

**RESOLUTION NO. 020919**

**PASSED February 24, 2003**

**A RESOLUTION OF THE CITY OF GAINESVILLE, FLORIDA, SUPPLEMENTING THE RESOLUTION OF THE CITY ADOPTED ON THE DATE HEREOF PROVIDING FOR AND AUTHORIZING THE ISSUANCE OF THE CITY'S TAXABLE PENSION OBLIGATION REVENUE BONDS, SERIES 2003A (EMPLOYEES' PLAN) AND SERIES 2003B (CONSOLIDATED PLAN) IN AN ORIGINAL AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$100,000,000 TO FUND THE UNFUNDED PENSION OBLIGATIONS OF THE CITY WITH RESPECT TO THE EMPLOYEES' PLAN AND THE CONSOLIDATED PLAN, RESPECTIVELY; AUTHORIZING THE CITY MANAGER, THE ADMINISTRATIVE SERVICES DIRECTOR OR THE FINANCE DIRECTOR TO AWARD THE SALE OF SUCH BONDS TO SALOMON SMITH BARNEY INC., UBS PAINWEBBER INC. AND WILLIAM R. HOUGH & CO. IN ACCORDANCE WITH CERTAIN PARAMETERS SET FORTH HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT; APPOINTING WELLS FARGO BANK MINNESOTA, N.A., AS PAYING AGENT AND REGISTRAR WITH RESPECT TO SUCH BONDS; APPROVING THE FORM AND AUTHORIZING THE CIRCULATION OF A PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FINAL OFFICIAL STATEMENT; AUTHORIZING THE CITY MANAGER, THE ADMINISTRATIVE SERVICES DIRECTOR OR THE FINANCE DIRECTOR TO DEEM FINAL THE PRELIMINARY OFFICIAL STATEMENT; AUTHORIZING THE CITY MANAGER, THE ADMINISTRATIVE SERVICES DIRECTOR OR THE FINANCE DIRECTOR TO ACCEPT THE TERMS OF A COMMITMENT FOR MUNICIPAL BOND INSURANCE FROM MBIA INSURANCE CORPORATION; AUTHORIZING CERTAIN OFFICIALS OF THE CITY TO EXECUTE ANY DOCUMENTS AND TAKE ANY ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION; AND PROVIDING CERTAIN OTHER DETAILS WITH RESPECT THERETO.**

**WHEREAS**, the City of Gainesville, Florida (the "Issuer") adopted a Resolution on the date hereof (the "Bond Resolution") authorizing the issuance of its Taxable Pension Obligation Revenue Bonds, Series 2003A (Employee's Plan) (the "2003A Bonds") and Series 2003B (Consolidated Plan) (the "2003B Bonds" and, collectively with the 2003A Bonds, the "2003 Bonds") to finance the funding of the 2003 Pension Obligations (as defined in the Bond Resolution), to capitalize interest on the 2003 Bonds and to pay the costs of issuance of the 2003 Bonds; and

**WHEREAS**, Salomon Smith Barney Inc., UBS PaineWebber Inc. and William R. Hough & Co. (the "Underwriters") intend to submit an offer to purchase the 2003 Bonds by negotiated sale pursuant to the terms of a Purchase Contract between the Issuer and the Underwriters in substantially the form on file with the office of the Clerk of the Commission (the "Purchase Contract"); and

**WHEREAS**, the Issuer desires to approve the form of an official statement (the "Final Official Statement") in substantially the form of a draft of the Preliminary Official Statement (the "Preliminary Official Statement") on file with the office of the Clerk of the Commission in connection with the issuance and sale of the 2003 Bonds; and

**WHEREAS**, the Issuer desires to authorize the City Manager, Administrative Services Director or Finance Director of the Issuer (the "Finance Director") to deem the Preliminary Official Statement final on behalf of the Issuer for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (the "Rule"); and

