

ORDINANCE NO. 2003-9

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REFUNDING BONDS FOR THE PURPOSE OF REFINANCING THE COST OF CAPITAL IMPROVEMENTS; PLEDGING A PORTION OF THE COLLECTIONS OF A 1% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Ozark, Arkansas (the "City") has previously issued, under Amendment No. 62 to the Constitution of the State of Arkansas and under Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), its Sales and Use Tax Bonds, Series 1993A (the "Series 1993A Bonds") for the purpose of financing police and firefighting facilities and water and sewer improvements (the "Series 1993A Projects"); and

WHEREAS, the City Council has determined the City will be able to refund the Series 1993A Bonds at lower interest rates, extend the maturity of the Series 1993A Bonds and significantly reduce the annual debt service costs to the City; and

WHEREAS, the City can obtain the necessary funds for the refunding of the Series 1993A Bonds (the "refunding") by the issuance of Sales and Use Tax Refunding Bonds, Series 2003, in the principal amount of \$1,390,000 (the "Bonds") and by appropriating available funds held in connection with the Series 1993A Bonds; and

WHEREAS, the City is making arrangements for the sale of the Bonds to Crews & Associates, Inc. (the "Purchaser") at a price of \$1,336,509.20 (principal amount less \$37,500 of Underwriter's discount and \$15,990.80 of original issue discount) plus accrued interest (the "Purchase Price"), pursuant to a Bond Purchase Agreement between the Purchaser and the City (the "Purchase Agreement"), which has been presented to and is before this meeting; and

WHEREAS, a Preliminary Official Statement, dated May 7, 2003, offering the Bonds for sale (the "Preliminary Official Statement"), has been presented to and is before this meeting; and

WHEREAS, the Limited Continuing Disclosure Agreement between the City and Bank of the Ozarks, Little Rock, Arkansas (the "Disclosure Agreement"), providing for the disclosure obligations of the City with respect to the Bonds, has been presented to and is before this meeting;

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

Section 1. The refunding shall be accomplished. The Series 1993A Bonds, which will be in the outstanding principal amount of \$1,695,000 on the date the Bonds are issued, shall be called for redemption on June 19, 2003, or promptly thereafter, at a redemption price equal to the principal amount outstanding plus accrued interest.

Section 2. The Purchase Agreement, in substantially the form submitted to this meeting, is approved and the Bonds are hereby sold to the Purchaser at the Purchase Price. The Mayor is hereby authorized and directed to execute and deliver the Purchase Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Purchase Agreement.

Section 3. The Preliminary Official Statement is hereby approved and the previous use of the Preliminary Official Statement by the Purchaser in connection with the sale of the Bonds is hereby in all respects approved, and the Mayor be and he is hereby authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement for use in connection with the sale of the Bonds as set forth in the Purchase Agreement.

Section 4. Under the authority of the Constitution and laws of the State, including particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, City of Ozark, Arkansas Sales and Use Tax Refunding Bonds, Series 2003 are hereby authorized and ordered issued in the principal amount of \$1,390,000, the proceeds of the sale of which are necessary, along with available funds appropriated hereby, to provide sufficient funds to accomplish the refunding, to pay expenses incidental thereto, to pay expenses of issuing the Bonds and to fund a debt service reserve.

The Bonds shall bear interest at the rates and shall mature on December 1 in the amounts and in the years as follows:

<u>Year</u> <u>(December 1)</u>	<u>Amount</u>	<u>Interest Rate</u>
2005	\$135,000	1.75%
2007	100,000	2.15
2009	110,000	3.10
2011	115,000	3.55
2013	125,000	3.90
2015	135,000	4.10
2018	220,000	4.50
2023	450,000	4.75

The Bonds shall be issuable only as fully registered bonds without coupons in the denomination of \$5,000 or any integral

multiple thereof. Unless the City shall otherwise direct, the Bonds shall be numbered from 1 upward in order of issuance. Each Bond shall have a CUSIP number but the failure of a CUSIP number to appear on any Bond shall not affect its validity.

Each Bond shall be dated as of June 1, 2003. Interest on the Bonds shall be payable on December 1, 2003, and semiannually thereafter on June 1 and December 1 of each year. Payment of each installment of interest shall be made to the person in whose name the Bonds are registered on the registration books of the City maintained by Bank of the Ozarks, Little Rock, Arkansas, as Trustee and Paying Agent (the "Trustee"), at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such Bond subsequent to such Record Date and prior to such interest payment date, by check or draft mailed by the Trustee to such owner at his address on such registration books. Principal of the Bonds shall be payable at the corporate trust office of the Trustee.

