C O P Y

ORDINANCE 1057

AN ORDINANCE AUTHORIZING THE ISSUANCE OF REFUNDING AND TOURIST REVENUE BONDS: PLEDGING TO THE PAYMENT OF THE BONDS THE REVENUES DERIVED FROM THE HOTEL AND RESTAURANT TAX PREVIOUSLY LEVIED BY THE CITY OF EUREKA SPRINGS: AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING TO THE TOURISM PROJECT AND THE FINANCING THEREOF: AND DECLARING AN EMERGENCY

WHEREAS, the City of Eureka Springs, Arkansas (the "City") has previously issued $50,000 City of Eureka Springs, Arkansas Auditorium and Convention Center Parking Revenue Bonds, dated December 1, 1975 (the "1975 Bonds"), authorized by Ordinance No. 988 of the City, adopted and approved November 15, 1975 (the "1975 Ordinance"), in order to finance parking facilities for use in conjunction with the City's convention center and has pledged to the 1975 Bonds (1) revenues derived from the parking facilities and (2) revenues derived from the City gross receipts tax (hereinafter described); and

WHEREAS, the City is authorized, pursuant to Act. No. 380 of the Acts of Arkansas of 1971, as amended ("Act No. 380"), to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of any land, buildings, improvements or facilities of any and every nature whatever necessary or desirable for the securing and developing of tourism; and

WHEREAS, the City Advertising and Promotion Commission of the City (the "Commission"), is, in cooperation with the city Council (the "Council") of the City, formulating plans for proposed tourism improvements (the "Project"); and

WHEREAS, the City has determined that the Projects should be undertaken, with the Project to include the acquisition of additional sites for parking lots; the improvement of two existing and the newly acquired parking lots (paving, landscaping, etc.), the construction and equipment of a tourism information center, the purchase of trolleys for use in the downtown area, the refurbishing of the natural springs in the City, the construction and equipment of new comfort stations and the renovation of the existing comfort stations; and

WHEREAS, the Project is needed to secure and develop tourism in the City and the Project facilities pertain to and will support the City's convention center and are necessary to the full utilization of the convention center, and

WHEREAS, a portion of the City has been designated as an historic district and is included in the National Register of Historic Places, and therefore the City is authorized pursuant to Act. No. 185 of the Acts of Arkansas of 1965, as amended ("Act No. 185") to levy a tax of not to exceed two percent (2%) upon the gross revenues or gross proceeds from the renting, leasing or otherwise furnishing of hotel or motel accommodations for profit in the City, and upon the gross receipts or gross proceeds of restaurants, cafes, cafeterias and other business establishments engaged in the business of selling prepared food for on-premises consumption in the City (the "City gross receipts tax"); and

WHEREAS, the City has levied, by Ordinance No. 936, as amended by Ordinance No. 942 and Ordinance No. 1018, and is now collecting, the City gross receipts tax at the rate of two percent (2%); and

WHEREAS, the necessary moneys to finance the Project may be obtained by issuance by the City of revenue bonds payable from the revenues derived from the City gross receipts tax and the Commission has requested the City Council to issue the bonds and has approved the pledging thereto of revenues from the City gross receipts tax; and

WHEREAS, in order to release the pledge of the City gross receipts tax to the 1975 Bonds and make it available for bonds issued to finance the Project it will be necessary to refund the 1975 Bonds; and

WHEREAS, the City has entered into a contract with Hill, Crawford & Lanford Incorporated, Little Rock, Arkansas (the "purchaser") for the purchase of $500,000 of Refunding and Tourism Revenue Bonds, dated March 1, 1979 (the "bonds"), bearing interest at the rate of 6-3/4% per annum, with interest payable semi-annually on March 1 and September 1 of each year, commencing September 1, 1979, and maturing on March 1 in each of the years 1980 to 1994, inclusive for a purchase price of $500,000 plus accrued interest from the date of the bonds to the date of delivery; and