**WHEREAS**, because of the current conditions existing in the market for securities similar to the 2003 Bonds, the Issuer finds it appropriate to delegate to the City Manager, the Administrative Services Director or the Finance Director of the Issuer, the authority to accept the offer of the Underwriter to purchase the 2003 Bonds to be issued pursuant to the terms of the Purchase Contract if certain conditions set forth in this Resolution are met; and

**WHEREAS**, the Issuer desires to approve the form of and authorize the execution and delivery of a Commitment (the "Commitment") for the issuance of a policy of municipal bond insurance for the 2003 Bonds from MBIA Insurance Corporation ("MBIA") in the form on file with the office of the Clerk of the Commission;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, that:**

**SECTION 1. Authority.** This Resolution is adopted pursuant to Chapter 166, Florida Statutes, Chapter 159, Part VII, Florida Statutes, the Charter of the Issuer and other applicable provisions of law (collectively, the "Act") and the Bond Resolution.

**SECTION 2. Definitions.** All terms used herein in capitalized form, unless otherwise defined herein, shall have the same meanings as ascribed to them in the Bond Resolution, unless the context otherwise requires. All terms used herein in capitalized form and defined in the preamble hereto shall have the meanings ascribed thereto in such preamble.

**SECTION 3. Findings.**

A. The findings and declarations of the Issuer contained in the Bond Resolution are hereby expressly approved, reaffirmed and ratified.

B. It is estimated that the Pledged Revenues will be sufficient to pay all the principal of, premium, if any, and interest on the 2003 Bonds herein authorized, as the same become due and to make all deposits into the funds and accounts and other payments in connection therewith as required by the Bond Resolution and this Resolution.

C. The Underwriters will, prior to acceptance by the Issuer of the offer of the Underwriters to purchase the 2003 Bonds, provide the Issuer with (i) a disclosure statement regarding the 2003 Bonds containing the information required by Section 218.385(6), Florida Statutes, and (ii) a Truth-In-Bonding Statement pursuant to Section 218.385(3), Florida Statutes (which Truth-In-Bonding Statement may be contained in the Purchase Contract or the disclosure statement), and no further disclosure is or shall be required by the Issuer.

D. Because of the characteristics of the 2003 Bonds, prevailing and anticipated market conditions and savings to be realized from the expeditious sale of the 2003 Bonds, and taking into account the advice of Public Financial Management, Inc., the Issuer's financial advisor (the "Financial Advisor"), it is in the best interest of the Issuer to accept the offer of the Underwriters to purchase the 2003 Bonds in an aggregate original principal amount not exceeding \$100,000,000 at a negotiated sale upon the terms and conditions outlined herein and in the Purchase Contract and as determined by the City Manager, the Administrative Services Director or the Finance Director in accordance with the terms hereof.

E. It is in the best interest of the Issuer to accept the Commitment of MBIA to issue a policy of municipal bond insurance insuring all of the 2003 Bonds (the "Policy") and the same shall constitute a Credit Facility under the terms of the Bond Resolution.

F. The expenditure of proceeds of the 2003 Bonds for the purpose of funding the 2003 Pension Obligations and capitalizing interest on the 2003 Bonds is hereby deemed to be made for a public purpose and constitutes a "project" within the meaning and contemplation of Section 166.101(8), Florida Statutes.

**SECTION 4. Instrument to Constitute a Contract; Covenants in Bond Resolution Applicable.** In consideration of the acceptance of the 2003 Bonds authorized to be issued hereunder by those who shall hold the same from time to time, the Bond Resolution, as supplemented by this Resolution, shall be deemed to be and shall constitute a contract between the Issuer and the Holders of the 2003 Bonds. The covenants and agreements set forth herein and in the Bond Resolution to be performed by the Issuer shall be for the equal benefit, protection and security of the Holders of the 2003 Bonds, and the 2003 Bonds shall be of equal rank with all other Bonds issued under the Bond Resolution, without preference, priority or distinction over any other thereof.

**SECTION 5. Authorization of Funding of 2003 Pension Obligations.** The funding of the 2003 Pension Obligations with respect to the Employees' Plan from proceeds of the 2003A Bonds and the funding of the 2003 Pension Obligations with respect to the Consolidated Plan from proceeds of the 2003B Bonds are hereby authorized.

