

SERVICE COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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: Index No. 401265/2012
In the Matter of the Rehabilitation of :
: :
FINANCIAL GUARANTY INSURANCE : Doris Ling-Cohan, J.
COMPANY. : *Motion Sequence #4*
: :
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**OBJECTION OF CERTAIN JEFFERSON COUNTY
WARRANTHOLDERS TO PLAN OF REHABILITATION**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
PRELIMINARY STATEMENT	1
BACKGROUND.....	4
The JeffCo Sewer Warrants.....	4
The Rehabilitation Proceedings and Plan	5
OBJECTION.....	7
I. The Plan Improperly Reverses Events of Default and Deprives JeffCo Holders of Expressly Bargained-For Contractual Rights	7
A. The Control Rights Impairments Are Capricious, Arbitrary and a Violation of the Rehabilitator’s Discretion	9
B. The Rehabilitator’s Justifications for Misappropriating the Control Rights Lack Merit.....	12
C. The Control Rights Impairments Constitute Unconstitutional Takings of the JeffCo Holders’ Property.....	16
II. The Plan Improperly Adjusts Policyholders’ Rights to Payment Based on Recoveries from Third-Parties.....	19
A. The Forced Payover/Setoff Provisions Contravene the Express Terms of the JeffCo Policies and the JeffCo Indenture.....	20
B. The Forced Payover/Setoff Provisions Violate New York’s “Made Whole” Doctrine	21
C. The Forced Payover/Setoff Provisions Constitute an Unconstitutional Taking of the JeffCo Holders’ Property	23
D. The Forced Payover/Setoff Provisions Conflict with Federal Bankruptcy Law and Interfere with Claims Administration in the Jefferson County Bankruptcy Proceeding.....	24
III. The Plan Unlawfully Seeks to Relieve FGIC of its Policy Obligations Where the Underlying Insured Obligation is Released	28
CONCLUSION.....	30

TABLE OF AUTHORITIES

<u>Case Opinions</u>	<u>Page</u>
<i>In re Agway, Inc.</i> , 357 B.R. 195 (Bankr. N.D.N.Y. 2006).....	27
<i>AMERCO v. Comm’r</i> , 96 T.C. 18 (T.C. 1991)	22
<i>Ballesteros v. N.J. Prop. Liab. Ins. Guar. Ass’n</i> , 530 F. Supp. 1367 (D.N.J. 1982)	11
<i>Bigelow v. Provost</i> , 5 Hill 566 (N.Y. Sup. Ct. 1843).....	27
<i>Bohlinger v. Zanger</i> , 306 N.Y. 228 (1954).....	10
<i>In re C.A.F. Bindery</i> , 199 B.R. 828 (Bankr. S.D.N.Y. 1996).....	13
<i>Carpenter v. Pac. Mut. Life Ins. Co.</i> , 74 P.2d 761 (Cal. 1938)	11
<i>Chicago, Burlington & Quincy R.R. Co. v. City of Chicago</i> , 166 U.S. 226 (1897).....	16, 23
<i>Contemporary Indus. Corp. v. Frost</i> , 564 F.3d 981 (8th Cir. 2009).....	26
<i>Craig v. Bank of N.Y.</i> , 169 F. Supp. 2d 202 (S.D.N.Y. 2001)	10
<i>Days Inn of Am., Inc. v. Citizens and S. Trust Co. (In re Mulberry Chesterton Inn, L.P.)</i> , Adv. No. 91-4020, 1992 WL 489775 (Bankr. S.D. Ga. Apr. 1, 1992).....	25-26
<i>Daubman v. Nassau Cnty. Civil Serv. Comm’n</i> , 195 A.D.2d 602 (2d Dep’t 1993)	15
<i>In re Del. River Stevedores, Inc.</i> , 129 B.R. 38 (Bankr. E.D. Pa. 1991).....	13
<i>Donovan v. City of Dallas</i> , 377 U.S. 408 (1964).....	12
<i>Employers Claim Control Serv. Corp. v. Workmen’s Comp.</i> , 35 N.Y.2d 492 (1974).....	27
<i>Fairfield Ins. Co. v. Stephens Martin Paving, LP</i> , 246 S.W.3d 653 (Tex. 2008).....	22
<i>Fasso v. Doerr</i> , 12 N.Y.3d 80 (2009).....	22
<i>In re First Assured Warranty Corp.</i> , 383 B.R. 502 (Bankr. D. Colo. 2007)	26-27
<i>In re Frontier Ins. Co.</i> , 36 Misc. 3d 529 (Albany Cnty. 2012).....	9, 29
<i>Gangemi v. City of New York</i> , 13 Misc. 3d 1112 (Kings Cnty. 2006).....	16, 23
<i>In re Gaslight Vill., Inc.</i> , 6 B.R. 871 (Bankr. D. Conn. 1980).....	13
<i>Gen. Atomic Co. v. Felter</i> , 434 U.S. 12 (1977).....	12

