to satisfy the requirements of the Rule.

(1) *Annual Financial Information and Operating Data.* A summary and description of the Pledged Revenues, including actual collections of said Pledged Revenues consistent with the presentation of such Pledged Revenues in the Official

Statement, shall be made public annually as soon as practicable after the receipt of the City's annual audited financial statements.

(2) *Audited Financial Information.* A copy of the City's annual audited financial statements prepared in accordance with generally accepted accounting principles shall be made public annually within six (6) months of the end of each Fiscal Year.

(3) *Material Events Notices.* In a timely manner, notice of the following events relating to the 1997 Bonds, if such events are material;

(i) Principal and interest payment delinquencies;

(ii) Nonpayment related defaults under the Original Ordinance and this Ordinance;

(iii) Unscheduled draws on reserves reflecting financial difficulties;

(iv) Unscheduled draws on credit enhancements reflecting financial difficulties;

(v) Substitution of credit or liquidity providers, or their failure to perform;

(vi) Adverse tax opinions or events affecting the tax-exempt status of the 1997 Bonds;

(vii) Modifications to rights of Registered Owners of the 1997 Bonds;

(viii) Redemptions;

(ix) Defeasances;

(x) Release, substitution or subordination of Pledged Revenues securing repayment of the 1997 Bonds;

(xi) Rating changes;

(4) *Notice of Failure to Provide Annual Financial Information.* In a timely manner, notice of the failure of the City to provide the information required by subsection (1) or (2) hereof within the times specified therefor.

B. MEANS OF MAKING INFORMATION PUBLIC.

(1) Information to be made public by the City shall be transmitted to one or more of the following entities as required by Subsection B(2) hereof:

(a) to each nationally recognized municipal securities information repository, as such term is used in United States Securities and Exchange Commission Release No. 34-34961 ("NRMSIR"), by (i) electronic facsimile transmissions confirmed by first class mail, postage prepaid, or (ii) first class mail, postage prepaid; provided that the City is authorized to transmit information to a NRMSIR by whatever means are mutually acceptable to the City, and the NRMSIR; and

(b) to the state information depository, as such term is used in Securities and Exchange Commission Release No. 34-34961 ("SID"), if and when a SID is created for the State of Florida, by (i) electronic facsimile transmissions confirmed by first class mail, postage prepaid, or (ii) first class mail, postage prepaid; provided that the City is authorized to transmit information to a SID by whatever means are mutually acceptable to the City and the SID, and

(c) to the Municipal Securities Rulemaking Board ("MSRB") by (i) electronic facsimile transmissions confirmed by first class mail, postage prepaid, or (ii) first class mail, postage prepaid, provided that the City is authorized to transmit information to the MSRB by whatever means are mutually acceptable to the City, and the MSRB.

(2) Information shall be transmitted to the following:

(a) all annual financial information and operating data described in Subsection A(1) hereof and the annual audited financial information described in Subsection A(2) hereof shall be sent to all NRMSIRs and to the SID (if a SID is established for the State of Florida); and

(b) all material event notices described in Subsection A(3) hereof and notices described in Subsection A(4) hereof shall be sent to each NRMSIR or to the MSRB, and to the SID (if a SID is established for the State of Florida).

Nothing in this Subsection B(2) shall be construed to relieve the City of its obligation to provide notices to the

Registered Owners of all 1997 Bonds if such notice is required by this Ordinance.

SECTION 6.10. REPEAL OF INCONSISTENT ORDINANCES AND RESOLUTIONS. All ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6.11. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage.

APPROVED AT FIRST READING THIS 4TH DAY OF JUNE, 1997.

PASSED AND ADOPTED AT SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, THIS 18th DAY OF JUNE, 1997.

CITY OF NAPLES, FLORIDA

Bill Barnett, Mayor

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Tara A. Norman
City Clerk

Kenneth B. Cuyler
City Attorney

**EXHIBIT A
[FORM OF BOND]**

No. _____

\$ _____

**UNITED STATES OF AMERICA
STATE OF FLORIDA
CITY OF NAPLES
PUBLIC SERVICE TAX REVENUE BOND, SERIES 1997**

[FORM OF FIRST PARAGRAPH OF CURRENT INTEREST PAYING BOND]

RATE OF INTEREST	MATURITY DATE	DATE OF ISSUE	CUSIP
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REGISTERED OWNER:

PRINCIPAL AMOUNT:

KNOW ALL MEN BY THESE PRESENTS, that the City of Naples, Florida (hereinafter called "City"), for value received hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the special funds hereinafter mentioned, on the Maturity Date specified above, the Principal Amount shown above, upon the presentation and surrender hereof at the corporate trust office _____, _____, Florida, as Paying Agent and Bond Registrar, and to pay solely from such special funds interest thereon from the date of this Bond or from the most recent interest payment date to which interest has been paid, whichever is applicable, until payment of such sum, at the Rate of Interest per annum set forth above, payable on July 1, 1998, and semiannually thereafter on January 1 and July 1 in each year, by check or draft mailed to the Registered Owner at his address as it appears on the fifteenth day of the month preceding the applicable interest payment date, on the registration books of the City kept by the Bond Registrar; provided, that for any Registered Owner of one million dollars or more in principal amount of Bonds, such payment shall, at the written request of such Registered Owner, be by wire transfer to a location within the continental United States or other medium acceptable to the City and to such Registered Owner. The principal of, premium, if any, and interest on this Bond are payable in lawful money of the United States of America.