**SECTION 6. Authorization of 2003 Bonds; Delegation; Terms and Form of 2003 Bonds.**

A. Subject and pursuant to the provisions hereof, the 2003 Bonds to be known as "City of Gainesville, Florida Taxable Pension Obligation Revenue Bonds, Series 2003A (Employees' Plan)" are hereby authorized to be issued for the purpose of paying the 2003 Pension Obligations related to the Employees' Plan, capitalizing interest on the 2003A Bonds and paying the costs of issuance of the 2003A Bonds, and the 2003B Bonds to be known as the "City of Gainesville, Florida Taxable Pension Obligation Revenue Bonds, Series 2003B (Consolidated Plan)" are hereby authorized for the purposes of paying the 2003 Pension Obligations related to the Consolidated Plan, capitalizing interest on the 2003B Bonds and paying the costs of issuance of the 2003B Bonds. The specific principal amounts of the 2003 Bonds shall be determined as hereinafter provided.

B. The City Manager, the Administrative Services Director or the Finance Director of the Issuer is hereby designated and authorized to award the sale to the Underwriters of the 2003 Bonds in an aggregate original principal amount of not to exceed \$100,000,000 and to approve the terms thereof, including, without limitation, the date or dates thereof, the principal amount thereof, the interest rate or rates with respect thereto, the purchase price thereof, the maturity dates thereof and the redemption terms with respect thereto; provided, however, that in no event shall (i) the aggregate original principal amount of the 2003 Bonds exceed \$100,000,000 (the "Maximum Principal Amount"), (ii) the purchase price of the 2003 Bonds be less than 99% of the original principal amount thereof (excluding original issue discount) (the "Minimum Purchase Price"), (iii) the true interest cost rate (the "TIC") of the 2003A Bonds or the 2003B Bonds exceed 8.0% (the "Maximum TIC"), (iv) the interest rate on the 2003 Bonds exceed the maximum rate

permitted by law, or (v) the final maturity of the 2003A Bonds or the 2003B Bonds occur after October 1, 2033.

C. The 2003 Bonds shall be dated such date, shall bear interest from such date, in the case of 2003 Bonds that are Current Interest Bonds payable semiannually on the first day of April and the first day of October of each year, and in the case of 2003 Bonds that are Capital Appreciation Bonds compounded on such dates, at such rates, and shall mature on October 1 of such year or years as shall be established by the Purchase Contract and approved by the City Manager, the Administrative Services Director or the Finance Director as herein provided, execution of the Purchase Contract by either of such officers to constitute conclusive evidence of approval of the terms set forth therein. The 2003 Bonds shall be issued as fully registered bonds in the denomination of \$5,000 each or any integral multiple thereof in the case of 2003 Bonds that are Current Interest Bonds, and in the denomination of \$5,000 Compounded Amount at maturity or any integral multiple thereof in the case of 2003 Bonds that are Capital Appreciation Bonds.

D. The 2003A Bonds shall be numbered consecutively from one upward preceded by the letters "RA" prefixed to the number and the 2003B Bonds shall be numbered consecutively from one upward preceded by the letters "RB" prefixed to the number. "CAB" or other distinctive lettering may be added to 2003 Bonds which are Capital Appreciation Bonds. Principal of and premium, if any, on the 2003 Bonds shall be payable upon presentation and surrender of the 2003 Bonds at the designated corporate trust office of the Paying Agent.

E. The 2003 Bonds shall be subject to such optional and mandatory redemption prior to their maturity as shall be provided by the Purchase Contract and approved by the City Manager, the Administrative Services Director or the Finance Director of the Issuer as herein provided.

F. So long as any of the 2003 Bonds remain outstanding, the Issuer shall maintain and keep, at the office of the Registrar, books for the registration of the 2003 Bonds.