<i>Grode v. Mut. Fire, Marine, & Inland Ins. Co.</i> , 572 A.2d 798 (Pa. Commw. Ct. 1990)	10
<i>Hager v. Anderson-Hutchinson Ins. Agency</i> , No. 86-841-E, 1989 U.S. Dist. LEXIS 13614 (S.D. Iowa July 19, 1989)	16-17, 24
<i>I.T.T. Small Bus. Fin. Corp. v. Frederique</i> , 82 B.R. 4 (E.D.N.Y. 1987)	13
<i>Kaiser v. Monitrend Invest. Mgmt, Inc.</i> , 672 A.2d 359 (Pa. Commw. Ct. 1996)	10
<i>Kelo v. City of New London</i> , 545 U.S. 469 (2005)	17
<i>Koken v. Reliance Grp. Holdings, Inc. (In re Reliance Grp. Holdings, Inc.)</i> , 273 B.R. 374 (Bankr. E.D. Pa. 2002)	27
<i>McShane v. N.J. Mfrs. Ins. Co.</i> , 867 A.2d 1207 (N.J. App. Div. 2005)	22
<i>Metro. Taxicab Bd. of Trade v. N.Y. City Taxi & Limousine Comm'n.</i> , 18 N.Y.3d 329 (2011)	15
<i>Mich. Nat'l Bank-Oakland v. Am. Centennial Ins. Co. (In re Union Indem. Ins. Co. of N.Y.)</i> , 89 N.Y.2d 94 (1996)	10
<i>Mills v. Fla. Asset Fin. Corp.</i> , 31 A.D.3d 849 (3d Dep't 2006)	10
<i>Minor v. Stephens</i> , 898 S.W.2d 71 (Ky. 1995)	11
<i>Muir v. Transp. Mut. Ins. Co.</i> , 523 A.D.2d 1190 (Pa. Commw. Ct. 1987)	12
<i>In re Mut. Benefit Life Ins. Co.</i> , 1993 N.J. Super LEXIS 940 (Ch. Div. Aug. 12, 1993)	11
<i>Nemko, Inc. v. Motorola, Inc. (In re Nemko, Inc.)</i> , 163 B.R. 927 (Bankr. E.D.N.Y. 1994)	13
<i>Niemann v. Luca</i> , 168 Misc. 2d 1023 (Suffolk Cnty. 1996)	22
<i>Nw. Mut. Life Ins. Co. v. Delta Air Lines, Inc. (In re Delta Air Lines, Inc.)</i> , 608 F.3d 139 (2d Cir. 2010)	22-23
<i>Ochs v. Simon (In re First Cent. Fin. Corp.)</i> , 269 B.R. 502 (Bankr. E.D.N.Y. 2001)	27
<i>Oppenheimer AMT-Free Muns. v. ACA Fin. Guar. Corp.</i> , No. 653290/11, 2012 WL 3322682 (N.Y. Cnty. July 23, 2012)	28
<i>People ex rel. Brown v. McNeill</i> , 35 Misc. 2d 53 (Dutchess Cnty. 1962)	24
<i>Realmuto v. N.Y. State Liquor Auth.</i> , 181 A.D.2d 772 (2d Dep't 1992)	15
<i>Stevens v. Am. Home Assurance Co.</i> , 811 F. Supp. 937 (S.D.N.Y. 1993)	10
<i>Thompson v. Consol. Gas Utils. Corp.</i> , 300 U.S. 55 (1937)	17-18