Each Bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from June 1, 2003, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 6 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Certificate on any Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the Bonds.

In case any Bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new Bond of like date and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City and Trustee in

connection therewith, and, in the case of a Bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such Bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. In the event any such Bond shall have matured, instead of issuing a new Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Bond under this Section the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The City shall cause books for the registration and for the transfer of the Bonds as provided herein and in the Bonds. The Trustee shall act as the bond registrar. Each Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered Bond or Bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of Bonds of any other authorized denomination or denominations. The City shall execute and the Trustee shall authenticate and deliver Bonds which the registered owner making the exchange is entitled to receive. The execution by the City of any Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall be thereby authorized to authenticate and deliver such Bond.

No charge shall be made to any owner of any Bond for the privilege of transfer or exchange, but any owner of any Bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. Neither the Trustee nor the City shall be required to transfer or exchange any Bonds selected for redemption in whole or in part.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest on any Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge

the liability upon such Bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Section 5. The Bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City.

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

(Form of Bond)

REGISTERED

REGISTERED

No. _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF FRANKLIN
CITY OF OZARK
SALES AND USE TAX REFUNDING BOND
SERIES 2003

Interest Rate: _____ % Maturity Date: December 1, _____
Dated Date: June 1, 2003
Registered Owner: _____
Principal Amount: _____ Dollars
CUSIP No.: _____

KNOW ALL MEN BY THESE PRESENTS:

That the City of Ozark, County of Franklin, State of Arkansas (the "City"), for value received, hereby promises to pay to the Registered Owner shown above upon the presentation and surrender hereof at the principal corporate trust office of Bank of the Ozarks, Little Rock, Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee"), on the Maturity Date shown above, the Principal Amount shown above, 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 by check or draft to the Registered Owner shown above interest thereon, in like coin or currency from the interest commencement date described below at the Interest Rate per annum shown above, payable on December 1, 2003 and on each June 1 and December 1 thereafter, until payment of such Principal Amount or, if this bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this bond. Payment of each installment of interest shall be made to the person in whose name this bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this bond subsequent to such Record Date and prior to such interest payment date.

This bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from the Dated Date shown above, or unless at the time of authentication hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

This bond is one of an issue of City of Ozark, Arkansas Sales and Use Tax Refunding Bonds, Series 2003, aggregating One Million Three Hundred Ninety Thousand Dollars (\$1,390,000) in aggregate principal amount (the "bonds"), and is issued for the purpose of refunding the City's Sales and Use Tax Bonds, Series 1993A, paying necessary expenses incidental thereto, paying expenses of authorizing and issuing the bonds and funding a debt service reserve.

The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), particularly Amendment No. 62 to the Constitution of the State and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. _____ of the City duly adopted on May 12, 2003 (the "Authorizing Ordinance"), and an election duly held at which the majority of the legal voters of the City voting on the questions approved the issuance of the indebtedness represented by the bonds. Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City, the Trustee and the registered owners of the bonds. The bonds are special obligations of the City,

payable from the first \$14,000 of monthly collections of the 1% sales and use tax levied by the City under Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated and Ordinance No. 1993-7 of the City duly adopted on April 13, 1993 (the "Tax"), or \$168,000 of annual Tax collections in the event that Tax collections in certain months are less than \$14,000 (the "Pledged Revenues") and the City hereby pledges the Pledged Revenues for the payment of this bond.

(REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND ON THE REVERSE SIDE HEREOF WHICH HAVE THE SAME EFFECT AS IF SET FORTH IN THIS PLACE.)

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF SECTION 265(b) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

IN WITNESS WHEREOF, the City of Ozark, Arkansas has caused this bond to be executed by its Mayor and City Clerk, their facsimile signatures thereunto duly authorized and its corporate seal to be impressed on this bond, all as of the Dated Date shown above.