WHEREAS, the purchaser has elected to convert the bonds to an issue of $518,000 in principal amount, bearing interest at the rates of 5-1/2%, 5-3/4%, 6%, 6-1/4% and 6-1/2% per annum, and upon examination the Council has found and determined that the cost of maturing the bonds after conversion is less than the cost of maturing the bonds prior to conversion, and that the conversion is within the terms of the contract and is proper;

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

Section 1. That the refunding of the 1975 Bonds and the Project be accomplished and the Mayor and City Clerk are hereby authorized to take all action and to execute all contracts and instruments necessary or desirable in connection with the accomplishing of the refunding and of the Project.

Section 2. That under the authority of the Constitution and laws of the State of Arkansas, including particularly Act. No. 380, Act. No. 185 and Act. No. 977 of the Acts of Arkansas of 1975, Refunding and Tourism Revenue Bonds (hereinafter referred to as the "bonds") are hereby authorized and ordered issued in the total principal amount of $518,000 for the purpose of financing the Project and accomplishing the refunding.

Section 3. That the sale of the bonds to Hill, Crawford and Lanford Incorporated, Little Rock, Arkansas, and the conversion thereof from $500,000 of bonds to $518,000 be, and the same hereby are, approved and confirmed.

Section 4. That First National Bank, Fayetteville, Arkansas, is hereby designated as Trustee and Paying Agent for the bonds.

Section 5. That the bonds shall be dated as of March 1, 1979 and shall mature (on March 1 of each year), bear interest and be numbered as follows:

Maturity	Principal Amount	Interest Rate	Bond Numbers
1980	$25,000	5-1/2%	1 - 5
1981	25,000	5-1/2%	6 -10
1982	28,000	5-3/4%	11-16
1983	25,000	5-3/4%	17-21
1984	25,000	5-3/4%	22-26
1985	30,000	6%	27-32
1986	30,000	6%	33-38
1987	30,000	6%	39-44
1988	35,000	6%	45-51
1989	35,000	6-1/4%	52-58
1990	40,000	6-1/4%	59-66
1991	40,000	6-1/4%	67-74
1992	45,000	6-1/4%	75-83
1993	50,000	6-1/2%	84-93
1994	55,000	6-1/2%	94-104

The bonds shall be issued as coupon bonds payable to bearer, registrable as to principal only or as to principal and interest, and shall be in the denomination of $3,000. Interest on the bonds shall be payable on September 1, 1979, and semiannually thereafter on March 1 and September 1.

Section 6. The bonds shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City. The principal of and interest on the bonds shall be payable solely out of the Refunding and Tourism Revenue Bond Fund (hereinafter created) and shall be a valid claim of the bondholders only against such Fund and the revenues pledged to such Fund. The bonds and the interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 7. That the bonds shall be in substantially the following form and the Mayor and City Clerk are hereby authorized and directed to make all recitals contained therein:

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF CARROLL
CITY OF EUREKA SPRINGS
__% REFUNDING AND TOURISM REVENUE BOND

No. _____ $ _____

KNOW ALL MEN BY THESE PRESENTS:

That the City of Eureka Springs, Arkansas (the "City"), for value received, promises to pay to bearer, or if this bond be registered to the registered owner hereof, on March 1, ____, the principal sum of

________________________DOLLARS

in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay in like coin or currency interest on said principal amount from the date hereof until paid at the rate of ________percent (___%) per annum, such interest to be payable semiannually on March 1 and September 1 of each year, commencing September 1, 1979. Payment of principal and interest shall be made at the principal office of First National Bank, Fayetteville, Arkansas (the "Trustee" and the Paying Agent"). Payment of interest, when registered as to interest, may be made by check or draft to the address of the registered owner as shown on the bond registration book maintained by the Trustee as bond registrar.

