

001021

Naples City Council
Agenda Item <u>9</u>
For The Meeting Of <u>1-16-91</u>

ORDINANCE NO. 91-6282

ORDINANCE PROVIDING FOR THE CONSTRUCTION AND INSTALLATION OF RENOVATIONS AND IMPROVEMENTS TO A BOAT DOCK PROJECT FOR THE CITY OF NAPLES, FLORIDA; AUTHORIZING THE ISSUANCE BY THE CITY OF NOT EXCEEDING \$275,000 CAPITAL IMPROVEMENT REVENUE BONDS TO FINANCE THE COST THEREOF; COVENANTING TO BUDGET AND APPROPRIATE CERTAIN FUNDS FOR THE PAYMENT OF THE BONDS AND PLEDGING ALL MONEYS ON DEPOSIT TO THE CREDIT OF THE SINKING FUND AND THE REVENUE FUND CREATED HEREUNDER AND THE EARNINGS ON THE INVESTMENT THEREOF TO SECURE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS FOR THE BENEFIT OF THE OWNERS OF THE BONDS; AUTHORIZING A NEGOTIATED SALE OF THE BONDS; AWARDING THE BONDS TO THE PLACEMENT AGENT THEREOF; APPOINTING THE REGISTRAR AND PAYING AGENT FOR THE BONDS; PROVIDING FOR A STATEMENT OF PURPOSE BY THE CITY THAT THE PROJECT IS UNDERTAKEN TO PROVIDE ELECTRICAL AND FUEL TANK IMPROVEMENTS TO THE CITY'S MUNICIPAL BOAT DOCK; AND PROVIDING AN EFFECTIVE DATE.

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

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ARTICLE I

GENERAL

1.01 Definitions. Unless the text clearly otherwise requires, when used in this Instrument the terms defined in Appendix A shall have the respective meanings assigned therein and the following terms shall have the following meanings:

"Additional Debt" shall mean all obligations of the Issuer which are non-selfsupporting and are payable from its non-ad valorem revenues which obligations must be issued in accordance with the provisions of Appendix B hereto.

"Authorized Depository" shall mean the State Board of Administration and any state banking corporation or national banking association situated in the State of Florida which is a member of the Federal Deposit Insurance Corporation and which is eligible under the laws of the State of Florida to receive deposits of funds of the Issuer.

"Authorized Investments" shall mean all accounts with the State Board of Administration of the State of Florida and, subject to any limitations which may be contained in Appendix F hereto, any investments which shall be authorized from time to time by applicable laws of the State of Florida for deposit or purchase by the Issuer for the temporary investment of its funds.

"Bond Counsel" shall mean Foley & Lardner & Hill, Tampa, Florida.

"Bond Register" shall mean the registration books of the Issuer, kept by the Registrar, for the purpose of registering ownership of the Bonds.

"Bonds" shall mean the Section 2.01 Bonds.

"Bond Service Requirement" for any Bond Year shall mean the amount required to pay the principal of and interest on the Bonds during such Bond Year.

"Bond Year" shall mean the period commencing on the day after the principal maturity date of the notes each calendar year and ending on the principal maturity date of the Bonds in the next succeeding calendar year. Each Bond Year shall be designated with the number of the calendar year in which such Bond Year ends.

"Closing" shall mean the closing of the delivery of the Bonds by the Issuer to the Placement Agent upon payment by the Placement Agent to the Issuer of the purchase price therefor in full.

"Code" shall mean the United States Internal Revenue Code of 1986, as the same may be amended from time to time, or any successor enactment, and the regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"Cost" when used in connection with the Project, shall mean all expenses necessary, appurtenant or incidental to the acquisition, construction and installation of the Project, including without limitation the cost of any land or interest therein or of any fixtures, equipment or personal property necessary or convenient therefor, the cost of labor and materials to complete such construction, architectural, engineering and legal expenses, fiscal expenses, expenses for estimates of costs and of revenues, expenses for plans, specifications and surveys, interest during construction, administrative expenses related solely to the acquisition and construction of the Project and all expenses incident to the financing of the Project and the issuance of the Bonds.

"Federal Securities" shall mean 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 obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Fiscal Year" shall mean the period commencing on October 1 of each year and ending on September 30 in the next succeeding year.

"Instrument" shall mean this ordinance and all ordinances amendatory hereof which may be hereafter duly adopted by the Issuer.

"Interest Payment Dates" shall mean the dates designated as such in Appendix C hereto.

"Maximum Bond Service Requirement" shall mean, as of any particular date of calculation, an amount equal to the largest Bond Service Requirement for the then current or any future Bond Year.