USF&G v. Maggiore, 299 A.D.2d 341 (2d Dep't 2001) 21-22
In re Vanderbilt's Estate, 281 N.Y. 297 (1939) 24

Statutes

11 U.S.C. § 365(e) 12, 13
11 U.S.C. § 502(e) 25
11 U.S.C. § 509 3, 25, 26
15 U.S.C. § 1012 26

Certain entities (the “JeffCo Holders”)¹ holding more than \$330 million in principal amount of sewer warrants² (“JeffCo Sewer Warrants”) issued by Jefferson County, Alabama (“Jefferson County”) supported by insurance policies (the “JeffCo Policies”) issued by Financial Guaranty Insurance Company (“FGIC”), submit this objection (the “Objection”) to the motion of Benjamin M. Lawskey, Superintendent of Financial Services of the State of New York (the “Superintendent”), as the court-appointed rehabilitator of FGIC (the “Rehabilitator”), for entry of an order, *inter alia*, approving a proposed plan of rehabilitation for FGIC (the “Plan”). In support of this Objection, the JeffCo Holders respectfully submit as follows:

PRELIMINARY STATEMENT

The JeffCo Sewer Warrants consist of approximately \$1.6 billion of municipal bond obligations, in respect of which FGIC has insured all payments of principal and interest.³ As tax-exempt, triple A-rated debt that was issued well before the 2008 financial crisis, the JeffCo Sewer Warrants were believed to be a conservative municipal bond investment appropriate for college or retirement savings accounts.

Jefferson County issued the JeffCo Sewer Warrants, which, in addition to being insured, are secured by all net revenues of the Jefferson County sewer system. Jefferson County filed for Chapter 9 bankruptcy protection in 2011. For the past several months, the JeffCo

¹ The JeffCo Holders are Brigade Capital Management, LLC, Claren Road Asset Management, LLC, Emerald Eagle Holdings, L.L.C., Emerald Eagle Holdings South, L.L.C., Fundamental Advisors, LP, Monarch Cayman Fund Limited, Monarch Alternative Solutions Master Fund Ltd, Monarch Capital Master Partners II LP, Monarch Capital Master Partners II-A LP, Monarch Capital Master Partners LP, Monarch Debt Recovery Master Fund Ltd., Monarch Debt Recovery Master Fund Ltd, Monarch Opportunities Master Fund Ltd, Monarch Research Alpha Master Fund Ltd, Oakford MF Ltd, P Monarch Recovery Ltd. and Stone Lion Capital Partners L.P., each as either holders of JeffCo Sewer Warrants or as investment advisers to, or managers of, funds or accounts that hold JeffCo Sewer Warrants with power to direct the voting of warrants held by such funds.

² The JeffCo Sewer Warrants represent municipal indebtedness similar in many respects to that of municipal bond debt.

³ Some of this amount may be reinsured.

Holders have negotiated with Jefferson County and its other creditors to maximize recoveries to holders of the JeffCo Sewer Warrants.

Now, the Rehabilitator has filed a Plan that not only proposes to pay the JeffCo Holders pennies on the dollar on their insurance claims, but also improperly attempts to usurp the JeffCo Holders' role in negotiating their rights against Jefferson County by unilaterally amending the JeffCo Policies – and also the indentures that govern the JeffCo Sewer Warrants, to which FGIC is not even a party. This, and other provisions of the Plan, render the Plan objectionable on multiple grounds.

