

**ORDINANCE NO. 9
SERIES 2007**

AN ORDINANCE OF THE CITY OF GUNNISON, COLORADO, AUTHORIZING THE ISSUANCE OF THE CITY'S SALES AND USE TAX REVENUE BONDS, SERIES 2007, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$9,500,000, FOR THE PURPOSES SET FORTH IN THE BALLOT QUESTION AUTHORIZING THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM A PLEDGE OF THE REVENUES ON DEPOSIT IN THE PARK AND RECREATION FUND OF THE CITY; AND PROVIDING THE DETAILS AND APPROVING DOCUMENTS IN CONNECTION WITH THE BONDS.

WHEREAS, the City of Gunnison, Colorado, is a municipal corporation duly organized and operating as a home-rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (certain capitalized terms used in the preamble of this Ordinance are defined in Section 1 hereof); and

WHEREAS, Article X, Section 20 of the Colorado Constitution provides that voter approval in advance is required for any new tax or the creation of any direct or indirect debt or other multiple-fiscal year financial obligation whatsoever; and

WHEREAS, pursuant to an election held on May 8, 2007, the majority of the voting electors of the City authorized a tax increase and the issuance of bonds by approving the following ballot issue (the "Ballot Issue"):

SHALL THE CITY OF GUNNISON TAXES BE INCREASED \$1,500,000 (FIRST FULL FISCAL YEAR DOLLAR INCREASE) ANNUALLY AND SHALL THE CITY OF GUNNISON DEBT BE INCREASED BY AN AMOUNT NOT TO EXCEED \$9,500,000, WITH A MAXIMUM REPAYMENT COST OF \$19,500,000; SUCH TAXES TO CONSIST OF A RATE INCREASE IN THE CITY SALES AND USE TAX OF 1.0% (WHICH REPRESENTS A ONE CENT INCREASE ON EACH DOLLAR) COMMENCING JULY 1, 2007, TO CONTINUE FOR A PERIOD OF TWENTY-FIVE YEARS, WITH A DECREASE IN THE TAX RATE FROM 1.0% TO 0.25% (WHICH REPRESENTS A ONE-QUARTER CENT INCREASE ON EACH DOLLAR) ON JULY 1, 2032; SUCH DEBT TO CONSIST OF REVENUE BONDS PAYABLE FROM THE AUTHORIZED SALES AND USE TAX AND ISSUED FOR THE PURPOSE OF:

- CONSTRUCTING AND EQUIPPING POOL FACILITIES TO INCLUDE A RECREATIONAL LAP POOL AND A WARM WATER THERAPY POOL;

- CONSTRUCTING AND EQUIPPING AN ENCLOSED REFRIGERATED ICE RINK FACILITY;

- CONSTRUCTING A NON-MOTORIZED TRAIL SYSTEM AROUND THE CITY AND ACQUIRING TRAIL EASEMENTS;

AND TO THE EXTENT FUNDS ARE AVAILABLE FOR THE PURPOSE OF CONSTRUCTING, ACQUIRING AND EQUIPPING OTHER PARK AND RECREATION IMPROVEMENTS, SUCH BONDS TO BE DATED AND SOLD AT SUCH TIME, AND AT SUCH PRICES (AT, ABOVE OR BELOW PAR) AND CONTAINING SUCH TERMS, NOT INCONSISTENT HERewith, AS THE CITY COUNCIL MAY DETERMINE; SHALL THE INCREASE IN THE CITY SALES AND USE TAX BE DEPOSITED INTO A CITY PARK AND RECREATION FUND AND USED SOLELY FOR PARK AND RECREATION PURPOSES INCLUDING, BUT NOT LIMITED TO (I) CONSTRUCTING, ACQUIRING AND IMPROVING CAPITAL IMPROVEMENTS, (II) ACQUIRING AND IMPROVING REAL PROPERTY INTERESTS AND EQUIPMENT, (III) OPERATING AND MAINTAINING CAPITAL IMPROVEMENTS, REAL PROPERTY INTERESTS AND EQUIPMENT AND (IV) PROVIDING FOR THE PAYMENT OF REVENUE BONDS ISSUED FOR SUCH PURPOSES; AND SHALL THE TAX REVENUES DEPOSITED IN THE CITY PARK AND RECREATION FUND AND ALL EARNINGS THEREON (REGARDLESS OF AMOUNT) CONSTITUTE A VOTER APPROVED REVENUE CHANGE, AND AN EXCEPTION TO THE REVENUE AND SPENDING LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?; and

WHEREAS, pursuant to Ordinance No. 7, Series 2007, which was adopted by the City on June 12, 2007, the City increased its sales and use tax from 3% to 4%, effective July 1, 2007 and continuing for 25 years, and has pledged all of such increase for park and recreation purposes as set forth in the Ballot Issue; and

WHEREAS, the City has established and created the Park and Recreation Fund in accordance with the Ballot Issue and the terms and with provisions of the Recreation Sales and Use Tax Ordinance and the City Charter; and

WHEREAS, the Ballot Issue and the Recreation Sales and Use Tax Ordinance provide that all revenues from the Recreation Sales and Use Tax shall be deposited into the Park and Recreation Fund and that such revenues shall be expended solely for the purpose of park and recreation purposes including, but not limited to (i) constructing, acquiring and improving capital improvements, (ii) acquiring and improving real property interests and equipment, (iii) operating and maintaining capital improvements, real property interests and equipment and (iv) providing for the payment of revenue bonds issued for such purposes; and

WHEREAS, the City is authorized by Section 8.5 of the Charter of the City to issue revenue bonds by ordinance of the City; and

WHEREAS, for the purpose of funding the Project, the City Council hereby determines that it is advantageous to, and in the best interests of, the City and the residents thereof, to issue the City of Gunnison, Colorado, Sales and Use Tax Revenue Bonds, Series 2007; and

WHEREAS, the City has determined that the issuance of bonds, the proceeds of which would fund the cost of trail improvements, is not in the best interests of the City at this time; rather, the City intends to designate an amount of not less than \$1,000,000 for the purpose of funding trail improvements as monies become available in the Parks and Recreation Fund; and

WHEREAS, the City Council has been presented with a proposal from the Underwriter, for the negotiated sale of the Bonds, the final terms and conditions of which are to be set forth in the Bond Purchase Agreement and the Sale Certificate; and

WHEREAS, the Bonds shall be revenue obligations of the City payable solely from moneys in the Park and Recreation Fund and the Recreation Sales and Use Tax; and

WHEREAS, the City has been presented with commitments from the Bond Insurer regarding the issuance of the Bond Insurance Policy and the Surety Policy in order to obtain the highest investment grade rating for the Bonds and establish the lowest borrowing costs for the City; and

WHEREAS, there has been presented to the City and made available to the City Council, among other things, the forms of (a) the Preliminary Official Statement, (b) Paying Agent Agreement, (c) the Bond Purchase Agreement, and (d) the Financial Guaranty Agreement; and

WHEREAS, none of the members of the City Council have any potential conflicting interests in connection with the authorization, issuance, or sale of the Bonds, or the use of the proceeds thereof; and

WHEREAS, the City Council desires to authorize the issuance, sale and delivery of the Bonds, and to provide for the details and payment of the Bonds;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. **Definitions.** The following terms shall have the following meanings as used in this Ordinance:

“*Act*” means Article 57 of Title 11, C.R.S.

“*Ballot Issue*” means the ballot issue approved by the voters pursuant to an election held on May 8, 2007, quoted and defined as such in the preambles hereto.

“*Bank*” means American National Bank, in Denver, Colorado, or its successor, a national banking association duly organized and existing under the laws of the United States of America, being a member of the Federal Deposit Insurance Corporation, and having full and complete trust powers.

“*Beneficial Owner*” means any person for which a Participant acquires an interest in the Bonds.

“*Bond Account*” means the “Park and Recreation Fund Bond Account” created in the section hereof entitled “Reaffirmation of Park and Recreation Fund; Establishment of Accounts.”

“*Bond Purchase Agreement*” means the Bond Purchase Agreement between the City and the Underwriter concerning the purchase of the Bonds by the Underwriter.

“*Bond Counsel*” means (a) as of the date of issuance of the Bonds, Kutak Rock LLP, and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by the City with nationally recognized expertise in the issuance of municipal bonds.