The Issuer and the Registrar may treat the registered owner of any 2003 Bond as the absolute owner thereof for all purposes, whether or not such 2003 Bond shall be overdue, and shall not be bound by any notice to the contrary. The person in whose name any 2003 Bond is registered may be deemed the owner thereof by the Issuer and the Registrar, and any notice to the contrary shall not be binding upon the Issuer or the Registrar.

G. Whenever any 2003 Bond shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such 2003 Bond shall, after cancellation, either be retained by the Registrar for a period of time specified in writing by the Issuer, or at the option

of the Issuer, shall be destroyed or cancelled by the Registrar and counterparts of a certificate of destruction or cancellation evidencing such destruction shall be furnished to the Issuer.

H. The 2003 Bonds shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida, and each successive Holder, in accepting any of the 2003 Bonds, shall be conclusively deemed to have agreed that such 2003 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the laws of the State of Florida.

I. The text of the 2003 Bonds shall be substantially in the form set forth in the Bond Resolution with such omissions, insertions and variations (including, without limitation, if applicable, changes required in connection with the issuance of 2003 Bonds as Capital Appreciation Bonds) as may be necessary or desirable and authorized by this Resolution, or as may be approved by the Mayor or Mayor-Commissioner Pro Tempore (execution thereof manually or by facsimile to be conclusive evidence of such approval), including, without limitation, such changes as may be required for the issuance of uncertificated public obligations and for execution of the 2003 Bonds by an authenticating agent.

**SECTION 7. Approval of Purchase Contract; Approval of Official Statement.**

A. The form of the Purchase Contract presented by the Underwriters and on file with the office of the Clerk of the Commission is hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein as may be approved and made in such Purchase Contract by the person executing the same on behalf of the Issuer, whether the City Manager, the Administrative Services Director or the Finance Director of the Issuer, in a manner consistent with the provisions of this Resolution, such execution to be conclusive evidence of such approval. Upon receipt of a disclosure statement and a Truth-in-Bonding Statement from the Underwriters, the City Manager, the Administrative Services Director or the Finance Director of the Issuer, with the advice of the Financial Advisor, is hereby authorized to accept the offer of the Underwriters to purchase the 2003 Bonds in the aggregate principal amount not exceeding the applicable Maximum Principal Amounts, at a TIC not to exceed the Maximum TIC, at a purchase price of not less than the Minimum Purchase Price, plus accrued interest thereon to the date of delivery, with an interest rate no greater than the maximum rate permitted by law, and with the latest maturity date not later than October 1, 2033, upon the terms and conditions set forth in the Purchase Contract. The City Manager, the Administrative Services Director or the Finance Director of the Issuer is hereby authorized to execute the Purchase Contract for and on behalf of the Issuer pursuant to the terms hereof and of the Purchase Contract. The City Attorney is hereby authorized to approve the form and legality of the Purchase Contract.

B. The Issuer hereby approves the form and content of the Official Statement which shall be in substantially the form of the Preliminary Official Statement on file with the office of the Clerk of the Commission, subject to such changes, insertions and omissions and such filling of the blanks therein as shall be approved by the City Manager or Finance Director of the City, who are hereby authorized to execute and deliver the Official Statement on behalf of the Issuer, execution thereof to be conclusive evidence of such approval.

C. In order to enable the Underwriters to comply with Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Rule"), in connection with the offering and sale of the 2003 Bonds, the City Manager, the Administrative Services Director or the Finance Director of the Issuer is hereby authorized, on behalf of the Issuer, to deem the Preliminary Official Statement final as of its date, except for Permitted Omissions. As used herein, "Permitted Omissions" shall mean the offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, bond ratings, and other terms of the 2003 Bonds depending on such matters.

**SECTION 8. Appointment of Registrar and Paying Agent.** Wells Fargo Bank Minnesota, N.A. is hereby appointed as Registrar and Paying Agent in connection with the 2003 Bonds and shall undertake the duties as such under the terms of the Bond Resolution, as supplemented hereby.