This bond is one of an issue of bonds in the aggregate principal amount of $518,000 (the "bonds") being issued for the purpose of financing certain costs in connection with proposed tourism improvements and refunding the City's Auditorium and Convention Center Parking Revenue Bonds, dated December 1, 1975 (the "Project"), as described in the Authorizing Ordinance (hereinafter referred to).

The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Act. No. 380 of the Acts of Arkansas of 1971, as amended, Act. No. 185 of the Acts of Arkansas of 1965, as amended, and Act. No. 977 of the Acts of Arkansas of 1975, and pursuant to Ordinance No. ____ of the City, adopted and approved on the ____ day of ________, 1979 (the "Authorizing Ordinance"), and the bonds do not constitute an indebtedness of the City within any constitutional or statutory limitation. The bonds are not general obligations of the City, but are special obligations payable solely from revenues derived from the gross receipts tax on hotel and motal accommodations and on restaurants, cafes, cafeterias and other establishments levied by Ordinance No. 936 of the City, as amended by Ordinance No. 942 and Ordinance No. 1018, adopted pursuant to the authority of Act. 185 of the Acts of Arkansas of 1965, as amended ("gross receipts tax"). An amount of such revenues sufficient to pay as due the principal of, premium, if any, and interest on the bonds is to be set aside in a special fund for that purpose identified as the Refunding and Tourism Revenue Bond Fund (created by the Authorizing Ordinance). Reference is hereby made to the Authorizing Ordinance for a detailed statement of the nature and extent of the security, the rights and obligations of the City, the Trustee and the registered owners of the bonds, and the terms and conditions upon which the bonds are issued.

The bonds are subject to redemption prior to maturity at the option of the City in inverse numerical order at a price of the principal amount being redeemed plus accrued interest to the date of redemption as follows:

(1) From surplus revenues derived from the gross receipts tax on any interest payment date.

(2) From funds from any other source on any interest payment date on or after March 1, 1989.

Notice of the call for redemption shall be published one time in a newspaper published in the City of Little Rock, Arkansas, and having a general circulation throughout the State of Arkansas, which publication shall not be less than thirty (30) days prior to the date of redemption. In addition, notice of redemption shall be mailed by registered or certified mail to the registered owner of any bond registered as to principal addressed to such registered owner at his registered address and placed in the mails not less than thirty (30) days prior to the date fixed for redemption. In the event that all of the bonds are registered as to principal, notice in writing by registered or certified mail to the owner or owners thereof not less than thirty (30) days prior to the date fixed for redemption shall be sufficient, and published notice of the call for redemption need not be given. Each notice shall specify the numbers and the maturities of the bonds being called, and the date on which they shall be presented for payment. After the date specified in such call, the bond or bonds so called will cease to bear interest provided funds for their payment have been deposited with the Trustee.

This bond may be registered as to principal alone or as to principal and interest and may be discharged from such registration in the manner, with the effect and subject to the terms and conditions endorsed hereon. Subject to the provisions for registration endorsed hereon, nothing contained in this bond shall affect or impair the negotiability of this bond. This bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the bonds do exist, have happened and have been performed in due time, form and manner as required by law, that the issuance of this bond and the issue of which it forms a part, together with all other obligations of the City, does not exceed or violate any constitutional or statutory limitation, and that the above referred to revenue pledged to the payment of the principal of and interest on the bonds as the same become due and payable will be sufficient in amount for that purpose.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Authorizing Ordinance until the Certificate of Authentication hereon shall have been executed by the Trustee.

IN WITNESS WHEREOF, the City of Eureka Springs, Arkansas has caused this bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized with the facsimile signature of the Mayor and the manual signature of the Clerk, and its corporate seal to be affixed, all as of March 1, 1979.

CITY OF EUREKA SPRINGS, ARKANSAS

By (facsimile signature)
Mayor

ATTEST:

____
City Clerk

(SEAL)

The following shall be endorsed on the bonds:

(Form of Trustee's Certificate)

TRUSTEE"S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds designated in and issued under the provisions of the within mentioned Authorizing Ordinance.