“*Bond Insurance Policy*” means the financial guaranty insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

“*Bond Insurer*” means XL Capital Assurance Inc. or any successor thereto.

“*Bonds*” means the Sales and Use Tax Revenue Bonds, Series 2007, dated as of the Dated Date, authorized hereby.

“*Business Day*” means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed for business.

“*Cede*” means Cede & Co., the nominee of DTC as record owner of the Bonds, or any successor nominee of DTC with respect to the Bonds.

“*Certified Public Accountant*” means an independent certified public accountant within the meaning of § 12-2-115, C.R.S. and any amendment thereto, licensed to practice in the State.

“*Charter*” means the home rule Charter for the City.

“*City*” means the City of Gunnison, Colorado.

“*City Council*” means the City Council of the City.

“*Commitments*” means those certain offers by the Bond Insurer to issue the Bond Insurance Policy and the Surety Policy.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, unless the context clearly requires otherwise.

“*Combined Maximum Annual Principal and Interest Requirements*” means an amount equal to the maximum amounts required to be paid in any single current or future calendar year as the principal of (including any mandatory sinking fund requirements) and interest on the Outstanding Bonds, any outstanding Parity Lien Bonds and the proposed Parity Lien Bonds, excluding any such bonds which have been defeased pursuant to the terms of the authorizing documents. For purposes of calculating the Combined Maximum Annual Principal and Interest Requirements in any calendar year in which any issue of Bonds and Parity Lien Bonds finally mature, there shall be subtracted from the final payment for said bonds any cash or the present value of any investments deposited in a reserve fund or account established pursuant to the authorizing documents which are properly allocable to said bonds.

“*Continuing Disclosure Undertaking*” means the Continuing Disclosure Undertaking of the City executed and delivered by the City in connection with the issuance of the Bonds to facilitate compliance with Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12).

“*County*” means Gunnison County, Colorado.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Dated Date*” means the original dated date for the Bonds as established in the Sale Certificate.

“*Depository*” means any securities depository as the City may provide and appoint, in accordance with the guidelines of the federal Securities and Exchange Commission, which shall act as securities depository for the Bonds.

“*DTC*” means the Depository Trust Company, New York, New York, and its successors and assigns, which shall act as the initial securities depository of the Bonds.

“*DTC Blanket Letter of Representations*” means the agreement between the City and DTC whereby the City agrees to comply with DTC’s operational requirements.

“*Event of Default*” means any of the events specified in the section hereof entitled “Events of Default.”

“*Financial Guaranty Agreement*” means the Financial Guaranty Agreement between the City and the Bond Insurer.

“*Federal Securities*” means bills, certificates of indebtedness, notes, bonds or similar securities which are direct non-callable obligations of the United States of America or which are fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America.

“*Interest Payment Date*” means each June 1 and December 1, commencing on June 1, 2008, or such other dates set forth in the Sale Certificate.

“*Interest Sub-Account*” means a sub-account of the Bond Account established by the provisions hereof for the purpose of paying the interest on the Bonds.

“*Letter of Instructions*” means the Letter of Instructions, dated the date of issuance of the Bonds, and delivered by Bond Counsel to the City, as it may be superseded or amended in accordance with its terms.

“*Official Statement*” means the final version of the Preliminary Official Statement.

“*Ordinance*” means this ordinance which authorizes the issuance of the Bonds, including any amendments properly made hereto.

“*Outstanding*” means, as of any date, all Bonds, except the following:

(a) any Bond cancelled by the City or the Paying Agent, or otherwise on the City’s behalf, at or before such dates;

(b) any Bond held by or on behalf of the City;

(c) any Bond for the payment of which moneys or Federal Securities sufficient to meet all of the payment requirements of the principal of and interest on such Bond to the date of maturity shall have theretofore been deposited in trust for such purpose in accordance with the section hereof entitled “Defeasance” and all other requirements of such section shall have been satisfied; and

(d) any lost, apparently destroyed, or wrongfully taken Bond in lieu of or in substitution for which another bond or other security shall have been executed and delivered.

“*Owner*” or “*Owners*” means the Person or Persons in whose name or names a Bond is registered on the registration books maintained by the Paying Agent pursuant hereto.

“*Participant*” or “*Participants*” means any broker-dealer, bank, or other financial institution from time to time for which DTC or another Depository holds the Bonds.

“*Parity Lien Bonds*” means any bonds or other obligations permitted to be issued pursuant to the section hereof entitled “Conditions to Issuance of Parity Lien Bonds,” with a lien that is equal and on a parity with the lien of the Bonds on the Pledged Revenues and the moneys on deposit from time-to-time in the Park and Recreation Fund.

“*Park and Recreation Fund*” means the “Park and Recreation Fund” established by the Recreation Sales and Use Tax Ordinance and reaffirmed in this Ordinance.

“*Paying Agent*” means the Bank, which shall act as paying agent, bond registrar, and authenticating agent for the Bonds.

“*Paying Agent Agreement*” means the Paying Agent Agreement between the City and the Bank.

“*Permitted Investments*” means any investment which is a lawful investment permitted for the investment of funds of the City by the laws of the State and which is included on the following list or is otherwise approved in writing by the Bond Insurer:

(a) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS), or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America;

(b) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

- (i) Farmers Home Administration (FmHA)
Certificates of beneficial ownership;
- (ii) Federal Housing Administration (FHA)
Debentures;
- (iii) General Services Administration
Participation certificates;
- (iv) Government National Mortgage Association (GNMA or “Ginnie Mae”)
guaranteed mortgage-backed bonds
guaranteed pass-through obligations (participation certificates);
- (v) U.S. Maritime Administration
Guaranteed Title XI financing;
- (vi) U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures
U.S. Public Housing Notes and Bonds;
- (vii) U.S. Export-Import Bank (Eximbank)
direct obligations or fully guaranteed certificates of beneficial ownership;

(viii) Federal Financing Bank;

(c) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

- (i) Federal Home Loan Bank System
Senior debt obligations (Consolidated debt obligations);
- (ii) Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)
Participation Certificates (Mortgage-backed securities);
Senior debt obligations;
- (iii) Federal National Mortgage Association (FNMA or “Fannie Mae”)
Mortgage-backed securities and senior debt obligations;
- (iv) Student Loan Marketing Association (SLMA or “Sallie Mae”)
Senior debt obligations;
- (v) Resolution Funding Corp. (REFCORP)
obligations;
- (vi) Farm Credit System Consolidated
systemwide bonds and notes;

(d) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of “AAAm-G”; “AAA-m”; or “AA-m” and if rated by Moody’s rated “Aaa,” “Aa1” or “Aa2”;

(e) certificates of deposit which: (i) are secured at all times by collateral described in clauses (a) and/or (b) above; (ii) are issued by commercial banks, savings and loan associations or mutual savings banks; and (iii) the collateral for which is held by a third party; with the Paying Agent, for the benefit of the Owners, having a perfected first security interest in the collateral;

(f) certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF;

(g) investment agreements, including GIC’s, forward purchase agreements and reserve fund put agreements acceptable to the Bond Insurer;

(h) commercial paper rated “Prime-1” by Moody’s and “A-1” or better by S&P;

(i) bonds or notes issued by any state or municipality which are rated by Moody’s and S&P in one of the two highest rating categories assigned by such agencies;

(j) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime-1” or “A3” or better by Moody’s and “A-1” or “A” or better by S&P; and

(k) repurchase agreements for 30 days or less that provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender) and the transfer of such from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date which satisfy the following criteria:

- (i) such agreements must be between the municipal entity and a dealer bank or securities firm described below:

(A) primary dealers on the Federal Reserve reporting dealer list which are rated "A" or better by S&P and "A2" or better by Moody's; or

(B) banks rated "A" or above by S&P and "A2" or better Moody's;

(ii) such agreements must include the following provisions:

(A) securities which are acceptable for transfer are:

(1) Direct U.S. Governments;

(2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC);

(B) the term of the agreement may be up to 30 days;

(C) the collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certified securities);

(D) such collateral is valued as follows:

(1) the securities must be valued weekly, marked-to-market at current market price plus accrued interest;

(2) the value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repurchase agreement plus accrued interest, provided that that if the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred and provided further that if the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%;

(iii) a legal opinion which must be delivered to the municipal entity that such agreement meets guidelines under state law for legal investment of public funds; and

"*Person*" means a corporation, firm, other body corporate, partnership, association or individual and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

"*Pledged Revenues*" means all of the revenues required to be deposited in the Park and Recreation Fund pursuant to the Recreation Sales and Use Tax Ordinance and all moneys on deposit from time-to-time in the Park and Recreation Fund; provided however, if the City lawfully pledges additional sales and use tax revenues to the payment of the Bonds, the term "Pledged Revenues" shall be deemed to include such additional sales and use tax revenues.