[FORM OF FIRST PARAGRAPH OF CAPITAL APPRECIATION BOND]

<input type="checkbox"/> RATE OF <input type="checkbox"/> INTEREST	<input type="checkbox"/> MATURITY <input type="checkbox"/> DATE	<input type="checkbox"/> DATE OF <input type="checkbox"/> ORIGINAL <input type="checkbox"/> ISSUE	PRINCIPAL AMOUNT AT ISSUANCE PER \$5,000 MATURITY AMOUNT
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

REGISTERED OWNER:

MATURITY AMOUNT:

KNOW ALL MEN BY THESE PRESENTS, that the City of Naples, Florida (the "City"), for value received, hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the special funds hereinafter mentioned, on the Maturity Date specified above, the Maturity Amount shown above, upon presentation and surrender hereof at the corporate trust office of _____, as Bond Registrar and Paying Agent; provided, that for any Registered Owner of one million dollars or more in principal amount of Bonds, such payment shall, at the written request of such Registered Owner be by wire transfer to a location within the continental United States or other medium acceptable to the City and to such Registered Owner. The Maturity Amount and premium, if any, of this Bond are payable in lawful money of the United States of America.

(REMAINDER OF BOND FORM)

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of not exceeding \$_____ of like date, tenor and effect, except as to number, interest rate and maturity, issued to finance the cost of the acquisition and construction of certain capital improvements, under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 166, Florida Statutes, the Charter of the City, and other applicable provisions of law, and Ordinance No. 97-_____, duly enacted by the City Council of the City on June 18, 1997, as supplemented (hereinafter collectively called "Ordinance"), and is subject to all the terms and conditions of such Ordinance.

This Bond and the Bonds of which this Bond is one are payable from and secured by a lien upon and pledge of the Pledged Revenues, which include (a) the Public Service Tax collected by the City on the purchase of utilities services pursuant to Section 166.231, Florida Statutes, and an ordinance enacted by the City on September 27, 1967, and (b) the income and investments held in the funds and accounts created by the Ordinance, all in the manner and as more particularly described in the Ordinance on a parity with the City's outstanding Utility Service Tax Revenue Certificates, Series 1971; Public Service Tax Refunding Revenue Bonds, Series 1989, and Public Service Tax Refunding Revenue Bonds, Series 1993.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision or limitation of indebtedness, and it is expressly agreed by the Registered Owner of this Bond that such Registered Owner shall never have the right to compel the exercise of the ad valorem taxing power of the City for the payment of the principal of and interest on this Bond or the making of any sinking fund, reserve or other payments provided for in the Ordinance. This Bond and the obligation evidenced thereby shall not constitute a lien upon any property of or in the City, but shall constitute a lien only on the Pledged Revenues, in the manner provided in the Ordinance.

(To be inserted where appropriate on face of Bond:
"REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE SIDE HEREOF, AND SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH ON THIS SIDE.")

This Bond may be transferred only upon the books of the City kept by the Bond Registrar under the Ordinance upon surrender thereof at the principal office of the Bond Registrar with an

assignment duly executed by the Registered Owner or his duly authorized attorney, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance, and upon surrender and cancellation of this Bond. Upon any such transfer, there shall be executed in the name of the transferee, and the Bond Registrar shall deliver, a new registered Bond or Bonds in the same aggregate principal amount and series, maturity and interest rate of the authorized denominations as the surrendered Bond.

In like manner, subject to such conditions and upon the payment of such charges, if any, the Registered Owner of any Bond or Bonds may surrender the same (together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Registered Owner or his duly authorized attorney) in exchange for an equal aggregate principal amount of fully registered Bonds of the same series and maturity of any other authorized denominations.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the Statutes and Constitution of the State of Florida applicable thereto; and that the issuance of this Bond and of the issue of Bonds of which this Bond is one, does not violate any constitutional or statutory limitation.

(Insert redemption provisions.)

Notice of such redemption shall be given in the manner required by the Ordinance.

This Bond is and has all the qualities and incidents of a negotiable instrument under the laws of the State of Florida.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the certificate of authentication hereon shall have been executed by the Bond Registrar.

IN WITNESS WHEREOF, the City of Naples, Florida, has issued this Bond and has caused the same to be executed by the manual or facsimile signature of its Mayor, and its corporate seal or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon and attested by the manual or

facsimile signature of its City Clerk, all as of the first day of _____, 1997.

CITY OF NAPLES, FLORIDA

(SEAL)
Bill Barnett, Mayor

By: _____

ATTEST:

Tara A. Norman, City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within-mentioned Ordinance.

By: _____
Authorized Signature

Date of Authentication

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

TEN COM - as tenants in common	UNIF GIF MIN ACT - _____
TEN ENT - as tenants by the entireties	(Cust.) Custodian for _____
JT ENT - as joint tenants with right of survivorship and not as tenants in common	(Minor) under Uniform Gifts to Minors Act of _____ (State)

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

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____

(PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE]

(Name and Address of Transferee)

the within Note and does hereby irrevocably constitute and appoints _____ to transfer the within note on the books kept for registration thereof, with full power of substitution in the premises.

Dated _____
Signature Guaranteed

Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other Guarantee program acceptable to the Registrar.

Note: The signature(s) on this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within bond in every particular, without Alteration or enlargement or any Change whatever.