"Owner" shall mean the Person in whose name any outstanding Bond is registered according to the Bond Register.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

"Placement Agent Agreement" shall mean the Placement Agent Agreement pertaining to the Section 2.01 Bonds attached as Appendix E hereto.

"Placement Agent" shall mean the Person identified as such in the Placement Agent Agreement, the initial purchaser of the Section 2.01 Bonds.

"Pledged Funds" shall mean the Revenues and all moneys on deposit to the credit of the Sinking Fund and the interest and earnings to be derived by the Issuer on the investment thereof.

"Project Account" shall mean the special account created pursuant to Section 3.03 hereof into which the Issuer shall deposit a portion of Bond proceeds.

"Registrar" shall mean the institution appointed by Section 4.08 hereof, or any bank or other qualified institution hereafter appointed as successor registrar and paying agent for the Bonds by resolution of the Governing Body.

"Revenue Fund" shall mean the account created pursuant to the provisions of Section 3.04(A) of this Instrument, into which the Issuer shall deposit monthly, as received, the Revenues.

"Revenues" shall mean that portion of the particular revenues of the Issuer described and defined in and by Appendix D hereto which the Issuer has covenanted to budget and appropriate for each Fiscal Year while the Bonds are outstanding in order to pay the principal and interest on the Bonds from its non-ad valorem revenues.

"Section 2.01 Bonds" shall mean the Bonds authorized to be issued pursuant to the provisions of Section 2.01 hereof.

"Sinking Fund" shall mean the account created pursuant to the provisions of Section 3.04(B) of this Instrument.

1.02 Authority for this Instrument. This Instrument is enacted pursuant to the provisions of the Act and other applicable provisions of law.

1.03 Findings. It is hereby found and determined: all of the findings specified in Appendix F hereto, and, in addition, that:

(A) The Project is necessary for the health, welfare, safety and economy of the citizens and inhabitants of the Issuer.

(B) It is necessary and in the best interest of the finances and economy of the Issuer that all or a part of the Cost of the Project be financed with the proceeds from the sale of the Section 2.01 Bonds.

(C) The Pledged Funds will be sufficient in each Bond Year to pay the principal of and interest on the Section 2.01 Bonds

which shall become due and payable in such Bond Year. It is deemed necessary and desirable to pledge the Pledged Funds to the payment of the principal of and interest on the Section 2.01 Bonds.

(D) The Issuer is not, under this Instrument, obligated to levy any ad valorem taxes on any real or personal property situated within its territorial limits to pay the principal of or interest or premium, if any, on the Bonds. The Bonds shall not constitute a lien upon any property of the Issuer or situated within its territorial limits other than the Pledged Funds.

(E) This Instrument is declared to be and shall constitute a contract between the Issuer and all Owners; and the covenants and agreements herein set forth to be performed by the Issuer are and shall be for the equal benefit, protection and security of all Owners, all of which shall be of equal rank and without preference, priority or distinction of any of the Bonds over any other, except as hereinafter provided.

(F) The Governing Body is advised that due to the present volatility of the market for tax-exempt public obligations such as the Section 2.01 Bonds, it is in the best interest of the Issuer to sell the Section 2.01 Bonds by a negotiated sale, allowing the Issuer to enter such market at the most advantageous time, rather than at a specified advertised future date, thereby permitting the Issuer to obtain the best possible price, interest rate and other terms for the Section 2.01 Bonds and, accordingly, the Issuer does hereby find and determine that it is in the best financial interest of the Issuer that a negotiated sale of the Section 2.01 Bonds be authorized. The Placement Agent has offered to purchase the Section 2.01 Bonds at the price and upon the terms stated in the Placement Agent Agreement and has filed with the Issuer the Placement Agent's Disclosure Statement attached hereto as Appendix H in compliance with Section 218.385(4), Florida Statutes, as amended; and the Governing Body does hereby find and determine that it is in the best financial interest of the Issuer that such offer be accepted by the Issuer and that the Designated Officer and the Clerk be authorized to evidence such acceptance by execution and delivery of such Placement Agent Agreement.

(G) It is necessary and appropriate that the Issuer appoint a registrar and a paying agent for the Bonds, and the institution appointed Registrar by Section 4.08 hereof is acceptable to the Issuer; and it appears to the Governing Body that the same is qualified to serve as Registrar for the Bonds in accordance with the terms hereof.

1.04 Project Authorized. The acquisition, construction and installation of the Project is hereby authorized.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION AND
REGISTRATION OF BONDS

2.01 Authorization of Bonds. Subject and pursuant to the provisions of this Instrument, fully registered obligations of the Issuer described in Appendix C hereto are hereby authorized to be issued for the purpose of financing all or a part of the Cost of the Project and such obligations are to be registered in the name of Cede & Co., as Securities Depository Nominee in the aggregate principal amount of the Bonds.