CITY OF OZARK, ARKANSAS

ATTEST:

By _____
Mayor

City Clerk

(SEAL)

(Reverse Side of Bond)

CITY OF OZARK, ARKANSAS
SALES AND USE TAX REFUNDING BOND
SERIES 2003

FURTHER PROVISIONS

The bonds are subject to redemption at the option of the City on and after December 1, 2008, in whole at any time or in part on any interest payment date at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date. If fewer than all of the bonds shall be called for redemption, the particular maturities of the bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the bonds of any one maturity shall be called for redemption, the particular bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

To the extent not previously redeemed, the Bonds are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on December 1 in the years and in the amounts set forth below, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption:

Bonds Maturing December 1, 2005

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2003	\$35,000
2004	50,000
2005 (maturity)	50,000

Bonds Maturing December 1, 2007

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2006	\$50,000
2007 (maturity)	50,000

Bonds Maturing December 1, 2009

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2008	\$55,000
2009 (maturity)	55,000

Bonds Maturing December 1, 2011

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2010	\$55,000
2011 (maturity)	60,000

Bonds Maturing December 1, 2013

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2012	\$60,000
2013 (maturity)	65,000

Bonds Maturing December 1, 2015

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2014	\$65,000
2015 (maturity)	70,000

Bonds Maturing December 1, 2018

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2016	\$70,000
2017	75,000
2018 (maturity)	75,000

Bonds Maturing December 1, 2023

<u>Years</u> <u>(December 1)</u>	<u>Principal Amounts</u>
2019	\$80,000
2020	85,000
2021	90,000
2022	95,000
2023 (maturity)	100,000

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

In case any outstanding bond is in a denomination greater than \$5,000, each \$5,000 of face value of such bond shall be treated as a separate bond of the denomination of \$5,000.

Notice of redemption identifying the bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed and the date they shall be presented for payment shall be given by the Trustee, not less than 30 nor more than 60 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to all registered owners of bonds to be redeemed. Failure to mail an appropriate notice or any such notice to one or more registered owners of bonds to be redeemed shall not affect the validity of the proceedings for redemption of other bonds as to which notice of redemption is duly given in proper and timely fashion. All such bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the

Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date.

This bond is transferable by the Registered Owner shown above in person or by his attorney-in-fact duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this bond. Upon such transfer a new fully registered bond or bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. This bond is issued with the intent that the laws of the State shall govern its construction.

The City and the Trustee may deem and treat the Registered Owner shown above as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The bonds are issuable only as fully registered bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, fully registered bonds may be exchanged for a like aggregate principal amount of fully registered bonds of the same maturity of other authorized denominations.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed, under the Constitution and laws of the State, particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, precedent to and in the issuance of this bond have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by this bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that tax revenues sufficient to pay the bonds and interest thereon have been duly pledged in accordance with the Authorizing Legislation for the payment of the bonds and interest thereon.

This bond shall not be valid until it shall have been authenticated by the Certificate hereon duly signed by the Trustee.

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Date of Authentication: _____.

BANK OF THE OZARKS
Little Rock, Arkansas
TRUSTEE

By _____
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, _____ ("Transferor"), hereby sells, assigns and transfers unto _____, the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ as attorney to transfer the within bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: _____

Transferor

GUARANTEED BY:

NOTICE: Signature(s) must be guaranteed by a member of or participant in the Securities Transfer Agents Medallion Program (STAMP), or in another signature guaranty program recognized by the Trustee.

Section 7. The City hereby expressly pledges and appropriates the first \$14,000 of revenues derived by the City from the City's 1% sales and use tax levied by Ordinance No. 1993-7 passed April 13, 1993 and approved at a special election held May 18, 1993 (the "Tax"), or \$168,000 of annual Tax receipts in the event that Tax collections in certain months are less than \$14,000 (the "Pledged Revenues"), to the payment of the principal of and interest on the Bonds when due at maturity or at redemption prior to maturity, to the payment of the fees and charges of the Trustee, and to the payment of any arbitrage rebate due with respect to the

Bonds under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code"). The City covenants that the Tax shall not be repealed or reduced while any of the Bonds are outstanding. The City further covenants to use due diligence in collecting the Tax.

Section 8. (a) The City hereby designates Bank of the Ozarks, Little Rock, Arkansas, as the bank which shall receive all collections of the Tax from the State Treasurer and the City covenants to file a written designation thereof with the State Treasurer prior to the issuance of the Bonds. The Trustee shall deposit all collections of the Tax as and when received into a special fund of the City in the Trustee which is hereby created and designated "2003 Sales and Use Tax Revenue Fund" (the "Revenue Fund"). There is hereby created in the Revenue Fund the following accounts: Bond Account and Surplus Revenues Account. The Pledged Revenues shall be deposited each month into the Bond Account in the amount necessary to make the transfers set forth below. The balance shall be deposited each month into the Surplus Revenues Account.

