

ORDINANCE NO. 1212

AN ORDINANCE AUTHORIZING THE ISSUANCE OF TOURISM REVENUE BONDS; PLEDGING TO THE PAYMENT OF THE BONDS 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"), has, in cooperation with the City Council of the City, formulated plans for proposed tourism improvements, specifically public transportation (streetcar) facilities and facilities related thereto (the "Project"); and

WHEREAS, the City has determined that the Project should be undertaken; and

WHEREAS, the Project is needed to secure and develop tourism in the City; 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, adopted and approved May 4, 1972, as amended by Ordinance No. 942, adopted and approved September 7, 1972 and Ordinance No. 1018, adopted and approved March 26, 1977, 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 that the City Council issue the bonds and has approved the pledging thereto, subject to the terms hereinafter set forth, of revenues from the City gross receipts tax; and

WHEREAS, upon due investigation, it has been determined that the City's Tourism Revenue bonds, Series 1984, should be issued and sold to Bank of Eureka Springs, Eureka Springs, Arkansas (the "Purchaser") for the price and upon the terms set forth below, being the best terms obtainable;

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

Section 1. The Project shall 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 Project.

Section 2. 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, Tourism Revenue Bonds, Series 1984 (hereinafter referred to as the "bonds"), are hereby authorized and ordered issued in the total principal amount of \$303,000 for the purpose of financing the Project.

Section 3. The sale of the bonds to the Purchaser is hereby approved. The bonds shall be sold at a price of par plus accrued interest from the date of the bonds to the date of delivery, if any. The bonds shall be dated September 1, 1984 but shall bear interest at the rate of 10 % per annum from the date of their delivery. Interest on the bonds shall be payable

on March 1 and September 1 of each year, commencing March 1, 1985. The bonds shall mature on September 1 of each year as follows:

<u>Year</u>	<u>Amount</u>
Payable \$35,590.27 per year, principal and interest, with balance of principal due 10 years from date.	

Section 4. Bank of Eureka Springs, Eureka Springs, Arkansas, is hereby designated as Trustee for the bonds.

Section 5. 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 Tourism Revenue Bond Fund, Series 1984 (hereinafter created) and shall be a valid claim of the bondholders only against such Fund and the revenues pledged to such Fund, as set forth herein. The bonds and the interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation. The pledge of revenues to the payment of the bonds is subordinate to the pledge securing the City's 1975 Bonds.

(The City has also issued its Tourism Revenue Bonds, Series 1981, dated December 1, 1981, in the principal amount of \$50,000, but all the Series 1981 Bonds mature September 1, 1984.)

Section 6. 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
10% TOURISM REVENUE BOND, SERIES 1984

No. 1

\$303,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Eureka Springs, Arkansas (the "City"), for value received, promises to pay to Bank of Eureka Springs, Eureka Springs, Arkansas, or registered assigns, the principal sum of

THREE HUNDRED THREE THOUSAND

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 Effective Date (identified hereinbelow) until paid at the rate of Ten percent (10%) per annum, such interest to be payable semiannually on March 1 and September 1 of each year, commencing March 1, 1985. Principal is due hereon, on September 1 of each year, as follows:

Payable \$35,590.27 per year, principal and interest, with balance of principal due ten years from date.

Payment of principal and 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, except that final payment shall be made at the principal office of Bank of Eureka Springs, Eureka Springs, Arkansas (the "Trustee").

This bond is one of an issue of bonds in the aggregate principal amount of \$303,000 (the "bonds") being issued for the purpose of financing certain costs in connection with tourism improvements (the "Project"), as described in the Authorizing Ordinance (hereinafter identified).

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. 1212 of the City, adopted and approved on the 28th day of August, 1984 (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 motel accommodations and on restaurants, cafes, cafeterias and other establishments duly levied by Ordinances adopted pursuant to the authority of Act No. 185 of the Acts of Arkansas of 1965, as amended. 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 Tourism Revenue Bond Fund, Series 1984 (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 pledge of revenues to payment of the bonds is subordinate to the pledge securing the City's Auditorium and Convention Center Parking Revenue Bonds, dated December 1, 1975.

Principal of the bonds is subject to redemption (prepayment) prior to maturity at the option of the City, in whole or in part, at a price of the principal amount being redeemed plus accrued interest to the date of redemption, from funds from any other source, on any interest payment date. Any prepayment shall be applied (after application to accrued interest, if any) to latest maturing principal.

Notice of redemption shall be mailed by registered or certified mail to the registered owner of this bond not less than fifteen (15) days prior to the date fixed for redemption. Each notice shall specify the principal amount being redeemed and the date on which this bond shall be presented for payment. After the date specified in such notice the principal so redeemed will cease to bear interest provided funds for payment have been deposited with the Trustee. Upon thirty (30) days' request of the registered owner, and upon surrender of this bond to the Trustee, bond or bonds shall be issued in exchange for this bond, in any denomination or denominations requested by such owner (but in no denomination smaller than \$1,000) in the aggregate principal amount equal to the principal amount then outstanding for this bond. No charge shall be made for such exchange, except in the event that printed bonds are requested,

but the City shall not be liable for any tax or like impost on account of such exchange.