2.02 Payment of Bonds and Interest. The Bonds shall be payable as to both principal and interest at the principal office of the Registrar in lawful money of the United States of America.

The interest payable on each of the Bonds on any Interest Payment Date will be paid by check or draft of the Registrar to the Owner in whose name such Bond shall be registered at the close of business on the date which shall be the fifteenth day (whether or not a business day) next preceding such interest payment date. In the event the interest payable on the Bonds is not punctually paid or duly provided for by the Issuer on such Interest Payment Date, such defaulted interest will be paid to the Owner in whose name such Bonds shall be registered at the close of business on a special record date for the payment of such defaulted interest as established by notice to such Owner, not less than ten (10) days preceding such special record date.

From and after any maturity date of any of the Bonds or part thereof (deposit of moneys and/or Federal Securities for the payment of the principal and interest on such Bonds or part thereof having been made by the Issuer with the Registrar), notwithstanding that any of such Bonds shall not have been surrendered for cancellation, no further interest shall accrue upon the principal of such Bonds or such part thereof, no interest shall accrue upon the interest which shall have accrued and shall then be due on such date, and such Bonds or part thereof shall cease to be entitled to any lien, benefit or security under this Instrument, and the Owners shall have no rights in respect of such Bonds or part thereof except to receive payment of such principal and unpaid interest accrued to the maturity date.

2.03 Provisions for Redemption. The Section 2.01 Bonds shall be redeemable prior to their respective stated dates of maturity only upon such terms and conditions as may be provided in the form of the Bonds set out in Appendix G hereto.

Unless waived by any Owner of Bonds to be redeemed, notice of any redemption of Bonds prior to maturity shall be given by the Registrar on behalf of the Issuer by mailing a copy of an

official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to each Owner of Bonds to be redeemed at the address of such Owner shown on the Bond Register or at such other address as shall be furnished in writing by such Owner to the Registrar.

Every official notice of redemption shall be dated and shall state:

- (1) the redemption date,
- (2) the redemption price,
- (3) if less than all outstanding Bonds are to be redeemed, the number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed,
- (4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
- (5) that such Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the redemption price at the principal office of the Registrar.

Prior to any redemption date, the Issuer shall deposit with the Registrar for the benefit of the Owners an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date. The Registrar shall not be obligated to pay interest or account for or pay over any earnings or benefits it may receive as a result of holding such money, to any Owner, the Issuer or any other Person.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the redemption price. Each check or other transfer of funds issued by the Registrar for the purpose of the payment of the redemption price of Bonds being redeemed shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal of such partially redeemed Bond.

All Bonds which have been redeemed shall be cancelled and destroyed by the Registrar and shall not be reissued.

In addition to the foregoing notice, further notice shall be given by the Clerk or the Registrar as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(1) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed.

(2) Each further notice of redemption shall be sent at least 35 days before the redemption date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds (such depositories now being Depository Trust Company of New York, New York, Midwest Securities Trust Company of Chicago, Illinois, Pacific Securities Depository Trust Company of San Francisco, California, and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania) and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(3) Each such further notice shall be published one time in the Bond Buyer of New York, New York or, if such publication is impractical or unlikely to reach a substantial number of the Owners of the Bonds, in some other financial newspaper or journal which regularly carries notices of redemption of obligations similar to the Bonds, such publication to be made at least 30 days prior to the date fixed for redemption.

2.04 Execution of Bonds. The Bond shall be executed in the name of the Issuer with the manual or facsimile signature of the Designated Officer and the corporate seal of the Issuer shall be imprinted thereon, attested and countersigned with the manual or facsimile signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Bond or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before such Bonds have been actually sold such Bonds may nevertheless be sold as herein provided and may be issued as if the person who signed or sealed the Bond had not ceased to hold such office. The Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of the Bond shall hold the proper office of the Issuer,

although at the date of such Bond such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Instrument, notwithstanding that either or both shall have ceased to hold such office at the time the Bonds shall be actually sold.

2.05 Book-Entry System. Upon issuance of the Bonds, one fully registered Bond will be registered in the name of Cede & Co., as Securities Depository Nominee in the aggregate principal amount for each maturity date for the Bonds. So long as Cede & Co., is the registered owner of the Bonds, as nominee of the Depository Trust Company, New York, New York (the "Securities Depository"), references herein to the registered owners of the Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds.