First, contrary to the express terms of the JeffCo Indenture (defined below), Sections 3.5 and 7.8 of the Plan provide that FGIC's defaults, whether in the past or future, including its failure to pay policy claims, shall be deemed not to have occurred. On this basis, the Plan then purports to bar the JeffCo Holders from exercising their right to control the restructuring of the JeffCo Sewer Warrants (the "Control Rights"). In other words, at the same time FGIC proposes to pay only a small fraction of the JeffCo Holders' policy claims, the Rehabilitator wants this Court to grant it control over the holders' efforts to recover from Jefferson County the amounts that FGIC insured but will fail to pay under the JeffCo Policies. These provisions of the Plan exceed the Rehabilitator's powers under New York state insurance law, and are arbitrary and capricious. The Rehabilitator's legal defense of these provisions is premised on a misapplication of the *ipso facto* doctrine, and is therefore unsupportable. And enforcement of these provisions would constitute a taking of the JeffCo Holders' property rights against a third party (Jefferson County) in violation of the Fifth and Fourteenth Amendments to the United States Constitution and similar provisions of the New York Constitution.

Second, the Plan requires the JeffCo Holders to turn over to FGIC a portion of any amounts they recover from Jefferson County, up to the amount of the cash they receive from FGIC under the Plan. If such amounts are not turned over, FGIC will set off those amounts against any future cash payments that FGIC would otherwise owe to the JeffCo Holders under the Plan (the “Forced Payover/Setoff Provisions”). The Forced Payover/Setoff Provisions amount to an unlawful confiscation of the JeffCo Holders’ recoveries from Jefferson County. They are inconsistent with the terms of the JeffCo Policies and the JeffCo Indenture, they violate the “made whole” doctrine under New York law, they constitute unlawful takings under the United States and New York Constitutions, and they conflict with Bankruptcy Code Section 509, which provides that FGIC cannot recover from Jefferson County until the FGIC-insured warrants are paid in full.

Third, Section 4.10 of the Plan can be interpreted to relieve FGIC of any liability under a Policy where the underlying insured obligation is released or otherwise extinguished by operation of law – an event most likely to occur with respect to the JeffCo Sewer Warrants as a function of Jefferson County’s Chapter 9 bankruptcy proceeding. This provision of the Plan violates New York state insurance law; therefore, the Rehabilitator’s inclusion of this provision in the Plan is arbitrary and capricious.

Municipal bonds have historically been the backbone of FGIC’s insurance business. As of the commencement of this proceeding, FGIC had approximately \$150 billion in municipal bond insurance policies outstanding. Other municipal bond policyholders are likely to find themselves in similar positions to that of the JeffCo Holders – with a municipal obligor that has defaulted on its bond debt and FGIC as their bond insurer, paying pennies on the dollar on its bond insurance policies but demanding full control over the insured bonds and appropriating

bondholder recoveries in violation of bondholders' rights against their principal obligors. This is completely contrary to the intent of bond insurance, which is to provide *additional* protection to policy holders by *adding* to the deficient recoveries that they may obtain from the issuer of their bonds. While the JeffCo Holders understand that the Rehabilitator is attempting to maximize recoveries to all of FGIC's policy holders, the Rehabilitator cannot be permitted to leverage FGIC's defaults to usurp the rights that the JeffCo Holders and other municipal bondholders have to recover against their primary obligors.