**SECTION 9. Application of 2003 Bond Proceeds; Reserve Requirement Designation.** To the extent not otherwise provided by the Issuer by certificate of the Mayor, or in his absence or unavailability, the Mayor-Commissioner Pro Tempore, delivered at or prior to the issuance and delivery of the 2003 Bonds, the proceeds from the sale of the 2003 Bonds, including accrued interest, if any, shall be disposed of as follows:

#### **2003A Bonds**

(1) Accrued interest, if any, and capitalized interest on the 2003A Bonds, if any, shall be deposited in the Sinking Fund in the Debt Service Fund created pursuant to the Bond Resolution and applied against interest next coming due on the 2003A Bonds.

(2) An amount equal to the 2003 Pension Obligation for the Employees' Plan shall be deposited into such plan as an employer contribution.

(3) The balance of the proceeds of the 2003A Bonds shall be held by the Issuer and used to pay, when due, the costs of issuance of the 2003A Bonds.

(4) The Reserve Requirement for the 2003A Bonds shall be \$0 and the 2003A Bonds shall not be secured by any subaccount in the Reserve Account in the Debt Service Fund.

### **2003B Bonds**

(1) Accrued interest, if any, and capitalized interest on the 2003B Bonds, if any, shall be deposited in the Sinking Fund in the Debt Service Fund created pursuant to the Bond Resolution and applied against interest next coming due on the 2003B Bonds.

(2) An amount equal to the 2003 Pension Obligation for the Consolidated Plan shall be deposited into such plan as an employer contribution.

(3) The balance of the proceeds of the 2003B Bonds shall be held by the Issuer and used to pay, when due, the costs of issuance of the 2003B Bonds.

(4) The Reserve Requirement for the 2003B Bonds shall be \$0. The 2003B Bonds shall not be secured by any subaccount in the Reserve Account in the Debt Service Fund.

**SECTION 10. Bond Insurance.** It is hereby determined to be in the best interest of the Issuer to obtain a policy of municipal bond insurance with respect to the 2003 Bonds and the City Manager, Administrative Services Director or Finance Director is hereby authorized to accept the terms of the Commitment from MBIA and to execute and deliver the Commitment on behalf of the Issuer.

**SECTION 11. Supplemental Covenants and Agreements.** Notwithstanding the terms of the Bond Resolution, the Issuer covenants and agrees, so long as any 2003 Bonds remain outstanding, so long as no event described in paragraph O below shall have occurred, as follows:

A. MBIA shall be given written notice of, and the right to consent to, all amendments or supplements to the Bond Resolution. Copies of any amendments consented to by MBIA must be provided to S&P.

B. MBIA shall be deemed the sole Bondholder of all 2003 Bonds insured by it for purposes of exercising all rights, remedies and privileges granted to such Bondholders. MBIA shall have the right to institute any suit, action or proceeding at law or in equity under the same terms as a Holder of 2003 Bonds insured by it.

C. Any notice that is required to be given to a Holder of the 2003 Bonds or to the Paying Agent pursuant to the Bond Resolution shall also be



provided to MBIA. All notices required to be given to MBIA under the Bond Resolution shall be in writing and shall be sent by registered or certified mail addressed to MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504, Attention: Surveillance.

D. In the event that, on the second Business Day, and again on the Business Day, prior to the payment date on the 2003 Bonds, the Paying Agent has not received sufficient moneys to pay all principal of and interest on the 2003 Bonds due on the second following or following, as the case may be, Business Day, the Paying Agent shall immediately notify MBIA or its designee on the same Business Day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

E. If the deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent shall so notify MBIA or its designee.

F. In addition, if the Paying Agent has notice that any Bondholder has been required to disgorge payments of principal or interest on the 2003 Bonds to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Bondholder within the meaning of any applicable bankruptcy laws, then the Paying Agent shall notify MBIA or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