Transfers of ownership interest in the Bonds will be accomplished by book entries made by Securities Depository, and, in turn by the participants in the Securities Depository (the "Participants") who act on behalf of the indirect participants in the Securities Depository (the "Indirect Participants") and the beneficial owners of the Bonds. For every transfer and exchange of beneficial ownership in the Bonds, the beneficial owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

The Issuer recognizes Securities Depository or its nominee, Cede & Co., as the owner of the Bonds for all purposes. Conveyance of notices and other communications by Securities Depository to Participants and by such Participants to Indirect Participants, and by Participants and Indirect Participants to beneficial owners of the Bonds will be governed by arrangements among Securities Depository, the Participants and the Indirect Participants, subject to any statutory and regulatory requirements as may be in effect from time to time.

THE ISSUER AND THE REGISTRAR WILL NOT HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO THE PARTICIPANTS OR INDIRECT PARTICIPANTS OR THE BENEFICIAL OWNERS OF THE BONDS WITH RESPECT TO (i) THE ACCURACY OF ANY RECORDS MAINTAINED BY SECURITIES DEPOSITORY OR ANY SUCH PARTICIPANT OR INDIRECT PARTICIPANT; (ii) THE PAYMENT BY SECURITIES DEPOSITORY OR ANY SUCH PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OR PREPAYMENT PRICE OF OR INTEREST ON THE NOTES; (iii) THE DELIVERY BY SECURITIES DEPOSITORY OR ANY SUCH PARTICIPANT OR ANY INDIRECT PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED TO BE GIVEN TO HOLDERS OF THE BONDS; OR (iv) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY SECURITIES DEPOSITORY AS HOLDER OF THE BONDS.

The Securities Depository may determine to discontinue providing its service with respect to the Bonds at any time by giving notice to the Issuer and discharging its responsibilities with respect thereto under the applicable law. In such event, or in the event the Issuer desires to use a similar book-entry system with another securities depository, there may be a successor securities depository (all references to Securities Depository include any such successor). The Issuer may also determine to discontinue participation in the system of book-entry transfer through Securities Depository at any time by giving reasonable notice to Securities Depository. If the book-entry system is terminated, Bonds will be delivered to the beneficial owners in the form of bearer certificates, in the denomination of \$5,000 or integral multiples thereof. The beneficial owners of the Bonds, upon registration of notes held in the beneficial owners' names, will become the registered owners of the Bonds.

2.06 Negotiability and Registration. The Bonds shall be and shall have all the qualities and incidents of negotiable instruments under the law merchant and the Uniform Commercial Code of the State of Florida, subject to the provisions for registration and transfer contained in this Instrument and in the Bonds.

Each Bond shall be transferable only upon the Bond Register of the Issuer, at the principal office of the Registrar, upon delivery to the Registrar of a written instrument or instruments of transfer in form and with guarantee of signatures satisfactory to the Registrar, duly executed by the Owner of the Bonds to be transferred, or by such Owner's attorney duly authorized in writing, containing such identification information for the transferee as the Registrar shall reasonably require, and the certificate for the Bond or Bonds to be transferred.

In all cases of the transfer of any Bond, the Registrar shall enter the transfer of ownership in the Bond Register and deliver in the name of the transferee or transferees a new registered Bond or Bonds, of authorized denominations of the same maturity and interest rate for the aggregate principal amount which the Owner is entitled to receive at the earliest practicable time in accordance with the provisions of this Instrument. The Issuer or the Registrar may charge the Owner for every such transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer and may require that such charge be paid before any such transfer shall be made or any new Bond shall be delivered.

Bonds may be exchanged at the principal office of the Registrar for a like aggregate principal amount of Bonds of the same series, maturity and interest rate in other authorized denominations. The Issuer and the Registrar shall not be required to issue, transfer or exchange any Bonds during the period beginning with the fifteenth day next preceding either any Interest

Payment Date or any day on which such Bonds shall have been duly called for redemption in whole or in part and with respect to which the applicable notice of redemption shall have been duly given. New Bonds delivered upon any transfer or exchange shall be valid, limited obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be payable solely from the Pledged Funds and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The Issuer and the Registrar may treat the Owner of any Bond, whether or not such Bond shall be overdue, as the absolute owner thereof for all purposes, and any notice to the contrary shall not be binding upon the Issuer or the Registrar.

2.07 Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender to and cancellation of such mutilated Bond by the Registrar, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Owner furnishing to the Issuer satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. If any such Bonds shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the Pledged Funds to the same extent as all other Bonds issued hereunder.

2.08 Form of Bonds. The text of each series of the Bonds shall be in substantially the form therefor provided in Appendix G hereto, with only such omissions, insertions and variations as may be necessary and/or desirable (which necessity and/or desirability shall be presumed by the Issuer's delivery of such Bonds to the purchaser or purchasers thereof).