This bond may be assigned, and upon assignment the assignor shall promptly notify the Trustee by registered mail, and the assignee shall surrender this bond to the Trustee for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal and interest prior to such surrender for transfer. This bond may be surrendered to the Trustee for completion of the Payment Record attached hereto, but the payment record maintained by the Trustee shall in all events control. Subject to the registration hereof, 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 revenues pledged to the payment of the principal of and interest on the bonds as the same become due and payable and 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, and its corporate seal to be affixed, all as of this 11 day of September, 1984 (the "Effective Date").

CITY OF EUREKA SPRINGS, ARKANSAS

ATTEST:

Theresa Walsh
City Clerk

By *Donald L. Humm*
Mayor

(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.

BANK OF EUREKA SPRINGS
Eureka Springs, Arkansas

By _____
Authorized Signature

Date of Registration	Name of Registered Owner	Signature of Bond Registrar (Trustee)
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:

PAYMENT RECORD

Date	Prepayment	Principal Balance	Signature of Trustee
:	:	:	:
:	:	:	:
:	:	:	:
:	:	:	:
:	:	:	:
:	:	:	:
:	:	:	:
:	:	:	:
:	:	:	:

Section 7. The bonds are being issued in the form of fully registered bonds. At the option of the registered owner of the bonds, or any of them, upon thirty (30) days' notice by such registered owner to the City and the Trustee, the bonds of such registered owner will be exchanged, at the expense of the City, for fully registered bonds as set forth in the form of bond hereinabove.

In the event of any such exchange the Trustee shall act as Trustee and Paying Agent for the bonds and shall be entitled to compensation for services as Paying Agent, and the term "Trustee's fees" in this Ordinance shall be deemed to include Paying Agent's customary and reasonable charges.

Section 8. 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. The pledge of revenues to the payment of the bonds is subordinate to the pledge securing the City's 1975 Bonds. 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 diligence 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 9. (a) Subject to the pledge in favor of the 1975 Bonds, 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 "Tourism Revenue Bond Fund, Series 1984" (the "Bond Fund"), 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 fees. The principal of and interest on the bonds is payable as follows:

Principal
(September 1)

Interest
March 1 September 1

(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 the sum of \$ 100.00 , until a Debt Service Reserve is established, in the Bond Fund, at the required level of \$ 3,000.00 , plus an amount sufficient to provide for the Trustee's fees as the same become due. Payments for Trustee's fees shall be made from time to time prior to the time due. At such time as the Debt Service Reserve is established at the required level, the additional monthly payment of \$ 100.00 may cease. In the event of any reduction in the required level of the Debt Service Reserve after it is attained, or in the event of any withdrawal of moneys from the Debt Service Reserve, the Debt Service Reserve shall be restored to the required level from the first available Pledged Revenues. Moneys held in the Debt Service Reserve shall be used solely to cure or prevent a default in the payment of principal of, premium, if any, interest on or Trustee's fees in connection with the bonds (except as set forth in Section 15 hereof).

(c) 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.

(d) When the moneys in the Bond Fund shall be and remain sufficient to pay the principal of and interest on all the bonds then outstanding, and Trustee's fees, there shall be no obligation to make any further payments into the Bond Fund.

(e) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bonds, and Trustee'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 and interest on, and Trustee's fees in connection with, the bonds, as the same become due, and in excess of the Debt Service Reserve, such surplus may be used for any lawful purpose determined by the City.

(f) 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.

(g) 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 10. Any Pledged Revenues remaining after the required deposits into the Bond Fund may be used, as determined by the City, subject to the pledge securing payment of the 1975 Bonds, for any lawful purpose.

Section 11. 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 12. (a) 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 or a parity with 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.

(b) Nothing in this ordinance shall be construed to prevent the issuance by the City of, and the City hereby reserves the right to issue, additional bonds ranking on a parity with the outstanding bonds of this issue, provided that there shall have been procured and filed with the Trustee a statement by an independent certified public accountant not in the regular employ of the City reciting the opinion based upon necessary investigation that revenues derived from the City gross receipts tax for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal at least 125% of the maximum annual principal and interest requirements on the 1975 Bonds, all the then outstanding bonds of this issue and the additional bonds. For purposes of computation required herein, there may be added to revenues derived from the City gross receipts tax of the fiscal year immediately preceding the fiscal year in which it is proposed to issue additional bonds the following: if prior to the issuance of the additional bonds and subsequent to the first day of such preceding fiscal year the City gross receipts tax or any like tax available for pledging by the City should, under then applicable law, be increased, the additional revenues which would have been received by the City had the increase been in effect throughout such fiscal year.