BACKGROUND

The JeffCo Sewer Warrants

Between 1997 and 2003, Jefferson County issued approximately \$3.6 billion in municipal, tax-exempt debt instruments to fund certain capital improvements to the Jefferson County sewer system (the "Sewer System"). These debt instruments, called "warrants," are essentially tax-exempt revenue bond obligations secured by net revenues from the Sewer System and certain other assets, and were issued under a Trust Indenture, dated February 1, 1997 (as supplemented, the "JeffCo Indenture," a copy of which is annexed as Exhibit A to the affirmation of Amy Caton in support of this Objection (the "Caton Aff."), filed contemporaneously herewith), with AmSouth Bank of Alabama, as indenture trustee (together with The Bank of New York Mellon, as successor, the "JeffCo Indenture Trustee"). Initially, more than 90% of these warrants bore interest at a fixed rate. In 2002 and 2003, Jefferson County refinanced most of this debt with variable rate warrants, of which FGIC currently insures more than \$1.6 billion in original principal amount under four separate bond insurance policies.⁴

⁴ The JeffCo Policies consist of multiple individual policies insuring, among other things, the payment of scheduled interest and principal under the JeffCo Sewer Warrants. The terms of the policies are substantially similar and do not differ in any way that is material to this Objection. An example of a JeffCo Policy is attached to the Caton Aff. as Exhibit B. FGIC has also issued two surety policies (with a combined remaining exposure of approximately

In 2008, Jefferson County missed payment on the JeffCo Sewer Warrants. Thereafter, it entered into a series of forbearance and/or standstill agreements with certain creditors that, among things, reduced the payments Jefferson County was required to make on a current basis, including payments to certain holders of the JeffCo Sewer Warrants.⁵

On November 9, 2011, Jefferson County filed a voluntary petition for relief under Chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). Approximately \$3.136 billion of JeffCo Sewer Warrants remained outstanding as of Jefferson County’s bankruptcy filing. It is uncertain whether Jefferson County will pay the JeffCo Sewer Warrants in full. Of the roughly \$1.6 billion of those outstanding JeffCo Sewer Warrants insured by FGIC, approximately \$330 million are held by the JeffCo Holders.

In February 2013, various principal and interest payments will come due on the JeffCo Sewer Warrants. It is expected that Jefferson County will not make such payments in full. Therefore, claims for payment under the JeffCo Policies will be asserted against FGIC in the near future.

The Rehabilitation Proceedings and Plan

On June 28, 2012, this Court appointed the Superintendent as Rehabilitator of FGIC. On September 27, 2012, the Rehabilitator filed the Plan and an accompanying disclosure statement (the “Disclosure Statement”). The Rehabilitator asserts that the Plan seeks to treat

\$16.6 million) which serve as credit instruments in a reserve fund established under the JeffCo Indenture. Under the JeffCo Indenture and surety policies, the JeffCo Indenture Trustee may make draws to the extent there is a shortfall in the debt service fund to cover interest and principal as they come due. FGIC’s claims for reimbursement for draws made under JeffCo surety policies are contractually subordinated under the JeffCo Indenture at least to the prior payment of debt service on the JeffCo Sewer Warrants. This Objection does not address the Plan’s effect on these surety policies.

⁵ For purposes of this Objection, the JeffCo Holders take no position as to whether the obligations under the JeffCo Sewer Warrants have been accelerated. The JeffCo Holders note, however, that FGIC will imminently default on payments due on the JeffCo Sewer Warrants in February 2013, and that it may be argued that the obligations under the JeffCo Sewer Warrants have been accelerated or will be accelerated in February 2013.

FGIC's policyholders in a fair and equitable manner while removing the causes and conditions that made this proceeding necessary. (Disclosure Statement at 1.) The Plan purports to achieve these goals by, among other things, the following:

First, the Plan does not propose to pay policy claims in full in cash, as required by the terms of FGIC's Policies. Instead, the Plan provides that FGIC will pay out on its policies as its obligations to pay interest and principal come due over the life of the underlying insured obligation (in the case of JeffCo Sewer Warrants, a period that could be up to 30 years), in the form of (i) cash in an amount equal to the cash payment percentage ("CPP") to be determined by the Rehabilitator, but presently expected to be approximately 15% of the amount of each Permitted Policy Claim, and (ii) the right to receive future payments (the "DPO" or deferred payment obligation) in an amount equal to the remaining portion of the Policy Claim. Payment on the DPO, moreover, is unlikely. Future payments will be made only if the Rehabilitator determines, in consultation with a third-party firm and with the approval of the New York State Department of Financial Services (the "NYSDFS"), that FGIC has sufficient assets to pay an increased percentage of cash. (Plan § 2.3; Plan Ex. B (Restructured Policy Terms) §§ 1.1, 1.2; Disclosure Statement at 21.) The Rehabilitator estimates that the average ultimate recovery to Policyholders will be 24% to 25%. (*Id.* at 2.)