FIRST NATIONAL BANK
Fayetteville, Arkansas

By____________________________
Authorized Signature

(Form of Coupon)

$_______ No. _____

On the first day of (March) (September), 19___, the City of Eureka Springs, Arkansas (unless the bond to which this coupon is attached shall have been previously called for redemption or shall have become payable as provided in the Authorizing Ordiance referred to in the bond) will pay, solely from the revenues pledged in the Authorizing Ordinance, to bearer at the principal office of First National Bank, Fayetteville, Arkansas, upon presentation and surrender hereof, the sum of

________________________DOLLARS

in such coin or currency of the United State of America as at the time of payment is legal tender for the payment of public and private debts, being six (6) months interest then due on its Refunding and Tourism Revenue Bond, dated March 1, 1979, and numbered _____.

CITY OF EUREKA SPRINGS, ARKANSAS

By (facsimile signature)
Mayor

PROVISIONS FOR REGISTRATION AND RECONVERSION

This Bond may be registered as to principal alone on books of the City, kept by the Trustee as bond registrar, upon presentation hereof to the bond registrar, which shall make mention of such registration in the registration blank below, and this Bond may thereafter be transferred only upon an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the bond registrar, such transfer to be made on such books and endorsed hereon by the bond registrar. Such transfer may be to bearer, and thereafter transferability by delivery shall be restored, but this Bond shall again be subject to successive registrations and transfers as before. The principal of this Bond, is registered, unless registered to bearer, shall be payable only to or upon the order of the registered owner or his legal representative. Interest accruing on this Bond will be paid only on presentation and surrender of the attached interest coupons as they respectively become due, and notwithstanding the registration of this Bond as to principal, the appurtenant interest coupons shall remain payable to bearer and shall continue to be transferable by delivery; provided, that if upon registration of this Bond, or at any time thereafter while this Bond is registered the name of the owner, the unmatured coupons attached evidencing interest to be thereafter paid hereon shall be surrendered to said bond registrar, a statement to that effect will be endorsed hereon by the bond registrar and thereafter interest evidenced by such surrendered coupons may be paid by check or draft of the bond registrar at the time provided herein to the registered owner of this Bond by mail to the address shown on the registration books. This Bond when so converted into a bond registered as to both principal and interest may be reconverted into a coupon bond at the written request of the registered owner and upon presentation at the office of said bond registrar. Upon such reconversion the coupons representing the interest to become due thereafter to the date of maturity will again be attached to this Bond and a statement will be endorsed hereon by the bond registrar in the registration blank below whether it is then registered as to principal or payable to bearer.

Date of Registration	Name of Registered Owner	Manner of Registration	Signature of Bond Registrar

Section 8. Pending the preparation and delivery of the bonds hereinabove authorized, temporary bonds in the aggregate principal amount of not to exceed $75,000 may be issued for the purpose of providing Project funds immediately and in anticipation of the issuance of such permanent and definitive bonds. The temporary bonds shall be in such denominations as the Mayor shall determine, be numbered from 1 upwards, be sold at a price of 100¢ on the dollar, be dated the day of delivery, bear interest at the rate of 6-3/4% per annum, be payable June 1, 1979 and shall be sold to Bank of Eureka Springs, Eureka Springs, Arkansas. Upon delivery of the permanent and definitive bonds, the temporary bonds to the extent then outstanding, with accrued interest, shall be paid from the proceeds of the permanent and definitive bonds and shall be cancelled. The temporary bonds shall be typewritten and in substantially the following form:

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF CARROLL
CITY OF EUREKA SPRINGS
6-3/4% TEMPORARY TOURISM REVENUE BOND

No.______ $___

KNOW ALL MEN BY THESE PRESENTS:

That the City of Eureka Springs, Arkansas (the "City"), hereby acknowledges itself indebted and promises to pay to Bank of Eureka Springs, Eureka Springs, Arkansas, or assigns, the principal sum of

__________________________ DOLLARS
on June 1, 1979, plus interest thereon from the date hereof at the rate of 6-3/4% per annum, payable at maturity.