(b) Moneys in the Bond Account shall, within five (5) days of receipt, be transferred to the following accounts each month in the following order of priority:

(1) the Trustee's fees and expenses next due - Expense Account in the Bond Fund;

(2) 1/6 of the interest on the Bonds next due - Debt Service Account in the Bond Fund;

(3) 1/12 of the principal of the Bonds next due at maturity or upon mandatory sinking fund redemption - Debt Service Account in the Bond Fund;

(4) the amount necessary to pay any arbitrage rebate due under Section 148(f) of the Code ("Arbitrage Rebate"); and

(5) the amount which may be necessary to increase the Debt Service Reserve Account to the required level - Debt Service Reserve Account in the Bond Fund.

The transfers made into the Debt Service Account in the Bond Fund shall be reduced or increased in order to take into account (A) as a credit (i) interest earnings, (ii) accrued interest deposited therein from Bond proceeds, (iii) transfers from the Debt Service Reserve Account and (iv) transfers from the Series 1993 Bond Fund (hereinafter identified) and (B) the number of months that Pledged Revenues are deposited into the Revenue Fund prior to the first interest and principal payment dates.

(c) Moneys in the Surplus Revenues Account in the Revenue Fund shall be released from the pledge and lien in favor of the

Bonds. Moneys in the Surplus Revenues Account shall be paid each month to the City which may use such moneys for any lawful purpose.

Section 9. (a) There is hereby created a special fund of the City in the Trustee which is designated "2003 Sales and Use Tax Bond Fund" (the "Bond Fund"), for the purpose of providing funds for the payment of principal of and interest on the Bonds as they become due at maturity or at redemption prior to maturity, the Trustee's fees and expenses, including reasonable legal fees and Arbitrage Rebate. There shall be established in the Bond Fund the following accounts into which moneys from the Revenue Fund shall be deposited monthly: (i) Debt Service Account; (ii) Expense Account; and (iii) Rebate Account. Moneys in the Bond Fund shall be used on each interest payment date (or in the case of clause (4), any date) in the following order of priority as and when necessary:

- (1) to pay the Trustee's fees and expenses then due - Expense Account;
- (2) to pay the interest on the Bonds then due - Debt Service Account;
- (3) to pay the principal of the Bonds then due at maturity or upon mandatory sinking fund redemption - Debt Service Account; and
- (4) to pay the Arbitrage Rebate when due - Rebate Account.

(b) There shall be established and maintained in the Bond Fund a Debt Service Reserve Account in an amount equal to one-half of the maximum annual principal and interest requirements on all outstanding Bonds (the "required level"). Moneys in the Debt Service Reserve Account shall be used to make the payments described in clauses (2) and (3) of subsection (a) above if moneys in the Debt Service Account in the Bond Fund are not otherwise sufficient for that purpose. Moneys in the Debt Service Reserve Account over and above the required level shall be immediately transferred from the Debt Service Reserve Account into the Debt Service Account in the Bond Fund.

(c) When the moneys in the Bond Fund shall be and remain sufficient to pay (1) the principal of all the Bonds then outstanding, (2) interest on the Bonds until the next interest payment date, (3) the Trustee's fees and expenses and (4) any Arbitrage Rebate due, there shall be no obligation to make any further payments into the Bond Fund and any Pledged Revenues remaining in the Bond Fund thereafter shall be paid to the City which may spend such funds for any lawful purpose.

(d) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds,

the Trustee's fees and expenses, and any Arbitrage Rebate as the same become due. 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 when due at maturity or at redemption prior to maturity and for making other authorized Bond Fund expenditures.

(e) The Bonds shall be specifically secured by a pledge of the Pledged Revenues, which pledge in favor of the Bonds is hereby irrevocably made according to the terms of this Ordinance, and the City, and the officers and employees of the City, shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

Section 10. Any Bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such Bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) cash sufficient to make such payment and/or (2) Government Securities as defined in Section 17 hereof which are direct obligations of the United States of America (provided that such deposit will not cause any of the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code, maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. Any cash must be insured at all times by the Federal Deposit Insurance Corporation ("FDIC") or otherwise collateralized with Government Securities.

On the payment of any Bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such Bonds, all such moneys and/or Government Securities.

When all the Bonds shall have been paid within the meaning of this Ordinance, if the Trustee has been paid its fees and expenses and if any Arbitrage Rebate due has been paid or provision has been made therefor to the satisfaction of the Trustee, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such Bonds to be paid over or delivered to or at the direction of the City.

Section 11. 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 that rank superior to or on a parity with the pledge in favor of the Bonds.