G. The Paying Agent is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Holders of the 2003 Bonds as follows:

1. If and to the extent there is deficiency in amounts required to pay interest on the 2003 Bonds, the Paying Agent shall (a) execute and deliver to U.S. Bank Trust National Association, or its successors under the Policy (the "Insurance Paying Agent"), in form satisfactory to the Insurance Paying Agent, an instrument appointing MBIA as agent for such Holders in any legal proceeding related to the payment of such interest and an assignment to MBIA of the claims for interest to which such deficiency relates and which are paid by MBIA, (b) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of the Policy payment from the Insurance Paying Agent with respect to the claims for interest so assigned, and (c) disburse the same to such respective Holders; and

2. If and to the extent of a deficiency in amounts required to pay principal of the 2003 Bonds, the Paying Agent shall (a) execute and deliver to the Insurance Paying Agent in form satisfactory to the Insurance Paying Agent an instrument appointing MBIA as agent for

such Holder in any legal proceeding relating to the payment of such principal and an assignment to MBIA of any of the 2003 Bonds surrendered to the Insurance Paying Agent of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Paying Agent and available for such payment (but such assignment shall be delivered only if payment from the Insurance Paying Agent is received), (b) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of the Policy payment therefor from the Insurance Paying Agent, and (c) disburse the same to such Holders.

H. Payments with respect to claims for interest on and principal of 2003 Bonds disbursed by the Paying Agent from proceeds of the Policy shall not be considered to discharge the obligation of the Issuer with respect to such 2003 Bonds, and the Insurer shall become the owner of such unpaid 2003 Bonds and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

I. Irrespective of whether any such assignment is executed and delivered, the Issuer and the Paying Agent hereby agree for the benefit of the 2003 Bonds that:

1. They recognize that to the extent MBIA makes payments, directly or indirectly (as by paying through the Paying Agent), on account of principal of or interest on the 2003 Bonds, MBIA will be subrogated to the rights of such Holders to receive the amount of such principal and interest from the Issuer, with interest thereon as provided and solely from the sources stated in the Bond Resolution and the 2003 Bonds; and

2. They will accordingly pay to MBIA the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in the Bond Resolution and the 2003 Bonds, but only from the sources and in the manner provided herein for the payment of principal of and interest on the 2003 Bonds to Holders, and will otherwise treat MBIA as the owner of such rights to the amount of such principal and interest.

J. In connection with the issuance of Additional Bonds, the Issuer shall deliver to MBIA a copy of the disclosure document, if any, circulated with respect to such Additional Bonds.

K. Copies of any amendments made to the documents executed in connection with the issuance of the 2003 Bonds which are consented to by the Insurer shall be sent to S&P.

L. MBIA shall receive notice of the resignation or removal of the Paying Agent and the appointment of a successor thereto.

M. MBIA shall receive copies of all notices required to be delivered to Bondholders and, on an annual basis, copies of the Issuer's audited financial statements and Annual Budget.

N. The Issuer agrees to reimburse MBIA immediately and unconditionally upon demand, to the extent permitted by law, for all reasonable expenses, including attorneys' fees and expenses, incurred by MBIA in connection with (i) the enforcement by MBIA of the Issuer's obligations, or the preservation or defense of any rights of MBIA, under the Bond Resolution and any other document executed in connection with the issuance of the 2003 Bonds, and (ii) any consent, amendment, waiver or other action with respect to the Bond Resolution or any related document, whether or not granted or approved, together with interest on all such expenses from and including the date incurred to the date of payment at Citibank's prime rate plus 3% or the maximum interest rate permitted by law, whichever is less. In addition, MBIA reserves the right to charge a fee in connection with its review of any such consent, amendment or waiver, whether or not granted or approved.