This bond is one of an issue of temporary bonds in an aggregate amount not to exceed $75,000 issued for the purpose of providing Project funds in anticipation of the issuance of permanent and definitive bonds ("Permanent Bonds") issued for financing certain costs in connection with proposed tourism improvements (the "Project") and refunding the City's Auditorium and Convention Center Parking Revenue Bonds, dated December 1, 1975 (the "1975 Bonds"), as described in the Authorizing Ordinance (hereinafter referred to).

The temporary bonds are issued pursuant to and in full compliance with the laws of the State of Arkansas, including particularly Act. No. 380 of the Acts of Arkansas of 1971, as amended, Act. No. 185 of the Acts of Arkansas of 1965, as amended, and Act. No. 977 of the Acts of Arkansas of 1975, and pursuant to Ordinance No. ____ of the City, adopted and approved on the ____ day of _________, 1979 (the "Authorizing Ordinance"), and the bonds do not constitute an indebtedness of the City within any constitutional or statutory limitation. The temporary bonds are not general obligations of the City, but are special obligations payable solely from revenues derived from the gross receipts tax on hotel and motel accommodations and on restaurants, cafes, cafeterias and other establishments levied by Ordinance No. 936 of the City, as amended by Ordinance No. 942 and Ordinance No. 1018, adopted pursuant to the authority of Act. No. 185 of the Acts of Arkansas of 1965, as amended (subject to a prior pledge of such revenues in favor of the 1975 Bonds), and from the proceeds of the Permanent Bonds. The City covenants that on or prior to the maturity date of the temporary bonds the City will issue the Permanent Bonds and apply the proceeds thereof to the retirement of the temporary bonds.

This bond may be redeemed at any time prior to maturity, from funds from any source at a price of par and accrued interest to date of redemption upon ten (10) days prior written notice by first class mail to the owner hereof.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the bonds do exist, have happened and have been performed in due time, form and manner as required by law, that the issuance of this bond and the issue of which it forms a part, together with all other obligations of the City, does not exceed or violate any constitutional or statutory limitation, and that the above referred to revenues pledged to the payment of the principal of an interest on the bonds as the same become due and payable will be sufficient in amount for that purpose.

IN WITNESS WHEREOF, the City of Eureka Springs, Arkansas has caused this bond to be signed by its Mayor and City Clerk and sealed with the corporate seal on this ____ day of ______, 1979.

CITY OF EUREKA SPRINGS, ARKANSAS

ATTEST:

____
Mayor

____
City Clerk

(SEAL)

Section 9. The City hereby expressly pledges the necessary amount of the revenues derived from the City gross receipts tax (hereinafter referred to as the "Pledged Revenues") to the payment of the principal of, premium, if any, and interest on the bonds and to the payment of the fees and charges of the Trustee and Paying Agent. The City covenants that the City gross receipts tax levied by the City (in the amount of 2% of the gross receipts or gross proceeds of hotels, motels and establishments selling food for on-premises consumption) shall never be repealed or reduced while any of the bonds are outstanding. The City further covenants to use due dilligence in collecting the City gross receipts tax. Nothing herein shall prohibit the City from increasing the City gross receipts tax from time to time, to the extent permitted by law, and no part of the revenues derived from any such increase shall become part of the Pledged Revenues.

Section 10. Refunding and Tourism Revenue Bond Fund.