Section 12. The Bonds shall be callable for payment prior to maturity in accordance with the terms set out in the face of the bond form set forth in Section 6 of this Ordinance. The City may acquire Bonds by purchase at a price not in excess of par plus accrued interest, inclusive of brokerage fees, and surrender to the Trustee any Bonds so acquired, in exchange for which the City shall receive a credit under this Ordinance in an amount equal to the principal amount of the Bonds so acquired and surrendered, for and of the then next date for mandatory sinking fund redemption of Bonds of the same maturity.

Section 13. It is hereby covenanted and agreed by the City with the owners of the Bonds that the City will faithfully and punctually perform all duties with reference to the Tax and the Bonds required by the Constitution and laws of the State and by this Ordinance, including the collection of the Tax, as herein specified and covenanted and the applying of the Pledged Revenues as herein provided.

Section 14. The Trustee will keep or cause to be kept proper books of accounts and records in which complete and correct entries shall be made of all transactions relating to the collections of the Tax and such books shall be available for inspection by the City, the Purchaser and the owner of any of the Bonds at reasonable times and under reasonable circumstances. The Trustee shall furnish a report to the City on a monthly basis of all receipts and disbursements of Tax collections received by the Trustee.

Section 15. (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 shall, upon the written request of the owners of not less than 10% in principal amount of the Bonds then outstanding, by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the State and under this Ordinance, and to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State.

(b) No owner of any Bonds shall have any right to institute any suit, action, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or

right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more owners of the Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of the outstanding Bonds, and that any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) All rights of action under this Ordinance or under any of the Bonds, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name and for the benefit of all the owners of the Bonds, subject to the provisions of this Ordinance.

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

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

(f) The Trustee may, and upon the written request of the owners of not less than a majority of the owners in principal amount of the Bonds then outstanding shall waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the

enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 16. When the Bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to or at the direction of the Purchaser upon payment of the Purchase Price. The accrued interest shall be deposited in the Debt Service Account in the Bond Fund. The expenses of issuing the Bonds, as set forth in the delivery instructions to the Trustee signed by the Mayor and City Clerk, shall be paid from the Purchase Price. The amount necessary to establish the Debt Service Reserve at the required level shall be deposited into the Debt Service Reserve Account in the Bond Fund.

An amount of the Purchase Price that is sufficient, along with other moneys set aside and appropriated hereby for such purpose, to accomplish the refunding shall be deposited with the trustee for the owners of the Series 1993A Bonds. The remainder of the Purchase Price, if any, shall be deposited into a special account in the name of the City designated "Cost of Issuance Fund, Series 2003" (the "Cost of Issuance Fund") in the Trustee. The moneys in the Cost of Issuance Fund shall be disbursed solely in payment of the costs of accomplishing the refunding, paying necessary expenses incidental thereto, and paying expenses of issuing the Bonds. Disbursements shall be made by the Trustee on the basis of 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 requisition must be signed by the Mayor. The Trustee shall be required to keep accurate records as to all payments made from the Cost of Issuance Fund.

When all required expenses have been paid and expenditures made from the Cost of Issuance Fund for and in connection with the accomplishment of the refunding and the issuance of the Bonds, this fact shall, if there are moneys on hand in the Cost of Issuance Fund, be evidenced by a certificate signed by the Mayor, which certificate shall state, among other things, that all obligations payable from the Cost of Issuance Fund have been discharged. A copy of the certificate shall be filed with the Trustee, and upon receipt thereof the Trustee shall deposit any remaining balance into the Debt Service Account in the Bond Fund.

Section 17. (a) Moneys held for the credit of the Debt Service Reserve Account in the Bond Fund shall be invested and reinvested in direct or fully guaranteed obligations of the United States of America (including any such securities issued or held in book-entry form on the books of the Department of the Treasury of the United States of America) ("Government Securities") or in time deposits or certificates of deposit of banks, including the

Trustee, which are insured by FDIC, or, if in excess of insurance coverage, collateralized by Government Securities or other securities authorized by State law to secure public funds, all of which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than seven (7) years after the date of investment or the final maturity date of the outstanding Bonds, whichever is earlier. The Trustee shall so invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(b) Moneys held for the credit of the Bond Fund (other than the Debt Service Reserve Account) and the Revenue Fund shall be invested and reinvested in Government Securities, or in time deposits or certificates of deposit of banks, including the Trustee, which are insured by FDIC, or, if in excess of insurance coverage, are collateralized by Government Securities or other securities authorized by State law to secure public funds. The Trustee shall invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(c) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund.