Second, the Plan provides – contrary to undisputed fact – that certain of FGIC's payment defaults will be deemed not to have occurred or not to occur in the future, despite the Plan's provision for only partial payment of FGIC's obligations. On this basis, FGIC will appropriate certain contractual rights – which it labels "FGIC Rights" – that FGIC would not otherwise have had. (Disclosure Statement at 22.) The Plan further employs this fiction to enjoin all persons from exercising "FGIC Rights" under any Policy or related Transaction

Document (including any approval, consent, direction, determination, appointment, request, voting, veto, waiver or other right that FGIC would otherwise have had had it not defaulted on any of its contractual obligations). (Plan § 7.8(e).) If any person seeks to exercise a “FGIC Right,” moreover, the Plan allows FGIC to declare a Policy Crystallization Event and unilaterally determine its anticipated payment obligations under the relevant Policy for the remainder of its expected duration. (Plan Ex. B (Restructured Policy Terms) §§ 2.1, 2.2.)

OBJECTION⁶

I. The Plan Improperly Reverses Events of Default and Deprives JeffCo Holders of Expressly Bargained-For Contractual Rights

Sections 3.5 and 7.8(e) of the Plan provide, respectively, that FGIC shall be deemed not to have defaulted under any FGIC Contract or Transaction Document – even though the same Plan makes clear that FGIC will not meet its existing Policy obligations – and that all parties will be enjoined from exercising any contractual rights, including Control Rights, they may otherwise have had as a result of FGIC’s failure to honor its pre-rehabilitation obligations (collectively, the “Control Rights Impairments”).⁷

⁶ Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Plan.

⁷ Section 3.5 of the Plan provides, in relevant part:

[U]pon the Effective Date, any default, event of default or other event or circumstance relating to the FGIC Parties then existing . . . under any FGIC Contract or Transaction Document, as a result of (whether directly or indirectly) the Rehabilitation or the Rehabilitation Circumstances shall be deemed not to have occurred (including, for the avoidance of doubt, any default, event of default or other event or circumstance that has arisen (or that may otherwise arise with the passing of time or the giving of notice or both) due to a lack of payment or performance of or by the FGIC Parties under any FGIC Contract or Transaction Document).

(Plan § 3.5.) Section 7.8(e) of the Plan further provides:

From and after the Effective Date, all Persons shall be prohibited from:

. . . [E]xercising or taking any action to exercise . . . any approval, consent, direction, determination, appointment, request, voting, veto, waiver or other right that the FGIC Parties have . . . (or that the FGIC Parties would have but for the Rehabilitation or the occurrence or existence of any of the Rehabilitation Circumstances) under or with respect to any FGIC Contract or any Transaction Document executed in connection with the

These provisions will profoundly restrict the JeffCo Holders' ability to protect their rights against Jefferson County in its Chapter 9 proceeding. Under the JeffCo Indenture, a majority of the holders of the JeffCo Sewer Warrants are authorized to direct the JeffCo Indenture Trustee to take action against Jefferson County:

The Holders of a majority in aggregate principal amount of the Parity Securities then outstanding shall have the right . . . to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture.

(Caton Aff. Ex. A (JeffCo Indenture) § 13.5). If FGIC is paying its obligations under JeffCo Policies – and therefore bears all risk of loss under the JeffCo Sewer Warrants – the JeffCo Indenture permits it to exercise the warrant holders' Control Rights by “deeming” FGIC the sole warrant holder. (*Id.* § 17.3(c)). This deemed status grants FGIC enormous substantive rights, including the ability to waive certain defaults and agree to amendments of the JeffCo Indenture. (*Id.* §§ 13.10, 15.2.) However, the JeffCo Indenture specifically provides that FGIC maintains its “deemed” status and ability to exercise the Control Rights only for “*so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.*” (*Id.* § 17.3(c) (emphasis added).)