(a) There shall be deposited from the Pledged Revenues (or, at the option of the City, from other available revenues) into a special fund of the City in the Trustee which is hereby created and designated "Refunding and Tourism Revenue Bond Fund" (the "Bond Fund"), (i) the sums in the amounts and at the times hereafter stated in subsection (b) for the purpose of providing funds for the payment of principal of, premium, if any, and interest on the bonds as they mature, and the Trustee's and Paying Agent's fees, and (ii) the sums in the amounts and at the times hereafter stated in subsection (c) for the purpose of establishing a Debt Service Reserve.

(b) There shall be paid from the Pledged Revenues into the Bond Fund on the first business day of each month until all outstanding bonds, principal and interest, have been paid, or adequate provision made for such payment, a sum equal to 1/6 of the next installment of interest, and 1/12 of the next installment of principal, on all outstanding bonds, plus an amount sufficient to provide for the Trustee's and Paying Agent's fees as the same become due and the required premium on any bonds called for redemption. It is understood that the required monthly deposits hereunder shall be so made as to result in there being on hand in the Bond Fund an amount sufficient to provide for the prompt payment of the principal of and interest on the bonds as the same become due. Payments for Trustee's and Paying Agent's fees and any required premium shall be made from time to time prior to the time due.

(c) There shall be paid from the Pledged Revenues into the Debt Service Reserve (hereby created) in the Bond Fund, on the first business day of each month the sum of $463.50. When the Debt Service Reserve has been established in an amount equal to the average annual principal and interest requirements on the outstanding bonds and so long as it remains in such amount, the payments required by this subsection (c) need not be made.

(d) If the Pledged Revenues shall be insufficient to make the payment required by (b) and (c) on the first business day of any month into the Bond Fund, then the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the first business day of the next month.

(e) When the moneys in the Bond Bund (including the Debt Service Reserve) shall be and remain sufficient to pay the principal of, premium, if any, and interest on all the bonds then outstanding and Trustee's and Paying Agent's Fees, there shall be no obligation to make any further payments into the Bond Fund.

(f) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the bonds and Trustee's and Paying Agent's fees, as the same become due, except that if at any time there shall be accumulated in the Bond Fund a surplus in excess of the amount necessary to insure the prompt payment of the principal of, premium, if any, and interest on, and Trustee's and Paying Agent's fees in connection with, the bonds as the same become due, and over and above the Debt Service Reserve, such surplus may be used, for any lawful purpose determined by the City.

(g) The Trustee is authorized and directed to withdraw moneys from the Bond Fund from time to time as necessary for paying principal of and interest on the bonds and for making other authorized Bond Fund expenditures.

(h) The bonds shall be specifically secured by a pledge of all revenues required by this Ordinance to be placed into the Bond Fund. The pledge in favor of the bonds is hereby irrevocably made according to the terms of this Ordinance, and the City, the Commission, and the officers and employees of the City and the Commission shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

Section 11. Any pledged Revenues remaining after the required deposits into the Bond Fund may be used, as determined by the City, for any lawful purpose.

Section 12. All references herein to "City" in connection with the City gross receipts tax, or in connection with the functions of the Commission, shall, where applicable, be deemed to mean or include the Commission.

Section 13. The City covenants that it will not issue any bonds, or incur any obligation, secured by a lien on or pledge of the Pledged Revenues having or claiming a priority over the lien and pledge in favor of the bonds herein authorized. Nothing herein, however, shall prohibit the City from issuing obligations, secured by a subordinate lien on, or subordinate pledge of, the Pledged Revenues. The City may issue additional bonds or other obligations secured by a lien on or pledge of the Pledged Revenues, which lien or pledge shall be on a parity with the bonds of this issue, if, but only if, there shall have been procured and filed in the office of the City Clerk a statement by a certified public accountant not in the regular employ of the City reciting the opinion that the Pledged Revenue for the calendar year preceding the calendar year in which parity obligations are to be issued were not less than 150% of the average annual debt service requirements (principal, interest, and Trustee's and Paying Agent's fees) on all outstanding bonds to which the Pledged Revenues are pledged and the obligations then proposed to be issued.