(d) Moneys so invested in Government Securities or in certificates of deposit of banks as permitted above need not be secured by the Trustee.

(e) All investments and deposits shall have a par value (or market value when less than par), exclusive of accrued interest at all times at least equal to the amount of money credited to such funds and shall be made in such a manner that the money required to be expended from any fund will be available at the proper time or times.

(f) Investments of moneys in all funds shall be valued in terms of current market value as of the last day of each year, except that direct obligations of the United States (State and Local Government Series) in book-entry form shall be continuously valued at par or face principal amount.

Section 18. Bank of the Ozarks, Little Rock, Arkansas is hereby appointed to act as Trustee and Paying Agent pursuant to this Ordinance. The Trustee shall be responsible for the exercise of good faith and reasonable prudence in the execution of its trusts. The recitals in this Ordinance and in the Bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been

requested to do so in writing by the owners of not less than 10% in principal amount of Bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign by giving 60 days' notice in writing to the City Clerk and to the owners of the Bonds, and the majority in principal amount of the owners of the outstanding Bonds or the City, so long as it is not in default hereunder, at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Clerk. The new Trustee shall be a bank or a trust company in good standing, duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$5,000,000. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the Bonds agree. Such written acceptance shall be filed with the City Clerk, and a copy thereof shall be placed in the Bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee. The Trustee's resignation shall take effect upon the acceptance of the trusts by the successor Trustee.

Section 19. (a) The terms of this Ordinance shall constitute a contract between the City and the owners of the Bonds and no variation or change in the undertaking herein set forth shall be made while any of the Bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(b) The Trustee may consent to any variation or change in this Ordinance in order to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto or to make any other change that the Trustee determines is not to the material prejudice of the owners of the Bonds without the consent of the owners of the Bonds.

(c) The owners of not less than 75% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any Bond, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or (3) the creation of a pledge of the Pledged

Revenues superior to or on a parity with the pledge created by this Ordinance, or (4) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (5) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

Section 20. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Bonds to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Bonds and the Pledged Revenues will not be used directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of the Series 1993A Projects, in such manner as to cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of the Bonds to make or finance loans to any person, and (ii) that while the Bonds are outstanding the Series 1993A Projects will only be used by the City, state or local governmental units or by persons on a basis as members of the general public.

(c) The Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 2003 will not exceed \$10,000,000.

(d) The City covenants that it will take no action which would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. The City further covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, a statement concerning the Bonds which contains the information required by Section 149(e) of the Code.

(e) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Rebate Account in the Bond Fund to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Non-purpose Investments (as therein defined) attributable to the Bonds, other than investments

attributable to such excess over (B) the amount which would have been earned if such Non-purpose Investments attributable to the Bonds were invested at a rate equal to the Yield (as defined in the Code) on the Bonds, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein to pay Arbitrage Rebate when due, it will employ a qualified consultant to advise the City in making the determination required to comply with this subsection (e). Anything herein to the contrary notwithstanding this provision may be modified or rescinded if in the opinion of Bond Counsel such modification or rescission will not affect the tax-exempt status of the Bonds for federal income tax purposes.

Section 21. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement on behalf of the City. The Mayor is authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement.

Section 22. All moneys in the Sales and Use Tax Bond Fund, Series 1993 established pursuant to Ordinance No. 1993-17 of the City, adopted July 13, 1993 (the "Series 1993 Bond Fund"), are hereby appropriated and shall be used as necessary to redeem the Series 1993A Bonds. Any balance in the Series 1993 Bond Fund following the redemption of the Series 1993A Bonds shall be transferred to the Trustee and deposited into the Debt Service Account in the Bond Fund.

Section 23. The provisions of this Ordinance are separable and in the event that any section or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of this Ordinance.

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

Section 25. It is hereby ascertained and declared that the refunding must be accomplished as soon as possible in order to lower the annual debt service costs of the City. The refunding cannot be accomplished without the issuance of the Bonds which cannot be sold at the interest rates specified herein unless this Ordinance is immediately effective. Therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.

PASSED: May 12, 2003.

ATTEST: *Cowlsneath*
City Clerk

APPROVED: *C.L. Coley*
Mayor

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Ozark, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 2003-9, passed at a regular session of the City Council of the City, held at the regular meeting place of the City Council at 7:00 o'clock p.m. on the 12th day of May, 2003 and that the Ordinance is of record in Ordinance Record Book No. C at Page 134, now in my possession.

GIVEN under my hand and seal this 13th day of May, 2003.



City Clerk

(SEAL)