Because the Plan provides that FGIC will not comply with its payment obligations under the JeffCo Policies, the Control Rights will revert to the JeffCo Holders under the express terms of the JeffCo Indenture. The Plan, however, purports to forestall this reversion by deeming FGIC to have complied with the obligations that it has already breached (or will breach in the future) and enjoining third parties from taking steps to enforce their rights elsewhere.

issuance of or entry into such FGIC Contract or related to such FGIC Contract or any obligations insured or covered thereby

(*Id.* § 7.8(e).)

These provisions cannot be approved for several reasons.

A. The Control Rights Impairments Are Capricious, Arbitrary and a Violation of the Rehabilitator's Discretion

Together, Sections 3.5 and 7.8 of the Plan operate to unilaterally and impermissibly amend the terms of the JeffCo Indenture (to which FGIC is not a party). By deeming FGIC not to have defaulted under the JeffCo Policies and enjoining the JeffCo Holders from asserting FGIC's default to enforce the reversion of their Control Rights, the Plan alters a basic element of the bargain embodied in the JeffCo Indenture. So long as FGIC bore all risk of loss under the JeffCo Sewer Warrants, the JeffCo Indenture permitted it to direct the Indenture Trustee.

Under the Plan, FGIC will bear only a sliver of the risk of loss under the JeffCo Sewer Warrants – the Disclosure Statement estimates its payments will total, at best, 25% on a net present value basis. (Disclosure Statement at 2.) To enjoin the JeffCo Holders, who now bear the great majority of the risk under the JeffCo Sewer Warrants, from receiving the reversion of the Control Rights rewrites their contract and upends the traditional purpose of insurance by placing the insurer's interests ahead of the insured's. As such, the Plan unilaterally amends the terms of the JeffCo Indenture, in clear violation of the terms of the Indenture, which require the JeffCo Indenture Trustee and Jefferson County to agree to any such amendments. (Caton Aff. Ex. A (JeffCo Indenture) §§ 15.1, 15.2).

While the Rehabilitator is granted wide latitude to manage FGIC's affairs and administer its assets, it is bound by applicable law and the contracts and facts that exist. *In re Frontier Ins. Co.*, 36 Misc. 3d 529, 541-42 (Albany Cnty. 2012) (“While the Court recognizes that deferential standard of review applicable to the Rehabilitator's actions, a plan of rehabilitation cannot be approved where it is inconsistent with law.”). The Rehabilitator's

authority is “circumscribed by [the court’s] mandate to act as a check on potential discretionary abuse and to insure equitable apportionment of loss.” *Grode v. Mut. Fire, Marine, & Inland Ins. Co.*, 572 A.2d 798, 804 (Pa. Commw. Ct. 1990); *Mills v. Fla. Asset Fin. Corp.*, 31 A.D.3d 849, 850 (3d Dep’t 2006) (rehabilitator may not act arbitrarily, capriciously or in manner that constitutes abuse of discretion). Sections 3.5 and 7.8 of the Plan exceed even these generous boundaries on the Rehabilitator’s authority.