Section 14. That it is hereby covenanted and agreed by the City with the holders of the bonds that the City and the Commission will faithfully and punctually perform all duties with reference to the City gross receipts tax and the bonds, required by the Constitution and laws of the State of Arkansas and by this Ordinance, including the collection of the City gross receipts tax, as herein specified and covenanted, the segragating of the Pledged Revenues and the applying of the Pledged Revenues as herein provided.

Section 15. That the bonds shall be sugject to redemption prior to maturity in the manner and in accordance with the terms set out in the bond form.

Section 16 . That the City will keep or cause to be kept proper books of accounts and records (separate from all other accounts and records) in which complete and correct entries shall be made of all transactions relating to the City gross receipts tax and such books shall be available for inspection by the holder of any of the bonds at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an independent certified public accountant at least once each year, and a copy of the audit shall be delivered to the Trustee. In the event the City fails or refuses to make the audit, the Trustee may have the audit made and the cost thereof shall be charged against the Debt Service Reserve.

Section 17. (a) That is there by any default in the payment of the principal of and interest on any of the bonds, or if the City defaults in the performance of any covenant contained in this Ordinance, the Trustee may, and upon the written request of the holders of not less than ten percent (10%) in principal amount of the bonds then outstanding shall, by proper suit compel the performance of the duties of the officials of the City and the Commission under the Constitution and laws of the State of Arkansas and under this Ordinance, and to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State of Arkansas.

(b) No holder of any bond shall have any right to institute any suit, action, mandmus or other proceeding in equity or in law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State of Arkansas unless such holder previously shall have given to the Trustee written notice of the default on account of which sum suit, action or proceeding is to be taken, and unless the holders of not less than tan percent (10%) in principal amount of the bonds of this issue then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State of Arkansas, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and idemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification request and offer of idemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more holders of the bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all holders of the outstanding bonds and coupons, and that any individual rights of action or other right given to one or more of such holders by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) That all rights of action under this Ordinance or under any of the bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the bonds or coupons appartaining thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name and for the benefit of all the holders of the bonds and coupons, subject to the provisions of this Ordinance.

(d) That no remedy herein conferred upon or reserved to the Trustee or to the holders of the bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law or by the Constitution of the State of Arkansas.

(e) That no delay or omission of the Trustee or of any holders of the bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiesence therein, and every power and remedy given by this Ordinance to the Trustee and to the holders of the bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(f) That the Trustee many, and upon the written request of the holders of not less than ten percent (10%) in principal amount of the bonds then outstanding shall waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 18. Moneys held for the credit of the Bond Fund may, at the option of the City, be invested and reinvested pursuant to the direction of the City in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys will be required for the purposes intended (or in not later than 10 years in the case of the Debt Service Reserve) as specified by the City.

Section 19. That in the event the office of Mayor, City Clerk, Commission, or City Council shall be abolished or any two or more of such offices shall be merged or consolidated or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 20. That the provisions of this Ordinance shall constitute a binding contract between the City and the holders of the outstanding bonds and coupons issued hereunder, and the City will at all times strictly adhere to the terms and provisions hereof and fully discharge all of its obligations hereunder. Subject to the terms and provisions contained in this section and not otherwise, the holders of not less than seventy-five percent (75%) in aggregate principal amount of the bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any bond issued hereunder, or (b) a reduction in the principal amount of any bond or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of Pledged Revenues other than as expressly authorized by the appropriate provisions of this Ordinance as now adopted, or (d) the creation of a privilege of priority or any bond or bonds over any other bond or bonds, or (e) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 21. The Trustee shall be responsible for the exercise of good faith and reasonable prudence in the execution of its trusts. The recitals in this Ordinance and in the face of the bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the holders of not less than ten percent (10%) in principal amount of bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by ten (10) days' notice in writing to the City Clerk, and the majority in value of the holders of the outstanding bonds at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the majority in value of the holders of the outstanding bonds may appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the City Clerk. If the majority in value of the holders of the outstanding bonds shall fail to fill a vacancy within thirty (30) days after the same shall occur, then the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Clerk. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it by this Ordiance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective holders of the bonds agree. Such written acceptance shall be filed with the City Clerk, and a copy thereof shall be placed in the bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee.