"*Preliminary Official Statement*" means the Preliminary Official Statement concerning the Bonds and the City.

"*Principal Payment Date*" means December 1 or such other date or dates of each year as established in the Sale Certificate.

"*Principal Sub-Account*" means a sub-account of the Bond Account established by the provisions hereof for the purpose of paying the principal of and premium, if any, on the Bonds.

"*Pro Rata Portion*" means the dollar amount derived by dividing the amount of principal or interest to come due on the next Principal Payment Date or Interest Payment Date by the number of monthly credits required to be made prior to such payment date.

“*Project*” means any purpose for which proceeds of the Bonds may be expended under the Ballot Issue.

“*Project Account*” means the “Park and Recreation Fund Project Account” created in the Section hereof titled “Establishment of Accounts.”

“*Project Costs*” means the City’s costs properly attributable to the Project or any part thereof, including without limitation: (a) the costs of labor and materials, machinery, furnishings, equipment, and the restoration of property damaged or destroyed in connection with construction work; (b) the costs of surveys, appraisals, plans, designs, specifications, and estimates; (c) the costs, fees, and expenses of printers, engineers, architects, financial consultants, legal advisors, or other agents or employees; (d) the costs of issuing the Bonds; and (e) all other lawful costs as determined by the City Council.

“*Rating Agency*” means Fitch Investors Service, Inc., Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc.

“*Record Date*” means the 15th day of the calendar month next preceding each interest payment date.

“*Recreation Sales and Use Tax*” means the Recreation Sales and Use Tax required to be deposited into the Park and Recreation Fund pursuant to the Recreation Sales and Use Tax Ordinance.

“*Recreation Sales and Use Tax Ordinance*” means Ordinance No. 7, Series 2007, which was adopted by the City upon second reading on June 12, 2007, which ordinance imposes the Recreation Sales and Use Tax.

“*Reserve Account*” means the “Park and Recreation Fund Reserve Account” created in the section hereof entitled “Reaffirmation of Park and Recreation Fund; Establishment of Accounts.”

“*Reserve Account Contract*” means a surety bond, insurance policy, letter of credit, investment agreement, investment contract or similar instrument obtained for the purpose of meeting all or any portion of the Reserve Account Requirement, which term shall include without limitation the Surety Policy.

“*Reserve Account Requirement*” means, as of any date on which it is calculated, the least of (a) 10% of the original principal amount of the Outstanding Bonds, (b) the maximum annual debt service in any calendar year on the Outstanding Bonds or (c) 125% of the average annual debt service on the Outstanding Bonds; provided, however, that the Reserve Account Requirement may be reduced if, in the opinion of Bond Counsel, the funding or maintenance of it at the level otherwise determined pursuant to this definition will adversely affect the exclusion from gross income tax for federal income tax purposes of interest on any of the Bonds.

“*Sale Certificate*” means the certificate executed by the Sale Delegate under the authority delegated pursuant to this Ordinance, including but not limited to the Sections hereof entitled “Bond Details,” “Redemption of Bonds Prior to Maturity,” and “Approval of Official Statement, Commitments, Financial Guaranty Agreement, and Miscellaneous Documents” which set forth, among other things, the aggregate principal amount of the Bonds, the Dated Date, the price at which the Bonds will be sold, the amount of principal of the Bonds maturing in any particular year, the Interest Payment Dates, the Principal Payment Dates and the rate of interest on the Bonds, as well as the dates on which the Bonds may be redeemed and the redemption prices therefore.

“*Sale Delegate*” means the City Manager of the City, or the Mayor in the absence of the City Manager.

“*Special Record Date*” means the record date for determining Bond ownership for purposes of paying defaulted interest, as such date may be determined pursuant to this Ordinance.

“*State*” means the State of Colorado.

“*Surety Policy*” means the municipal bond debt service reserve insurance policy issued by the Bond Insurer for the purpose of funding the Reserve Account.

“*Underwriter*” means Stifel, Nicolaus & Company, Incorporated of Denver, Colorado, the original purchaser of the Bonds.

Section 2. **Authorization and Purpose of the Bonds.** Pursuant to and in accordance with the Charter and the Act, the City hereby authorizes, approves and orders that there shall be issued the “City of Gunnison, Colorado, Sales and Use Tax Revenue Bonds, Series 2007” in the aggregate principal amount not greater than \$8,400,000, for the purpose of paying the costs of the Project.

Section 3. **Bond Details.**

(a) ***Registered Form, Denominations, Original Dated Date and Numbering.*** The Bonds shall be issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof, shall be dated as of the Dated Date, shall be consecutively numbered in the manner determined by the Paying Agent and shall be registered in the names of the Persons identified in the registration books of the City maintained by the Paying Agent.

(b) ***Maturity Dates, Principal Amounts and Interest Rates.*** The Bonds shall mature on December 1 of the years and in the principal amounts, and shall bear interest at the rates per annum (calculated based on a 360-day year of twelve 30-day months) set forth in the Sale Certificate. The City Council hereby delegates to the Sale Delegate the authority to determine the aggregate principal amount of the Bonds, the Dated Date, the price at which the Bonds will be sold, the amount of principal of the Bonds maturing in any particular year, the Interest Payment Dates, the Principal Payment Dates and the rate of interest on the Bonds. The City Council hereby authorizes the maximum net effective interest rate for this issue of Bonds of 6.00%, and the actual net effective interest rate of the Bonds shall not exceed such specified maximum rate.

(c) ***Accrual and Dates of Payment of Interest.*** Interest on the Bonds shall accrue at the rates set forth in the Sale Certificate from the later of the Dated Date or the latest Interest Payment Date (or in the case of defaulted interest, the latest date) to which interest has been paid in full and shall be payable on each Interest Payment Date.

(d) ***Manner and Form of Payment.*** Principal of and the final installment of interest on each Bond shall be payable to the Owner thereof upon presentation and surrender of such bond at the principal operations office of the Paying Agent or at such other location as identified by the Paying Agent. Interest (other than the final installment of interest) on each Bond shall be payable by check or draft of the Paying Agent mailed on the Interest Payment Date to the Owner thereof as of the Record Date. All payments of the principal of and interest on the Bonds shall be made in lawful money of the United States of America.

(e) ***Book-Entry Registration.*** The Bonds shall be initially issued in the form of a single, certificate, fully registered Bond for each maturity. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Bond Registrar in the name of Cede, and principal of and interest on the Bonds shall be paid to DTC in accordance with the DTC Blanket Letter of Representations; provided, however, if at any time the Paying Agent determines, and notifies the City of its determination, that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the Bonds, the City may, at its sole and absolute discretion, either (i) designate a substitute securities depository for DTC and reregister the Bonds as directed by such substitute securities depository or (ii) terminate the book-entry registration system and reregister the Bonds in the names of the Beneficial Owners thereof. Neither the City nor the Paying Agent shall have any liability to DTC, Cede, any substitute securities depository, any Beneficial Owner, any Person in whose name the Bonds are reregistered at the direction of any substitute securities depository, or any other Person for any action taken to implement the City’s discretionary determination set forth above that is taken pursuant to any direction of or in reliance on any information

provided by DTC, Cede, any substitute securities depository, any Beneficial Owner, or any Person in whose name the Bonds are reregistered.

Section 4. **Form of the Bonds.** The Bonds shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the City executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Ordinance and is incorporated herein as if set forth in full in the body of this Ordinance.

Section 5. **Execution, Authentication and Delivery of the Bonds.**

(a) **Execution.** The Bonds shall be executed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, shall bear a manual or facsimile of the seal of the City and shall be attested by the manual or facsimile signature of the City Clerk both of whom are hereby authorized and directed to prepare and execute the Bonds in accordance with the requirements hereof. Should any officer whose manual or facsimile signature appears on the Bonds cease to be such officer before delivery of any Bond, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes.