ARTICLE III

COVENANTS, SPECIAL FUNDS
AND APPLICATION THEREOF

3.01 Bonds Not to Be General Obligations of Issuer. Neither the Bonds nor the interest thereon shall be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from and secured by the Pledged Funds as herein provided. No Owner shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Bond or be entitled to payment of such Bond from any moneys of the Issuer, except from the Pledged Funds in the manner provided herein.

3.02 Security for Bonds. The payment of the principal of and interest on the Bonds shall be secured forthwith equally and ratably by a pledge of and lien upon the Pledged Funds. The Issuer does hereby irrevocably pledge the Pledged Funds to the payment of the principal of and interest on the Bonds and to the payment into the Sinking Fund at the times provided of the sums required to secure to the Owners thereof the payment of the principal of and interest and premium, if any, on the Bonds as the same shall become due. The portion of the Issuer's non-ad valorem revenues which is not appropriated for the repayment of the Bonds nor placed in the Revenue Fund is not pledged as security for the Bonds.

3.03 Application of Section 2.01 Bond Proceeds. The Issuer will establish with an Authorized Depository a separate account (the "Project Account") into which shall be deposited the proceeds from the sale of the Section 2.01 Bonds (except accrued interest, if any, which shall be deposited in the Sinking Fund) and the additional funds, if any, required to assure payment in full of the Cost of the Project. There shall exist no lien upon or pledge of funds in the Project Account in favor of the Owners, and the Owners shall have no duty or obligation to see that the proceeds of the Section 2.01 Bonds shall be applied as herein specified or that the moneys in the Project Account shall be expended in the manner provided in this section.

Moneys in the Project Account shall be continuously secured by such Authorized Depository in the manner prescribed by the laws of the State of Florida relating to the securing of funds of the Issuer. The Issuer may direct the Authorized Depository to invest in Authorized Investments all or any portion of such funds on deposit in the Project Account which shall not be needed immediately to pay items of the Cost of the Project. The earnings from any such investment shall be deposited in the Project Account.

Provided, however, anything herein to the contrary notwithstanding, no use will be made of the proceeds of the Section

2.01 Bonds which, if such use were reasonably expected on the date of issuance of the Section 2.01 Bonds, would cause the same to be "arbitrage bonds" within the meaning of the Code. The Issuer will at all times while the Section 2.01 Bonds and the interest thereon shall remain outstanding and unpaid comply with the requirements of Section 148 of the Code.

When the construction of the Project has been completed and all Costs thereof have been paid in full, all funds remaining in the Project Account shall be retained in the Project Account and promptly expended by the Issuer to pay all or part of the cost of any other governmental capital project or projects with respect to which the Issuer shall obtain an opinion of nationally recognized bond counsel that such expenditure will not cause the interest on any of the Section 2.01 Bonds to be includable in the gross income of the Owners thereof, or applied, to the extent possible, to the purchase of Section 2.01 Bonds which may be available in the open market or, if not available, to the redemption of Section 2.01 Bonds on the earliest optional redemption date, in the manner provided in Section 2.03 hereof, whereupon any balance thereof shall be deposited in the Revenue Fund and the Project Account shall be closed.

3.04 Covenants of the Issuer. So long as any of the principal of or premium, if any, or interest on any of the Bonds shall be outstanding and unpaid, or until provision for payment thereof shall have been made within the meaning of Section 4.05 hereof, the Issuer covenants with the Owners as follows:

(A) Revenue Fund. The Issuer covenants and agrees to establish with an Authorized Depository and maintain a special account into which the Issuer shall deposit on the first day of each month the Revenues which have been budgeted and appropriated for the repayment of the Bonds in an amount which will be sufficient to pay the next succeeding interest and principal (and redemption premium, if any) due on the Bonds. The Revenue Fund shall be held by the Issuer separate and apart from all other funds of the Issuer and expended and applied by the Issuer only in the manner specified in this section.

(B) Sinking Fund. The Issuer covenants and agrees to establish with an Authorized Depository a special fund to be known as the "Sinking Fund" and used exclusively by the Issuer for the purpose of receiving and holding the accrued interest to be deposited therein from Bond proceeds, any sum required by Appendix F hereto to be deposited from Bond proceeds (or any other source specified in Appendix F hereto) and the moneys to be deposited therein from the Revenue Fund pursuant to this subsection and paying therefrom all interest on the Bonds as the same shall come due and the principal of the Bonds at the respective maturity dates thereof.

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On or before the fifteenth day of each month, the Issuer shall withdraw from the Revenue Fund and deposit to the credit of the Sinking Fund such sums on deposit in the Revenue Fund as shall be specified in Appendix F hereto.