Section 22. That when the bonds have been executed and the seal of the City impressed as herein provided, they shall be delivered to the Trustee, and the Trustee shall authenticate them and deliver them to the purchasers upon payment in cash of the purchase price plus accrued interest to the date of delivery of the bonds (called "total sale proceeds"). The Trustee shall handle the total sale proceeds as follows:

(a) There shall be deducted from the total sale proceeds that amount which will be sufficient to provide for the refunding of the 1975 Bonds on the next redemption date of the 1975 Bonds, which amount shall be deposited in trust with the Paying Agent of the 1975 Bonds, with instructions that it be applied solely to the payment of the principal of and interest on the 1975 Bonds.

(b) The amount necessary to retire the temporary bonds shall be applied to that purpose.

(c) The Trustee shall deposit the accrued interest into the Bond Fund.

(d) The Trustee shall remit the balance of the total sale proceeds to the City for deposit by the City in a special account designated "Development Fund," in a depository designated by the City that is a member of the Federal Deposit Insurance Corporation. The moneys in the Development Fund in excess of the amount insured by the Federal Deposit Insurance Corporation, unless invested as herein authorized, shall be continuously secured by bonds or other direct or fully guaranteed obligations of the United States of America. The moneys in the Development Fund shall be disbursed solely in payment of the cost of accomplishing the Project, paying necessary expenses incidental thereto and paying the expenses of issuing the bonds. Disbursements shall be on the basis of checks or requisitions which shall contain at least the following information: the person to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each check or requisition must be signed by the designated representative or representatives of the City, as specified to the depository of the Development Fund. If requisitions are used, the depository shall issue its check upon the Development Fund payable to the person designated in the requisition. The depository of the Development Fund shall be required to keep accurate records as to all payments made on the basis of requisitions, and the City shall keep accurate records of all payments made on the basis of checks.

When the Project has been completed and all required expenses paid from the Development Fund in connection with the Project and the issuance of the bonds, this fact shall be evidenced by a certificate signed by the designated representative of the City and by the Mayor, which certificate shall state, among other things, the date of the completion and that all obligations payable from the Development Fund have been discharged. A copy of the certificate shall be filed with the Trustee, and upon receipt thereof the depository of the Development Fund shall take the necessary steps to transfer any remaining balance in the Development Fund to the Bond Fund.

Section 23. That the provisions of this Ordinance are hereby declared to be separable, and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of the Ordinance.

Section 24. That all ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 25. That this Ordinance shall not create any right of any character and no right of any character shall arise under or pursuant to it until the bonds authorized by this Ordinance shall be issued and delivered.

Section 26. That it is hereby ascertained and declared that the Project should be accomplished as soon as possible in order to provide the Project facilities for the 1979 tourist season, which is vital to the economic welfare of the citizens of the City. Such cannot be accomplished without the issuance of the bonds authorized by this Ordinance, and therefore an emergency is hereby declared to exist, and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage.

PASSED 14th of March, 1979

APPROVED:

Marcile Davis (self signed)
Mayor

ATTEST:

Vesta C. Johnson (self signed)
City Clerk

(SEAL)

CERTIFICATE

The undersigned City Clerk of the City of Eureka Springs, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 1057, passed at a special session of the City Council of the City, held in the office of the mayor in the City at 2:00 o'clock p.m. on the 14th day of March, 1979, and that the Ordinance is on record in Ordinance Record Book 4, at Page 128, now in my possession.

GIVEN under my hand and seal this 14th day of March, 1979.

Vesta C. Johnson
City Clerk

(SEAL)