(b) **Authentication.** When the Bonds have been duly executed, the officers of the City are authorized to, and shall, deliver the Bonds to the Paying Agent for authentication. No Bond shall be secured by or entitled to the benefit of this Ordinance, or shall be valid or obligatory for any purpose, unless the certificate of authentication of the Paying Agent has been manually executed by an authorized signatory of the Paying Agent. The executed certificate of authentication of the Paying Agent upon any Bond shall be conclusive evidence, and the only competent evidence, that such Bond has been properly authenticated hereunder.

(c) **Delivery.** Upon the authentication of the Bonds, the Paying Agent shall deliver the same to DTC in accordance with the provisions of the DTC Blanket Letter of Representations. Upon receipt of the agreed purchase price of the Bonds from the Underwriter and issuance of the approving opinion of Bond Counsel, DTC shall be directed to release the Bonds to the Beneficial Owners.

Section 6. **Registration, Transfer and Exchange of the Bonds.**

(a) **Registration.** The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of Bonds shall be recorded. The person in whose name any Bond shall be registered on such registration books shall be deemed to be the absolute owner thereof for all purposes, whether or not payment on any Bond shall be overdue, and neither the City nor the Paying Agent shall be affected by any notice or other information to the contrary.

(b) **Transfer and Exchange.** The Bonds may be transferred or exchanged, at the principal operations office of the Paying Agent at the location identified in the definition of Paying Agent in the section hereof entitled "Definitions," for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith. Upon surrender for transfer of any Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the City shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond.

(c) **Limitations on Transfer.** The City and Paying Agent shall not be required to issue or transfer any Bonds during a period beginning at the close of business on the Record Date and ending at the opening of business on the first Business Day following the ensuing interest payment date.

Section 7. **Replacement of Lost, Destroyed or Stolen Bonds.** If any Bond shall become lost, apparently destroyed, stolen or wrongfully taken, it may be replaced in the form and tenor of the lost, destroyed, stolen or taken bond and the City shall execute and the Paying Agent shall authenticate and deliver a replacement Bond upon the Owner furnishing, to the satisfaction of the Paying Agent: (a) proof of ownership (which shall be shown by the registration books of the Paying Agent), (b) proof of loss, destruction or theft, (c) an indemnity to the City and the Paying Agent with respect to the Bond lost, destroyed or taken, and (d) payment of the cost of preparing and executing the new bond or bonds.

Section 8. **Redemption of Bonds Prior to Maturity.**

(a) **Optional Redemption.** The Bonds shall be subject to redemption at the option of the City, in whole or in part, and if in part in such order of maturities as the City shall determine and by lot within a maturity on such dates as set forth in the Sale Certificate. The City Council hereby delegates to the Sale Delegate the authority to determine the dates on which the Bonds shall be subject to optional redemption and the redemption price or prices at which such redemption may be made.

(b) **Mandatory Sinking Fund Redemption.** All or any principal amount of the Bonds may be subject to mandatory sinking fund redemption by lot on December 1 of the years and in the principal amounts specified in the Sale Certificate, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date. The City Council hereby delegates to the Sale Delegate the authority to determine the principal amounts and dates on which the Bonds shall be subject to mandatory sinking fund redemption.

(c) **Redemption Procedures.** Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the City by sending a copy of such notice by first-class, postage prepaid mail, not less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

Any notice of redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Bonds so called for redemption, and that if funds are not available, such redemption shall be cancelled by written notice to the owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed.

(d) **Redemption Conditions.** Redemption of the Bonds is permitted at any time without the prior written consent of the Bond Insurer provided that funds for such redemption are irrevocably deposited with the Paying Agent (or with an escrow agent which is a commercial bank, savings bank, savings and loan association or other financial institution which is authorized by law to accept and hold deposits of money) prior to rendering notice of redemption to the Owners of the Bonds or, alternatively, such notice expressly states that such redemption is subject to the deposit of funds by the City.

Section 9. **Reaffirmation of Park and Recreation Fund; Establishment of Accounts.** There is hereby reaffirmed the Park and Recreation Fund established pursuant to the Recreation Sales and Use Tax Ordinance. Moneys deposited in the Park and Recreation Fund shall be appropriated and distributed in accordance with the Recreation Sales and Use Tax Ordinance and this Ordinance. There also is hereby established within the Park and Recreation Fund the following accounts: the Bond Account, which shall include the Interest Sub-Account and the Principal Sub-Account; the Reserve Account; and the Project Account. The Director of

Finance is hereby authorized to create additional sub-accounts within the Project Account for the purpose of accounting for proceeds expended for the various purposes set forth in the Ballot Issue.

Section 10. **Application of Proceeds of the Bonds.** Upon payment to the City of the purchase price of the Bonds in accordance with the Bond Purchase Agreement, the proceeds received by the City from the sale of the Bonds shall be applied as a supplemental appropriation of the City as follows: to payment of the premium for issuance of the Bond Insurance Policy and the Surety Policy; for payment of the costs of issuing the Bonds; accrued interest, if any, on the Bonds from the Dated Date to the date of issuance shall be deposited into the Interest Sub-Account; and all remaining proceeds shall be deposited into the Project Account.

Section 11. **Deposit of Pledged Revenues.** Immediately upon receipt of the Recreation Sales and Use Tax, all revenues from the Recreation Sales and Use Tax shall be deposited in the Park and Recreation Fund. The City shall make the following credits within the Park and Recreation Fund in the following order of priority:

First, to the credit of the Interest Sub-Account, the amounts required by the section hereof entitled "Bond Account," and, on a pro rata basis, to the credit of any other account established for the payment of the interest on Parity Lien Bonds, the amounts required by the instruments authorizing or controlling the payment of such Parity Lien Bonds;

Second, to the credit of the Principal Sub-Account, the amounts required by the section hereof entitled "Bond Account," and, on a pro rata basis, to the credit of any other account established for the payment of the principal of Parity Lien Bonds, the amounts required by the instruments authorizing or controlling the payment of such Parity Lien Bonds;

Third, to the credit of the Reserve Account, the amounts required by the section hereof entitled "Reserve Account," and, on a pro rata basis, to the credit of any other account established as a reserve account securing the payment of the principal of, premium if any, and interest on Parity Lien Bonds, the amounts required by the instruments authorizing or controlling the payment of such Parity Lien Bonds;

Fourth, to the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on subordinate lien obligations as described in paragraph (c) of the section hereof entitled "Pledge and Lien for Payment of Bonds," including any sinking fund, reserve fund, or similar fund or account established therefor, the amounts required by the ordinance or other enactment authorizing issuance of said subordinate lien obligations; and

Fifth, to the credit of any other fund or account hereafter established by the City in accordance with the Recreation Sales and Use Tax Ordinance for the payment of any lawful expenditures.

Section 12. **Bond Account.**

(a) **Use of Moneys in Bond Account.** Moneys deposited in the Bond Account shall be used solely for the purpose of paying the principal of, premium if any, and interest on the Bonds. The Principal Sub-Account shall be used to pay the principal of and premium, if any, on the Bonds, and the Interest Sub-Account shall be used to pay the interest on the Bonds.

(b) **Deposits to Interest Sub-Account.** On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the City shall credit to the Interest Sub-Account, from the Pledged Revenues and any interest income to be deposited in the Interest Sub-Account pursuant to the terms hereof, an amount equal to the Pro Rata Portion of the interest to come due on the Bonds on the next succeeding Interest Payment Date. Notwithstanding, the City shall have credited to the Interest Sub-Account from the Pledged Revenues an amount sufficient to pay the interest on the Bonds due on the next succeeding Interest Payment Date not less than 3 Business Days before such Interest Payment Date.

(c) ***Deposits to Principal Sub-Account.*** On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the City shall credit to the Principal Sub-Account, from the Pledged Revenues and any interest income to be deposited in the Principal Sub-Account pursuant to the terms hereof, an amount equal to the Pro Rata Portion of the principal coming due on the Bonds on the next succeeding Principal Payment Date. Notwithstanding, the City shall have credited to the Principal Sub-Account from the Pledged Revenues an amount sufficient to pay the principal coming due on the Bonds on the next succeeding Principal Payment Date not less than 3 Business Days before such Principal Payment Date.