O. In addition to the restrictions provided herein and in the Bond Resolution, MBIA shall not be entitled to any benefits of the Bond Resolution or this Resolution or any rights specifically granted to it thereunder or hereunder, including the right to consent to, approve or participate in any actions proposed to be taken by the Issuer, a 2003 Bondholder, or either of them if:

(a) MBIA shall be in default in the due and punctual performance of its payment obligations under the bond insurance policy issued by MBIA or if such policy for whatever reason is not then enforceable and in full force and effect; or

(b) MBIA shall apply for or consent to the appointment of a receiver, custodian, trustee or liquidator of MBIA or of all or a substantial part of its assets, or shall admit in writing its inability, or be generally unable, to pay its debts as such debts become due, or shall make a general assignment for the benefit of its creditors, or commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect) or shall file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, or shall fail to contest in a timely and appropriate manner, or acquiesce in writing to, any other petition filed against

MBIA in any involuntary case under said Federal Bankruptcy Code, or shall take any other action for the purpose of effecting the foregoing; or

(c) A proceeding or case shall be commenced without the application or consent of MBIA, in any court of competent jurisdiction seeking the liquidation, reorganization, dissolution, winding up or composition or readjustment of debts of MBIA or the appointment of a trustee, receiver, custodian, liquidator, sequestrator (or other similar official) or the like, of MBIA or of all or a substantial part of its assets, or similar relief with respect to MBIA under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, or for relief, rehabilitation, reorganization, conservation, liquidation or dissolution under the law of any state and such proceeding or case shall continue undismissed and an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed in effect for a period of one hundred twenty (120) days from the commencement of such proceedings or case, or any order for relief against MBIA shall be entered in an involuntary case under said Federal **Bankruptcy** Code; or

(d) MBIA shall no longer insure any of the 2003 Bonds.

#### **SECTION 12. Authorizations.**

A. The City Manager, the Administrative Services Director or the Finance Director of the Issuer is hereby authorized, in accordance with the terms hereof, to sign the Purchase Contract at the places provided therein. The City Manager, the Finance Director or the Administrative Services Director of the Issuer is hereby authorized to deliver the Purchase Contract immediately following the execution thereof to the representative of the Underwriters.

B. The Mayor, or in his absence or unavailability, the Mayor-Commissioner Pro Tempore, and the Clerk or any Deputy Clerk of the Issuer or their duly authorized alternative officers are hereby authorized and directed on behalf of the Issuer to execute the 2003 Bonds (including any temporary bond or bonds) as provided in the Bond Resolution and this Resolution and any of such officers are hereby authorized and directed upon the execution of the 2003 Bonds in the form and manner set forth in the Bond Resolution as supplemented hereby to deliver the 2003 Bonds in the amounts authorized to be issued hereunder, to the Registrar for authentication and delivery to or upon the order of the Underwriters pursuant to the Purchase Contract, upon payment of the purchase price and upon compliance by the Underwriters with the terms of the Purchase Contract.

C. The Mayor, or in his absence or unavailability, the Mayor-Commissioner Pro Tem, the City Manager, the Administrative Services Director, or the Finance Director, the Clerk, any Deputy Clerk of the Issuer, and such other officers and employees of the Issuer as may be designated by the Mayor, or in his

absence or unavailability the Mayor-Commissioner Pro Tem, are each designated as agents of the Issuer in connection with the issuance and delivery of the 2003 Bonds and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the 2003 Bonds, and which are specifically authorized by or are not inconsistent with, the terms and provisions of this Resolution or any action relating to the 2003 Bonds heretofore taken by the Issuer. Such officers and those so designated are hereby charged with the responsibility for the issuance of the 2003 Bonds.

**SECTION 13. Repeal of Inconsistent Resolutions.** Except as supplemented and amended hereby, all provisions of the Bond Resolution remain in full force and effect. All other resolutions or parts of other resolutions in conflict herewith are hereby repealed.

**SECTION 14. Severability.** If any one or more of the covenants, agreements or provisions of this Resolution should 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 separate from the remaining covenants, agreements or provisions of this Resolution or of the 2003 Bonds issued hereunder.

**SECTION 15. Effective Date.** This Resolution shall take effect immediately upon its adoption in the manner provided by law.

PASSED AND ADOPTED this 24th day of February, 2003.



THOMAS D. BUSSING, MAYOR

ATTEST:

By: 

CLERK OF COMMISSION

Approved as to Form and Legality:



FEB 25 2003

Marion J. Radson, City Attorney