Section 13. 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 segregating of the Pledged Revenues and the applying of the Pledged Revenues as herein provided.

Section 14. The bonds shall be subject to redemption prior to maturity in the manner and in accordance with the terms set out in the bond form.

Section 15. 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 16. (a) If there be any default in the payment of the principal of and interest on any of the bonds, or if the City defaults in the performance of any covenant contained in this Ordinance, the Trustee may, and 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, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State of Arkansas unless such holder previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the holders of not less than ten 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 indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more 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 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) 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, 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, subject to the provisions of this Ordinance.

(d) 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 any law or by the Constitution of the State of Arkansas.

(e) 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 acquiescence 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) 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 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 17. (a) 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 obligations may be in book entry form ("Government Securities"), 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 (but not later than 10 years) as specified by the City.

(b) If the City shall pay or cause to be paid to the holders and owners of the bonds the principal, premium, if any, and interest to become due thereon at the times and in the manner stipulated therein, and if the City shall keep, perform and observe all and singular the covenants and promises in the bonds and in this Ordinance expressed as to be kept, performed and observed by it on its part, then the estate and rights hereby granted shall cease, determine and be void, and the Trustee shall execute and deliver to the City such instruments in writing as shall be requisite to satisfy the lien and pledge hereof and assign and deliver to the City any money or property at the time subject to the lien and pledge hereof which may then be in its possession, except cash or Government Securities held by it for the payment of the principal of, premium, if any, and interest on the bonds.

Bonds for the payment or redemption of which moneys or Government Securities maturing on or prior to the maturity or redemption date of the bonds shall have been deposited in the Bond Fund (whether upon or prior to the maturity or the redemption date of such bonds) shall be deemed to be paid within the meaning of this Ordinance; provided, however, that if such bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or arrangements satisfactory to the Trustee must have been made for the giving of such notice. In determining the sufficiency of the deposit there shall be considered the principal amount of such

Government Securities and interest to be earned thereon until the maturity of such Government Securities.

The City may at any time surrender to the Trustee for cancellation by it any bonds previously authenticated and delivered hereunder, which the City may have acquired in any manner whatsoever, and such bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Section 18. 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 19. The provisions of this Ordinance shall constitute a binding contract between the City and the holders of the outstanding bonds 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 of any bond or bonds over any other bond or bonds, or (e) a reduction in the aggregate principal amount of the bonds required or consent to such supplemental ordinance.

Section 20. The Trustee shall be responsible for the exercise of good faith and reasonable prudence in the execution of its trusts. The recitals in this Ordinance and in the 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 principal amount 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 principal amount 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 principal amount 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 Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective 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 21. The City covenants for the benefit of the holders of the bonds that it will not permit any thing or act to be done in such manner as would result in loss of exemption of interest on the outstanding bonds from income taxation under Section 103(c) of the Internal Revenue Code.

Without limiting the generality of the foregoing, the City represents and warrants that no portion of the Project will be used by a person (other than an "exempt person," within the meaning of Section 103 of the Internal Revenue Code) in the trade or business of such person pursuant to a contractual arrangement with the City, and the City covenants that it will not use any of the proceeds received from the sale of the Bonds or any moneys deemed to be proceeds of the bonds, directly or indirectly, in any manner which would result in such bonds being classified as "arbitrage bonds" within the meaning of Section

103(c)(2) of the Internal Revenue Code and the regulations thereunder.

Section 22. 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 Purchaser 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) The Trustee shall deposit the accrued interest, if any, into the Bond Fund.

(b) The Trustee shall remit the balance of the total sale proceeds for deposit in a special account designated "1984 Tourism Construction Fund", in the Trustee. The moneys in the Construction 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 Construction 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 Trustee. If requisitions are used, the Trustee shall issue its check upon the Construction Fund payable to the persons designated in the requisition. The Trustee 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 Construction 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 Construction Fund have been discharged. A copy of the certificate shall be filed with the Trustee, and upon receipt thereof the Trustee shall take the necessary steps to transfer any remaining balance in the Construction Fund to the Bond Fund.

Section 23. 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 this Ordinance.

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

Section 25. 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. It is hereby ascertained and declared that the funds to be derived from issuance of the bonds are needed immediately in order to match federal grant funds for the Project 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: August 28, 1984.

ATTEST:

Tracie Walsh
City Clerk

APPROVED:

By *Donald L. Shuman*
Mayor

(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. 1212, passed at a regular session of the City Council of the City, held at the regular meeting place in the City at _____ o'clock ____ .m., on the ____ day of _____, 1984, and that this Ordinance is of record in Ordinance Record Book _____, at Page _____, now in my possession.

GIVEN under my hand and seal this ____ day of _____, 1984.

Tracie Walsh
City Clerk

(SEAL)