(d) ***Investments.*** Moneys deposited in the Bond Account may be invested or deposited in securities or obligations that are Permitted Investments. The investment of moneys deposited in the Bond Account shall, however, be subject to the covenants and provisions of the section hereof entitled "Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." Except to the extent otherwise required by such section, all interest income from the investment or reinvestment of moneys deposited in any sub-account of the Bond Account shall remain in and become part of such sub-account.

Section 13. **Reserve Account.**

(a) ***Use of Moneys in Reserve Account.*** Moneys in the Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, and interest on the Bonds when due. Moneys on deposit in the Reserve Account, proceeds of the liquidation of Permitted Investments on deposit in the Reserve Account or moneys available from a Reserve Account Contract shall be transferred to the Bond Account on any date on which a payment of principal of, premium, if any, or interest on the Bonds is due to the extent the amount on deposit in the Bond Account is insufficient to make such payment. To the extent the Reserve Account is funded with a combination of cash and a Reserve Account Contract, the cash shall be expended before any draw is made against the Reserve Account Contract.

(b) ***Funding and Maintenance of Reserve Account Requirement.*** The Reserve Account Requirement shall be funded and maintained by any one of or any combination of (i) cash; (ii) Permitted Investments; and (iii) with the prior written consent of the Bond Insurer, a Reserve Account Contract which provides for payments when and as required for purposes of the Reserve Account. The Reserve Account Contract must be issued by an obligor whose obligations such as the Reserve Account Contract are either (A) rated "AA" by a Rating Agency or (B) if a rating has been obtained on the Bonds, whose obligations are rated by each Rating Agency that then maintains a rating on the Bonds in a category (or comparable classification) equal to or higher than the category, if any, in which the Bonds are rated, or will not impact the rating on the Bonds. The Reserve Account Requirement shall be funded initially by the Surety Policy.

(c) ***Valuation of Deposits.*** Cash shall satisfy the Reserve Account Requirement by the amount of cash on deposit. Permitted Investments shall satisfy the Reserve Account Requirement by the value of such investments. The value of each Permitted Investment on deposit in the Reserve Account shall be (i) its purchase price from the date of purchase until the first date thereafter on which the Reserve Account Requirement is calculated pursuant to paragraph (d) of this section and (ii) following each date on which the Reserve Account Requirement is calculated pursuant to paragraph (d) of this section until the next date on which the Reserve Account Requirement is so calculated, its fair market value determined as of such calculation date. A Reserve Account Contract shall satisfy the Reserve Account Requirement by the amount available under the Reserve Account Contract for payment.

(d) ***Calculation of Reserve Account Requirement and Transfers Resulting from Calculation.*** The Reserve Account Requirement shall be calculated as of (i) the date of issuance of the Bonds, and (ii) not less than annually. If at any time the calculated amount of the Reserve Account is less than the Reserve Account Requirement or transfers are made from the Reserve Account as provided in paragraph (a) hereof, then the City shall deposit to the Reserve Account from the Pledged Revenues, amounts

sufficient to bring the amount deposited in the Reserve Account to the Reserve Account Requirement. If at any time a draw is made against a Reserve Account Contract as provided in paragraph (a) hereof, then the City shall pay any amounts due and owing under the Reserve Account Contract from the Pledged Revenues. If at any time the calculated amount of the Reserve Account is more than the Reserve Account Requirement, then the City shall transfer to the Bond Account such amount which is in excess of the Reserve Account Requirement. Such deposits shall be made as soon as possible after such use or calculation, but in accordance with and subject to the limitations of the section hereof entitled "Deposit of Pledged Revenues."

(e) ***Transfer of Interest Income to Bond Account.*** The investment of moneys deposited in the Reserve Account shall be subject to the covenants and provisions of the section hereof entitled "Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." Except to the extent otherwise required by such section, interest income from the investment or reinvestment of moneys deposited in the Reserve Account shall be transferred to the Bond Account.

Section 14. Project Account.

(a) ***Use of Moneys in Project Account.*** All moneys deposited in the Project Account shall be applied solely to the payment of the Project Costs. Upon the determination of the City Council that all Project Costs have been paid or are determinable, any balance remaining in the Project Account (less any amounts necessary to pay Project Costs not then due and owing) shall be transferred to the Bond Account.

(b) ***Investments.*** Moneys deposited in the Project Account may be invested or deposited in securities or obligations that are Permitted Investments. The investment of moneys deposited in the Project Account shall, however, be subject to the covenants and provisions of the Section hereof titled "Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." Except to the extent otherwise required by such section, interest income from the investment or reinvestment of moneys deposited in the Project Account shall remain in and become part of the Project Account.

Section 15. Pledge and Lien for Payment of Bonds.

(a) ***Pledge of Revenues.*** The City hereby pledges for the payment of the principal of, premium, if any, and interest on the Bonds at any time Outstanding, and grants a first lien (but not necessarily an exclusive first lien) for such purpose on the Pledged Revenues. Pursuant to § 11-57-208, C.R.S., the Pledged Revenues, as received by the City or otherwise deposited to the Park and Recreation Fund, shall immediately be subject to the lien established herein without any physical delivery, filing or further act. The lien of such pledge shall be valid, binding and enforceable against all persons having claims for any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such lien.

(b) ***Superior Liens Prohibited.*** The City shall not pledge or create any other lien on the revenues and moneys pledged pursuant to paragraph (a) of this Section that is superior to the pledge thereof or lien thereon pursuant to such paragraphs.

(c) ***Subordinate Liens Permitted.*** Nothing herein shall prohibit the City from issuing subordinate lien obligations and pledging or creating a lien on the revenues and moneys pledged and the lien created pursuant to paragraph (a) of this section that is subordinate to the pledge thereof or lien thereon pursuant to such paragraph, provided that no Event of Default shall have occurred and be continuing.

(d) ***No Prohibition on Additional Security.*** Nothing herein shall prohibit the City from depositing any legally available moneys that are not Pledged Revenues into any account of the Park and Recreation Fund (and thereby subjecting the moneys so deposited to the pledge made and lien granted in paragraph (a) of this section). Provided however, such legally available revenues shall not be considered Pledged Revenues.

(e) ***Bonds are Special, Limited Obligations of the City.*** The Bonds are special, limited obligations of the City payable solely from the Park and Recreation Fund and secured solely by the sources provided in this Ordinance. The Bonds shall not constitute a debt of the City within the meaning of the Charter or any constitutional limitation.

Section 16. **Conditions to Issuance of Parity Lien Bonds.** The City shall not issue Parity Lien Bonds unless all of the following conditions are satisfied:

(a) ***Historical Test; Special Test for Refundings.*** A Certified Public Accountant certifies in writing that either:

(1) the Pledged Revenues for any 12 consecutive months in the 18 months immediately preceding the month in which such certification is delivered (referred to in this paragraph as the “test period”) have been equal to at least 150% of the sum of the Combined Maximum Principal and Interest Requirements due or to become due on the Outstanding Bonds, any outstanding Parity Lien Bonds, and the proposed Parity Lien Bonds during each calendar year following the date of issuance of the proposed Parity Lien Bonds; or

(2) the proceeds of the proposed Parity Lien Bonds will be used to refund the Bonds and the aggregate principal of and interest due on the proposed Parity Lien Bonds is not greater than the aggregate principal of and interest due on the Bonds that will be refunded.

(b) ***Creation of Separate Accounts.*** The ordinance, indenture or other document providing for the issuance of the Parity Lien Bonds must provide for a reserve account, which is established and maintained in an amount formulated substantially the same way as the Reserve Account Requirement, and a bond account for the Parity Lien Bonds, and such accounts must be established and maintained on substantially the same terms and contain substantially the same provisions as set forth in this Ordinance for the Reserve Account and the Bond Account, respectively.

(c) ***No Event of Default.*** The Mayor certifies in writing that no Event of Default has occurred and is continuing.

Section 17. **Additional General Covenants.** In addition to the other covenants of the City contained herein, the City hereby further covenants for the benefit of Owners of the Bonds that:

(a) ***Maintenance of Recreation Sales and Use Tax.*** The City will not reduce the percentage of the Recreation Sales and Use Tax deposited to the Park and Recreation Fund pursuant to the Recreation Sales and Use Tax Ordinances, will not reduce the rate of the Recreation Sales and Use Tax, and will not alter, exempt or modify the transactions, properties or items subject to the Recreation Sales and Use Tax or any other sales and use tax of the City without the prior written consent of the Bond Insurer.