Each month after such deposits shall have been made from the Revenue Fund to the Sinking Fund to the extent required, the balance of the moneys on deposit in the Revenue Fund, if any, and any interest or other earnings which may thereafter, until the fifteenth day of the next succeeding month, be derived by the Issuer from the investment of Sinking Fund moneys may be withdrawn by the Issuer, from the Revenue Fund and the Sinking Fund, respectively, whereupon the lien in favor of the Bonds upon such moneys so withdrawn shall be and is hereby released, and such moneys and earnings so withdrawn may be used by the Issuer for the purchase of Bonds, or for the redemption of Bonds which shall then be subject to redemption, or for any other lawful public purpose.

(C) Trust Funds. The Revenue Fund, the Sinking Fund and all other funds and accounts which may be established pursuant to Appendix F hereto shall constitute trust funds for the purposes provided herein for such funds. All moneys on deposit therein, except those invested as hereinafter provided, shall be continuously secured in the same manner as deposits of funds of the Issuer are required to be secured by the laws of the State of Florida. There is hereby created a lien upon such funds in favor of the Owners until the moneys deposited therein shall have been applied in accordance with this Instrument. Moneys on deposit to the credit of the Sinking Fund, except as may be provided in Appendix F hereto, may be invested in Authorized Investments which shall mature not later than the date on which such moneys shall be needed to pay the principal of and interest on the Bonds in the manner herein provided. The securities so purchased as an investment of funds shall be deemed at all times to be a part of the Sinking Fund, and any loss resulting from such investment shall be charged to the Sinking Fund and any interest accruing on such investment or any other profit realized therefrom shall be deposited in the Sinking Fund.

Except as may be expressly provided in Appendix F hereto, the cash required to be accounted for in any of the funds and accounts created hereunder may be deposited in a single bank account, and the moneys allocated to such funds and accounts may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein and such investments for the purposes of such funds and accounts as herein provided.

The designation and establishment of the funds and accounts in and by this Instrument shall not be construed to require the establishment of any completely independent,

self-balancing fund as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to create a lien upon and pledge thereof in favor of the Bonds and establish certain priorities for application of such revenues as herein provided.

(D) Issuance of Additional Debt. The Issuer covenants and agrees that while any Bonds shall be outstanding it will not issue any other obligations payable from or secured by the Pledged Funds or any part thereof, unless the lien on and pledge of all or part of the Pledged Funds in favor of such obligations shall be junior and subordinate in all respects to the lien thereon and pledge thereof in favor of the Bonds and each such obligation shall contain on its face a statement to that effect Additional Debt shall be issued only upon such conditions as may be prescribed in Appendix B hereto.

Any resolution authorizing the issuance of Additional Debt may provide that any of the covenants herein contained will not be applicable to such Additional Debt, provided that such provisions shall not adversely affect the rights of any Bonds which shall then be outstanding.

Additional Debt may only be issued in accordance with Appendix B hereto.

(E) Events of Default and Remedies. If one or more of the following events, herein called "Events of Default," shall happen, that is to say, in case:

(1) default shall be made in the payment of the principal or redemption price of any Bond when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(2) default shall be made in the payment of any installment of interest on any Bond when and as such installment of interest shall become due and payable; or

(3) the Issuer shall (1) admit in writing its inability to pay its debts generally as they become due, (2) file a petition in bankruptcy or take advantage of any insolvency act, (3) make an assignment for the benefit of its creditors, (4) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or (5) be adjudicated a bankrupt; or

(4) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of the Pledged Funds or any part thereof, or of the whole or any substantial part of the Issuer's property, or approving a petition seeking

reorganization of the Issuer under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State of Florida pertaining to bankruptcy or insolvency, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; or

(5) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Pledged Funds, or any part thereof, or of the Issuer or of the whole or any substantial part of the Issuer's property, and such custody or control shall not be terminated or stayed within 60 days from the date of assumption of such custody or control; or

(6) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Instrument on the part of the Issuer to be performed, and such default shall continue for 30 days after written notice specifying such default and requiring the same to be remedied shall have been given the Issuer by the Owners of not less than 25% in principal amount of the Bonds then outstanding;

then in each and every such case any Owner of the Bonds affected by the Event of Default and then outstanding hereunder or an agent or trustee therefor may proceed to protect and enforce its rights and the rights of the Owners by a suit, action or special proceeding in equity or at law, by mandamus or otherwise, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for any enforcement of any proper legal or equitable remedy (including the appointment of a receiver) as said Owner or Owners shall deem most effectual to protect and enforce the rights aforesaid.

No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission of any Owner to exercise any right or power accruing 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 section to the Owners may be exercised from time to time, and as often as may be deemed expedient.

Nothing herein, however, shall be construed to waive any venue privileges of the Issuer or to grant to any Owner any right to or lien on the Facilities or any part thereof or on any other property or income of the Issuer or situated within its territorial limits except the Pledged Funds.