(b) ***Efficient Collection and Enforcement.*** The City will manage the collection and enforcement of the Recreation Sales and Use Tax in the most efficient and economical manner practicable.

(c) ***Inspection of Records.*** The City will keep or cause to be kept such books and records showing the proceeds of the Recreation Sales and Use Tax, in which complete entries shall be made in accordance with generally accepted accounting principles, as applicable to governmental entities, and the Owner of any Bond shall have the right at all reasonable times to inspect all non-confidential records, accounts, actions and data of the City relating to the Bonds, the Recreation Sales and Use Tax and the Park and Recreation Fund.

(d) ***Annual Audit.*** The City will cause an annual audit to be made of the books relating to the Recreation Sales and Use Tax each year by a certified public or registered accountant and shall furnish a copy thereof to the Underwriter at its request and to any Owner who so requests and agrees to pay the cost of reproduction and

mailing. The annual audit of the City's general purpose financial statements shall be deemed to satisfy this covenant.

Section 18. Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes. For purposes of ensuring that the interest on the Bonds is and remains excluded from gross income for federal income tax purposes, the City hereby covenants that:

(a) ***Prohibited Actions.*** The City will not use or permit the use of any proceeds of the Bonds or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, or would otherwise cause the interest on any Bond to be includible in gross income for federal income tax purposes.

(b) ***Affirmative Actions.*** The City will at all times do and perform all acts permitted by law that are necessary in order to assure that interest paid by the City on the Bonds shall not be includible in gross income for federal income tax purposes under the Code or any other valid provision of law. In particular, but without limitation, the City represents, warrants and covenants to comply with the following rules unless it receives an opinion of Bond Counsel stating that such compliance is not necessary: (i) gross proceeds of the Bonds will not be used in a manner that will cause the Bonds to be considered "private activity bonds" within the meaning of the Code; (ii) the Bonds are not and will not become directly or indirectly "federally guaranteed"; and (iii) the City will timely file Internal Revenue Form 8038-G which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

(c) ***Letter of Instructions.*** The City will comply with the Letter of Instructions delivered to it on the date of issuance of the Bonds, including but not limited by the provisions of the Letter of Instructions regarding the application and investment of Bond proceeds, the calculations, the deposits, the disbursements, the investments and the retention of records described in the Letter of Instructions; provided that, in the event the original Letter of Instructions is superseded or amended by a new Letter of Instructions drafted by, and accompanied by an opinion of Bond Counsel stating that the use of the new Letter of Instructions will not cause the interest on the Bonds to become includible in gross income for federal income tax purposes, the City will thereafter comply with the new Letter of Instructions.

(d) ***Bank Qualification.*** The City hereby designates the Bonds as qualified tax-exempt obligations within the meaning of Section 265(b)(3) of the Code. The City covenants that the aggregate face amount of all tax-exempt obligations issued by the City, together with governmental entities which derive their issuing authority from the City or are subject to substantial control by the City, shall not be more than \$10,000,000 during calendar year 2007. The City recognizes that such tax-exempt obligations include notes, leases, loans and warrants, as well as bonds.

Section 19. Defeasance. Any Bond shall not be deemed to be Outstanding hereunder if it shall have been paid and cancelled or if Federal Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the maturity of such Bond, but if such Bond is to be paid prior to maturity, the City shall have given the Paying Agent irrevocable directions to give notice of redemption as required by this Ordinance, or such notice shall have been given in accordance with this Ordinance). In computing the amount of the deposit described above, the City may include the maturing principal of and interest to be earned on the Federal Securities. If less than all the Bonds are to be defeased pursuant to this Section, the City, in its sole discretion, may select which of the Bonds shall be defeased.

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer, if any, pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, and all covenants, agreements and other obligations of the City to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

Section 20. **Events of Default.** Each of the following events constitutes an Event of Default:

(a) ***Nonpayment of Principal or Interest.*** Failure to make any payment of principal of or interest on the Bonds when due hereunder;

(b) ***Breach or Nonperformance of Duties.*** Breach by the City of any material covenant set forth herein or failure by the City to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of 30 days after receipt by the City Attorney of the City of written notice thereof from the Paying Agent, the Bond Insurer or from the Owners of at least 10% in principal amount of the Outstanding Bonds, provided that such 60 day period shall be extended so long as the City has commenced and continues a good faith effort to remedy such breach or failure; or

(c) ***Appointment of Receiver.*** An order or decree is entered by a court of competent jurisdiction appointing a receiver for all or any portion of the revenues and moneys pledged for the payment of the Bonds pursuant hereto is entered with the consent or acquiescence of the City or is entered without the consent or acquiescence of the City but is not vacated, discharged or stayed within 30 days after it is entered.

Section 21. **Remedies for Events of Default.**

(a) ***Remedies.*** Upon the occurrence and continuance of any Event of Default, the Owners of not less than 25% in principal amount of the Bonds then Outstanding, including, without limitation, a trustee or trustees therefor, may proceed against the City to protect and to enforce the rights of any Owner of Bonds under this Ordinance by mandamus, injunction or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction: (i) for the payment of interest on any installment of principal of any Bond that was not paid when due at the interest rate borne by such bond, (ii) for the appointment of a receiver or an operating trustee, (iii) for the specific performance of any covenant contained herein, (iv) to enjoin any act that may be unlawful or in violation of any right of any Owner of any Bond, (v) to require the City to act as if it were the trustee of an express trust, (vi) for any other proper legal or equitable remedy as such Owner may deem most effectual to protect their rights or (vii) any combination of such remedies or as otherwise may be authorized by any statute or other provision of law; provided, however, that acceleration of any amount not yet due on the Bonds according to their terms shall not be an available remedy. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of Bonds then Outstanding. Any receiver or operating trustee appointed in any proceedings to protect the rights of Owners of Bonds hereunder may collect, receive and apply all revenues and moneys pledged for the payment of the Bonds pursuant hereto arising after the appointment of such receiver or operating trustee in the same manner as the City itself might do.

(b) ***Failure to Pursue Remedies Not a Release; Rights Cumulative.*** The failure of any Owner of any Bond then Outstanding to proceed in any manner herein provided shall not relieve the City of any liability for failure to perform or carry out its duties hereunder. Each right or privilege of any such Owner (or trustee therefor) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof. Each Owner of any Bond shall be entitled to all of the privileges, rights and remedies provided or permitted in this Ordinance and as otherwise provided or permitted by law or in equity.

(c) ***Bond Insurer Third Party Beneficiary; Right To Control Remedies.*** To the extent that this Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Ordinance, the Bond Insurer is hereby explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. Upon the occurrence and continuance of an Event of Default, so long as it is not in default of its obligations under the Bond Insurance Policy, the Bond Insurer shall be entitled to control and direct

the enforcement of all rights and remedies granted to the Owners under this Ordinance and pursuant to State law.

(d) ***Obligations of City and Paying Agent in Connection with Events of Default.*** Upon the occurrence and continuation of any of Events of Default: (i) the City shall take all proper acts to protect and preserve the security for the payment of the Bonds and to insure the payment of debt service on the Bonds promptly when due; (ii) the City and the Paying Agent shall give the Owners of the Bonds then Outstanding notice by first class mail of (A) any default in the payment of or interest on the Bonds immediately after discovery thereof and (B) any other Event of Default within 30 days after discovery thereof. During the continuation of any Event of Default, except to the extent it may be unlawful to do so, all revenues and moneys pledged for the payment of the Bonds pursuant hereto shall be held for and applied to the debt service on all Bonds on an equitable and prorated basis. If the City fails or refuses to proceed as provided in this paragraph, the Owners of not less than 25% in principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and to enforce the rights of the Owners of the Bonds as provided in this paragraph; and to that end any such rights of Owners of Bonds then Outstanding shall be subrogated to all rights of the City under any agreement or contract involving the revenues and moneys pledged for the payment of the Bonds pursuant hereto that was entered into prior to the effective date of this Ordinance or thereafter while any of the Bonds are Outstanding. Nothing herein requires the City to proceed as provided in this paragraph if it determines in good faith and without any abuse of its discretion that such action is likely to affect materially and prejudicially the Owners of the Bonds then Outstanding.

Section 22. **Amendment of Ordinance.**

(a) ***Amendments Permitted without Notice to or Consent of Owners.*** The City may, with the consent of the Bond Insurer but without the consent of or notice to the Owners of the Bonds, adopt one or more ordinances amending or supplementing this Ordinance (which ordinances shall thereafter become a part hereof) for any one or more or all of the following purposes: to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision of this Ordinance; to facilitate the designation of a substitute securities depository or to terminate the book-entry registration system for the Bonds in accordance with the section hereof entitled "Bond Details"; to facilitate the issuance of Parity Lien Bonds permitted to be issued pursuant to the section hereof entitled "Conditions to Issuance of Parity Lien Bonds" and provide for the establishment of separate bond and reserve accounts for the Bonds and the Parity Lien Bonds; to facilitate the funding of the Reserve Account or the substitution of one source of funding of the Reserve Account for another permitted source in accordance with the section hereof entitled "Reserve Account"; to maintain the then existing or to secure a higher rating of the Bonds by any nationally recognized securities rating agency; or to make any other change that does not materially adversely affect the Owners of the Bonds.

(b) ***Amendments Requiring Notice to and Consent of Owners.*** Except for amendments permitted by paragraph (a) of this section, this Ordinance may only be amended (i) by an ordinance of the City amending or supplementing this Ordinance (which, after the consents required therefor, shall become a part hereof) and (ii) with the written consent of the Owners of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding, subject to the section hereof entitled "Rights of Bond Insurer"; provided that any amendment that makes any of the following changes with respect to any Bond shall not be effective without the written consent of the Owner of such bond: (A) a change in the maturity of such bond; (B) a reduction of the interest rate on such bond; (C) a change in the terms of redemption of such bond; (D) a delay in the payment of principal or interest on such bond; (E) the creation of any pledge or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is superior to the pledge and lien for the payment of such bond hereunder; (F) a relaxation of the conditions to the issuance of Parity Lien Bonds or to the creation of any pledge or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is equal to or on a parity with the pledge and lien for the payment of such bond hereunder; (G) a reduction of the principal amount or percentage of Bonds whose consent is required

for an amendment to this Ordinance; or (H) the establishment of a priority or preference for the payment of any amount due with respect to any other Bond over such bond.

(c) ***Procedure for Notifying and Obtaining Consent of Owners.*** Whenever the consent of an Owner or Owners of Bonds is required under paragraph (b) of this Section, the City shall mail a notice to such Owner or Owners at their addresses as set forth in the registration books maintained by the Paying Agent and to the Underwriter, which notice shall briefly describe the proposed amendment and state that a copy of the amendment is on file in the office of the City Clerk for inspection. Any consent of any Owner of any Bond obtained with respect to an amendment shall be in writing and shall be final and not subject to withdrawal, rescission or modification for a period of 60 days after it is delivered to the City unless another time period is stated for such purpose in the notice mailed pursuant to this paragraph.

(d) ***Consent of and Notice to Bond Insurer.*** The Bond Insurer's consent is required for any amendment to this Ordinance under the provisions of this Section. Notice of any such amendment shall be mailed to the Bond Insurer at the address listed below in accordance with the procedures provided in paragraph (c) of this Section. The address for the Bond Insurer is as follows:

XLCA Capital Assurance Inc.
1221 Avenue of the Americas
New York, NY 10020-1001
Attention: Surveillance

(e) ***Copies of Amendments to Rating Agency.*** A copy of any amendment consented to by the Bond Insurer pursuant to paragraph (d) of this Section shall be mailed to the Rating Agency at the address listed below:

Standard & Poor's Ratings Services
Public Finance Department
55 Water Street
New York, NY 10041-0003

Section 23. **Findings and Determinations.** Having been fully informed of and having considered all the pertinent facts and circumstances, the Council does hereby find, determine, and declare: the issuance of the Bonds and all procedures undertaken incident thereto are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Act, the Charter and the Constitution of the State, and other applicable law relating to the issuance of the Bonds have been satisfied; and it is to the best advantage of the City and its residents that the Bonds be authorized, sold, issued and delivered at the time, in the manner and for the purposes provided in this Ordinance.

Section 24. **Approval of Official Statement, Commitments, Financial Guaranty Agreement, and Miscellaneous Documents.** The City Council hereby ratifies and approves the distribution and use of the Preliminary Official Statement; authorizes and directs the City staff to prepare a final Official Statement for use in connection with the sale of the Bonds in substantially the form thereof presented to the City Council at the meeting at which this Ordinance is adopted, with such changes therein, if any, not inconsistent herewith, as are approved by the City. The City authorizes and approves the execution of the DTC Blanket Letter of Representations, the Continuing Disclosure Undertaking, the Paying Agent Agreement, the Commitments, the Financial Guaranty Agreement and the Bond Purchase Agreement, which shall be in substantially the forms presented to the City Council at this meeting and shall be completed in accordance with the terms of this Ordinance (which, once executed, shall constitute conclusive evidence of approval of the City Council). The Mayor is hereby authorized and directed to execute the final Official Statement and the Mayor, the City Clerk and all other officers of the City are hereby authorized and directed to execute all documents and certificates necessary or desirable to effectuate the issuance of the Bonds and the transactions contemplated hereby.

Section 25. **Rights of Bond Insurer.**

(a) ***Payments Under the Bond Insurance Policy.***

(1) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date (“Payment Date”), there is not on deposit with the Paying Agent under this Ordinance, after making all transfers and deposits required under this Ordinance, moneys sufficient to pay the principal of, and interest on, Bonds due on such Payment Date, the City shall give notice to the Bond Insurer and to its designated agent (if any) (the “Insurer’s Fiscal Agent”), by telephone or telecopy, of the amount of such deficiency by 10:00 a.m., New York City time, on such Business Day. If, on the Business Day prior to the related Payment Date, there is not on deposit with the Paying Agent moneys sufficient to pay the principal of, and interest on, the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer and the Bond Insurer’s Fiscal Agent (if any) by telephone of the amount of any deficiency in the amount available to pay principal and interest, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the related Insurer and the Bond Insurer’s Fiscal Agent by 10:00 a.m., New York City time, on such Business Day, by delivering the Notice of Nonpayment and Certificate.

(2) For the purposes of the preceding paragraph, “Notice” means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from the Paying Agent to the Bond Insurer, which notice shall specify (a) the name of the entity making the claim, (b) the policy number, (c) the claimed amount and (d) the date such claimed amount will become Due for Payment. “Nonpayment” means the failure of the City to have provided sufficient funds to the Paying Agent for payment in full of all principal of, and interest on, the Bonds that are Due for Payment. “Due for Payment”, when referring to the principal of Bonds, means when the stated maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments, acceleration or other advancement of maturity, unless the Bond Insurer shall elect, in its sole discretion, to pay such principal due upon such acceleration; and when referring to interest on Bonds, means when the stated date for payment of interest has been reached. “Certificate” means a certificate in form and substance satisfactory to the Bond Insurer as to the Paying Agent’s right to receive payment under the Bond Insurance Policy.

(3) The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Bond Insurer at maturity on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Insured Bond to the Bond Insurer, registered in the name of the Bond Insurer, as the case may be, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent’s failure to so designate any payment or issue any replacement Insured Bond shall have no effect on the amount of principal or interest payable by the City on any Insured Bond or the subrogation rights of the Bond Insurer.

(4) The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account (as hereinafter defined) and the allocation of such funds to payment of interest on and principal paid with respect to any Insured Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

(5) Upon payment of a claim under the Bond Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of holders of Bonds referred to herein as the “Policy Payments Account” and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under Bond

Insurance Policy in trust on behalf of holders of Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to holders of Bonds in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

(6) Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent.

(7) Any funds remaining in the Policy Payments Account following an Insured Bond payment date shall promptly be remitted to the Bond Insurer.

(b) ***Effect of Defeasance of all Bonds or Failure by Bond Insurer To Pay Under Bond Insurance Policy.*** Notwithstanding any other provision hereof, this Section, all other provisions hereof included for the benefit of the Bond Insurer and all references herein to the Bond Insurer and the Bond Insurance Policy shall be ineffective (i) when no Bonds are Outstanding and (ii) following a failure by the Bond Insurer to pay the principal of or interest on any Bond pursuant to the Bond Insurance Policy.