If an Event of Default shall happen and shall not have been remedied, the Issuer or a receiver appointed for the purpose shall apply all Pledged Funds as follows and in the following order:

(1) to the payment of the reasonable and proper charges, expenses and liabilities of the receiver, the Registrar and the paying agents hereunder;

(2) to the payment of the interest and principal or redemption price then due on the Bonds, as follows:

Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied

first: to the payment to the Persons entitled thereto of all installments of interest then due, in the order of the maturity of such installments (with interest on defaulted installments of interest at the rate or rates borne by the Bonds with respect to which such interest is due to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amount due on such installment, to the Persons entitled thereto, without any discrimination or preference;

second: to the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at maturity or upon mandatory redemption prior to maturity (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of Section 4.05 of this Instrument), in the order of their due dates, with interest upon such Bonds at the rate or rates borne by such Bonds, from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such dates, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the Persons entitled thereto without any discrimination or preference; and

third: to the payment of the redemption premium on and the principal of any Bonds called

for optional redemption pursuant to the provisions of this Instrument.

If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest thereon as aforesaid, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bonds, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

(F) Records and Audits. The Issuer shall keep books and records of the Pledged Funds, which such books and records shall be kept separate and apart from all other books, records and accounts of the Issuer, and any Owner shall have the right, at all reasonable times, to inspect such books and records.

So long as any of the Bonds shall be outstanding, the Issuer will furnish on or before one hundred eighty (180) days after the close of each Fiscal Year, to any Owner who shall request the same in writing, copies of an annual audit report prepared by an independent certified public accountant or an auditing official of the State of Florida, covering for the preceding Fiscal Year, in reasonable detail, the financial condition of the Issuer, receipts of the Revenues and all transactions in the Revenue Fund and the Sinking Fund.

(G) Fidelity Bond. The Issuer will require each employee who may have possession of any Pledged Funds to be covered by a fidelity bond written by a responsible indemnity company in an amount fully adequate to protect the Issuer from loss.

(H) Creation of Superior Liens. The Issuer covenants that it will not issue any other notes, bonds, certificates of obligations of any kind or nature or create or cause or permit to be created any debt, lien, pledge, assignment or encumbrance or charge payable from or enjoying a lien upon any of the Pledged Funds ranking prior and superior to the lien created by this Instrument for the benefit of the Bonds.

(I) Compliance with Code. The Issuer covenants that it will not knowingly make any investments or acquiesce in the making of any investments by any depository pursuant to or under the provisions of this Instrument which could cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Issuer covenants and agrees that it will take any reasonable action required to be taken pursuant to the nonarbitrage certificate or instructions from bond counsel, whether delivered in connection with or subsequent to the issuance and sale of the Bonds, in order to comply with all provisions of the Code

compliance with which is required to maintain the tax-exempt status of the interest payable on the Bonds.

ARTICLE IV

MISCELLANEOUS PROVISIONS

4.01 General Authority. The members of the Governing Body and the Issuer's officers, attorneys and other agents and employees are hereby authorized to do all acts and things required of them by this Instrument or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Bonds and this Instrument, and they are hereby authorized to execute and deliver all documents which shall be reasonably required by bond counsel or the Placement Agent to effectuate the sale of the Section 2.01 Bonds to the Placement Agent.

4.02 No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in any of the Bonds, or in any certificate or other instrument to be executed on behalf of the Issuer in connection with the issuance of any of the Bonds, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member of the Governing Body, officer, employee or agent of the Issuer in his or her individual capacity, and none of the foregoing persons nor any officer of the Issuer executing any of the Bonds, or any certificate or other instrument to be executed in connection with the issuance of any of the Bonds, shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

4.03 No Third Party Beneficiaries. Except as otherwise expressly provided herein or in the Bonds, nothing in this Instrument, or in the Bonds, expressed or implied, is intended or shall be construed to confer upon any Person other than the Issuer and the Owners any right, remedy or claim, legal or equitable, under and by reason of this Instrument or any provision hereof, or of the Bonds, all provision hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Persons who shall from time to time be the Owners.

4.04 Compliance with Chapter 218, Part III, Florida Statutes. The Issuer hereby approves and authorizes bond counsel to complete and file with the Division of Bond Finance, Department of General Services of the State of Florida, an advance notice of the impending sale of the Bonds, and to perform any other acts as may be necessary to comply with Chapter 218, Part III, Florida Statutes, as amended.