(c) ***Notice to Bond Insurer.*** All notices required to be given to any party under this Ordinance shall also be given to the Bond Insurer at the address listed below:

XLCA Capital Assurance Inc.
1221 Avenue of the Americas
New York, NY 10020-1001
Attention: Surveillance

(d) ***Subrogation.*** If the principal of or interest on the Bonds shall be paid by the Bond Insurer, the Bonds shall remain Outstanding under this Ordinance for all purposes, and shall not be deemed defeased or otherwise satisfied, or paid by the City, and the assignment and pledge of the Net Revenues and all moneys on deposit from time to time in the Revenue Fund subject to the application of the Gross Revenues as provided in the Section herein entitled "Deposit of Gross Revenues" and all covenants, agreements and other obligations of the City to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer and the Bond Insurer shall be subrogated to the rights of such Owners.

Section 26. **Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed

Section 27. **Events Occurring on Days That Are Not Business Days.** Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any payment to be made hereunder or any event or action to occur hereunder which, but for this section, is to be made or is to occur on a day that is not a Business Day shall instead be made or occur on the next succeeding day that is a Business Day.

Section 28. **Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 29. **Ordinance Irrepealable.** After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the City, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 30. **Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 31. **Repealer.** All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 32. **Effective Date; Recording and Authentication.** This Ordinance shall be in full force and effect upon adoption. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and the City Clerk, and shall be published in accordance with law. Pursuant to Section 6.14 of the City's Charter, this Ordinance shall be excepted from the initiative and referendum provisions of the Charter.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 25th day of September, 2007, on first reading, and introduced, read, passed and adopted on second and final reading this 9th day of October, 2007.

Mayor

(SEAL)

ATTEST:

City Clerk

Published in full in
The Gunnison Country Times
October 4, 2007, edition

R- _____

\$ _____

APPENDIX A

FORM OF THE BOND

EXCEPT AS OTHERWISE PROVIDED IN THE HEREINAFTER DEFINED ORDINANCE, THIS GLOBAL BOOK-ENTRY BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (AS DEFINED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

UNITED STATES OF AMERICA

**CITY OF GUNNISON, COLORADO
SALES AND USE TAX REVENUE BONDS
SERIES 2007**

Interest Rate:	Maturity Date:	Original Dated Date:	CUSIP:
%	December 1, 20__	_____, 2007	

REGISTERED OWNER:

PRINCIPAL SUM:

DOLLARS

CITY OF GUNNISON, COLORADO, in the State of Colorado, a duly organized and validly existing home-rule City and political subdivision of the State of Colorado (the "City"), for value received, hereby promises to pay to the order of the registered owner named above or registered assigns, solely from the special funds as hereinafter set forth, on the maturity date stated above, the principal sum stated above, in lawful money of the United States of America, with interest thereon from the original dated date stated above, at the interest rate per annum stated above, payable on June 1 and December 1 of each year, commencing June 1, 2008 the principal of and the final installment of interest on this bond being payable to the registered owner hereof upon presentation and surrender of this bond at the principal operations office of American National Bank, Denver, Colorado, as Paying Agent (the "Paying Agent"), in Denver, Colorado, or at such other location as identified by the Paying Agent, and the interest hereon (other than the final installment of interest hereon) to be paid by check or draft of the Paying Agent mailed on the interest payment date to the registered owner hereof as of the close of business on the fifteenth day (whether or not such day is a Business Day) of the calendar month next preceding the interest payment date, except that so long as Cede & Co. is the registered owner of this bond, the principal of and interest on this bond shall be paid by wire transfer to Cede & Co. Capitalized terms used but not defined in this bond shall have the meaning assigned to them in the Ordinance of the City authorizing the issuance of the Bonds.

This bond is one of an issue of bonds of the City designated Sales and Use Tax Revenue Bonds, Series 2007, issued in the principal amount of \$_____ (the "Bonds"). The Bonds are being issued by the City for the purposes set forth in the Ballot Issue, pursuant to and in full conformity with the City Charter, the Constitution and laws of the State of Colorado, and an approving ordinance (the "Ordinance") duly adopted by the City prior to the issuance hereof.

[Redemption provisions set forth in the Sale Certificate (as defined in the Bond Ordinance) to be set forth herein]

The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of the Bonds shall be recorded. The person in whose name this bond shall be registered on such registration books shall be deemed to be the absolute owner hereof for all purposes, whether or not payment on this bond shall be overdue, and neither the City nor the Paying Agent shall be affected by any notice or other information to the contrary. This bond may be transferred or exchanged, at the principal operations office of the Paying Agent in Denver, Colorado, or at such other location as identified by the Paying Agent, for a like

aggregate principal amount of the Bonds of other authorized denominations (\$5,000 or any integral multiple thereof) of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith.

The Bonds are special, limited obligations of the City payable solely from and secured solely by the sources provided in the Ordinance and shall not constitute a debt of the City within the meaning of the City Charter or any constitutional limitation. Pursuant to the Ordinance the City pledged for the payment of the principal of and interest on the Bonds at any time outstanding, and granted a lien for such purpose on (i) the Recreation Sales and Use Tax and (ii) on all moneys on deposit from time to time in the Park and Recreation Fund. The City is authorized to pledge and grant a lien, on a parity with the lien for the payment of the Bonds, on the Pledged Revenues identified above for the payment of other bonds or obligations upon satisfaction of certain conditions set forth in the Ordinance.

THE ORDINANCE CONSTITUTES THE CONTRACT BETWEEN THE REGISTERED OWNER OF THIS BOND AND THE CITY. THIS BOND IS ONLY EVIDENCE OF SUCH CONTRACT AND, AS SUCH, IS SUBJECT IN ALL RESPECTS TO THE TERMS OF THE ORDINANCE, WHICH SUPERSEDES ANY INCONSISTENT STATEMENT IN THIS BOND.

The City agrees with the owner of this bond and with each and every person who may become the owner hereof, that it will keep and perform all the covenants and agreements contained in the Ordinance.

The Ordinance may be amended or supplemented from time-to-time with or without the consent of the registered owners of the Bonds as provided in the Ordinance.

It is hereby certified that all conditions, acts and things required by the City Charter, and the constitution and laws of the State of Colorado, and the ordinances of the City, to exist, to happen and to be performed, precedent to and in the issuance of this bond, exist, have happened and have been performed, and that the Bonds do not exceed any limitations prescribed by said City Charter, Constitution or laws of the State of Colorado, or the ordinances of the City.

This bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the Paying Agent shall have signed the certificate of authentication hereon.

IN WITNESS WHEREOF, City of Gunnison, Colorado, has caused this bond to be signed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, to be sealed with the seal of the City or a facsimile thereof and to be attested by the manual or facsimile signature of the City Clerk.

[SEAL]

GUNNISON, COLORADO

By _____
(Manual or Facsimile Signature)
Mayor

ATTEST:

By _____
(Manual or Facsimile Signature)
City Clerk

CERTIFICATE OF AUTHENTICATION

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

American National Bank, Denver, Colorado, as
Paying Agent

By _____
Authorized Representative

Date of Authentication: _____

STATEMENT OF INSURANCE

XL Capital Assurance Inc. (“XLCA”), New York, New York, has delivered its municipal bond insurance policy (the “Policy”) with respect to the scheduled payments due of principal of and interest on this Bond to American National Bank, Denver, Colorado, or its successor, as paying agent (the “Paying Agent”) for the City of Gunnison, Colorado, Sales and Use Tax Revenue Bonds, Series 2007. **Said Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from XLCA or the Paying Agent.**

APPROVING LEGAL OPINION

Set forth below is a true copy of the approving legal opinion of Kutak Rock LLP, delivered on the date on which the Bonds were originally issued:

[TO BE PROVIDED BY BOND COUNSEL]

I, the undersigned City Clerk of the City of Gunnison, Colorado, do hereby certify that the foregoing approving opinion of Kutak Rock LLP, Denver, Colorado, is a true and complete copy of a manually executed and dated copy thereof on file in the official records of the City.

By _____
City Clerk

CERTIFICATE OF TRANSFER

FOR VALUE RECEIVED, _____, the undersigned, hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. _____) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

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

TRANSFER FEE MAY BE REQUIRED