4.05 Defeasance. If, at any time, the Issuer shall have paid, or shall have made provision for payment of, the principal, interest and redemption premiums, if any, with respect to any of the Bonds, then, and in that event, the pledge of and lien on the Pledged Funds in favor of the Owners of such Bonds shall be no longer in effect. For purposes of the preceding sentence, deposit by the Issuer of direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of Treasury), none of which permit redemption prior to maturity at the option of the obligor, in irrevocable trust with a banking institution or trust company, for the sole benefit of such Owners, in respect to which obligations the principal and interest received will be sufficient to make timely payment of the principal of and interest and redemption premiums, if any, on such Bonds, shall be considered "provision for payment." Nothing in this section shall be deemed to require the Issuer to call any Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair in any way the discretion of the Issuer in determining whether or not to exercise any such option for early redemption.

4.06 Modification or Amendment. Any modification or amendment of this Instrument or of any resolution amendatory hereof or supplemental hereto may be made with the consent in writing of the provider of municipal bond insurance insuring all of the Bonds then outstanding which shall be materially and adversely affected by such modification or amendment, if as a result of which insurance such Bonds shall be rated in the highest rating category by either Moody's Investors Service or Standard & Poor's Corporation; or if such Bonds shall not be so insured or such insurance provider shall be in default or bankrupt, with the consent in writing of the Owners of fifty-one per centum (51%) or more in principal amount of such Bonds; provided, however, that no such modification or amendment shall permit a change in the maturity of such Bonds, or a reduction in the rate of interest thereon or in the amount of the principal obligation thereof, or affecting the promise of the Issuer to pay the principal of and interest on such Bonds as the same shall become due from the Pledged Funds, or reduce the percentage of such Bonds the Owners of which are required to consent to any such modification or amendment without the consent of the Owners of one hundred per centum (100%) of such Bonds. This Instrument and any resolution amendatory hereof or supplemental hereto may be amended, to the extent that the amendment shall not materially and adversely affect any of the Bonds, without the consent of such insurance provider or any of the Owners for any of the following purposes:

- (1) To cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Instrument, as supplemented, or to clarify any matters or questions arising hereunder.

(2) To grant to or confer upon the Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners.

(3) To add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Instrument other conditions, limitations and restrictions thereafter to be observed.

(4) To add to the covenants and agreements of the Issuer in this Instrument other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer.

(5) To specify and determine any matters and things relative to the Bonds which are not contrary to or inconsistent with this Instrument as theretofore in effect.

4.07 Sale of Section 2.01 Bonds. The Section 2.01 Bonds are sold and awarded to the Placement Agent at the price and upon the terms and conditions stated in the Placement Agent Agreement. The Designated Officer and the Clerk are hereby authorized to execute the Issuer's acceptance of the Placement Agent Agreement, and said officers and the other officers, agents and employees of the Issuer are hereby authorized and directed to conclude the issuance and delivery of the Section 2.01 Bonds in accordance with the provisions thereof.

4.08 Registrar and Paying Agent. _____, _____, Florida, is hereby appointed as Registrar, to serve as registrar and paying agent for the Bonds.

4.09 Additional Provisions. Any additional provisions specified in Appendix F hereto are hereby adopted in like manner as though the same were set out in their entirety in this place.

4.10 Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Bonds.

4.11 Repeal of Inconsistent Resolutions. All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

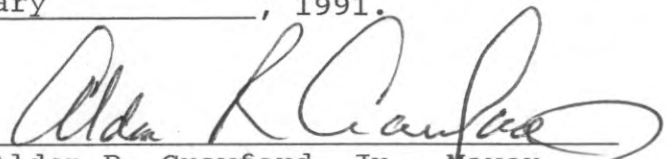
4.12 Table of Contents and Headings not Part Hereof. The Table of Contents preceding the body of this Instrument and the

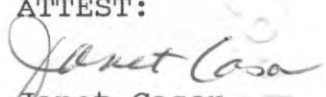
headings preceding the several articles and sections hereof shall be solely for convenience of reference and shall not constitute a part of this Instrument or affect its meaning, construction or effect.

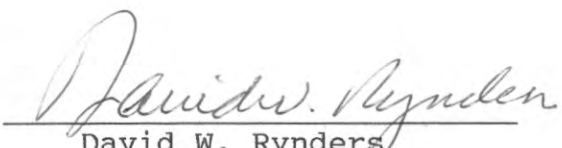
4.13 This ordinance shall take effect immediately upon adoption at second reading.

APPROVED AT FIRST READING THIS 2nd DAY OF January, 1991.

PASSED AND ADOPTED AT SECOND READING, AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA THIS 16th DAY OF January, 1991.


 Alden R. Crawford, Jr., Mayor

ATTEST:

 Janet Cason
 City Clerk

APPROVED AS TO FORM AND LEGALITY BY 
 David W. Rynders
 City Attorney

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	
Anderson			X		
Barnett	X		X		
Herms			X		
Muenzer			X		
Passidomo			X		
Sullivan		X	X		
Crawford			X		
(7-0)					