The discretion afforded a rehabilitator does not include the power to unilaterally amend contracts to expand an insurer’s rights. Rather, it steps into the shoes of the insolvent insurer and obtains no greater rights than those that the insurer had prior to its insolvency. As the New York Court of Appeals has recognized, insolvency does not expand an insurer’s rights and the fiduciary “should not and may not be placed in a better position than the company he takes over” *Bohlinger v. Zanger*, 306 N.Y. 228, 234 (1954) (addressing liquidation).⁸

The same applies to an insolvent insurer’s contractual rights. *See, e.g., Kaiser v. Monitrend Invest. Mgmt, Inc.*, 672 A.2d 359, 364 n.5 (Pa. Commw. Ct. 1996) (holding, in an action to enforce a contract, that “the Statutory Liquidator has no greater rights under the contract than the insurer and would be subject to any defense that may be asserted against the insurer by the other party to the contract”). Before the appointment of the Rehabilitator, FGIC’s ability to exercise the Control Rights would be eliminated upon a payment default. The Rehabilitator cannot expand FGIC’s rights under the JeffCo Indenture through artful formulation of Plan terms and a judicial fiction.

⁸ *See also Mich. Nat’l Bank-Oakland v. Am. Centennial Ins. Co. (In re Union Indem. Ins. Co. of N.Y.)*, 89 N.Y.2d 94, 108 (1996) (holding that liquidator was subject to same defenses that insurer was subject to); *Craig v. Bank of N.Y.*, 169 F. Supp. 2d 202, 210 (S.D.N.Y. 2001) (“Under New York law the general rule is that the liquidator of an insurance company stands in the shoes of the insolvent, gaining no greater rights than the insolvent had.”) (quotations omitted); *Stevens v. Am. Home Assurance Co.*, 811 F. Supp. 937, 947-48 (S.D.N.Y. 1993) (holding that liquidator had no greater rights than those of insurer prior to liquidation and noting that “New York courts have been strongly supportive of preserving rights which existed prior to liquidation proceedings.”)

No authority cited by the Rehabilitator, moreover, suggests that this Court has jurisdiction to enforce an amendment of this sort. This Court exercises only *in rem* jurisdiction over the assets of FGIC and its affiliates. *Ballesteros v. N.J. Prop. Liab. Ins. Guar. Ass'n*, 530 F. Supp. 1367, 1371-72 (D.N.J. 1982). But FGIC is not a party to the JeffCo Indenture, which is an agreement between Jefferson County and the JeffCo Indenture Trustee. The JeffCo Indenture therefore is not FGIC's property and this Court lacks jurisdiction to issue orders concerning the rights of Jefferson County, the Indenture Trustee or any other third-party possessing rights thereunder.

Even assuming this Court had jurisdiction over the JeffCo Indenture – and it does not – the Rehabilitator identifies no proper authority that would permit it to modify that contract. While the Rehabilitator cites cases purportedly authorizing it to modify FGIC's *insurance policies*, none suggests – let alone holds – that a court supervising a rehabilitation may modify a contract that is *not* an insurance policy or to which the insurer is not a party.⁹ In fact, based on the “public interest” in the “business of insurance,” those cases conclude that “the contract of the policyholder is subject to the reasonable exercise of the state’s police power.” *Carpenter*, 74 P.2d at 774-75; *accord Minor*, 898 S.W.2d at 80. On this basis, they hold that “neither the company nor the policyholder has the inviolate rights that characterize private contracts.” *Id.* A municipal bond indenture, however, is not the “contract of a policyholder” or “the business of insurance.” As a result, the Rehabilitator offers no basis to adjust the “inviolate rights” of the parties to the JeffCo Indenture. Nor does the Rehabilitator explain how New York State’s police

⁹ *Carpenter v. Pac. Mut. Life Ins. Co.*, 74 P.2d 761, 776 (Cal. 1938) (modifying insurance policy terms); *Minor v. Stephens*, 898 S.W.2d 71 (Ky. 1995) (same); *In re Mut. Benefit Life Ins. Co.*, 1993 N.J. Super LEXIS 940, at *133-34 (Ch. Div. Aug. 12, 1993) (same).

power might extend to adjust the terms of an Alabama law contract that governs public debt issued by a subdivision of the State of Alabama.¹⁰

Similarly, the cases cited by the Rehabilitator in support of Section 7.8's injunction (Rehabilitator's Memorandum of Law at 25-26) do no more than enjoin creditors from asserting claims against the property of the insurer outside the rehabilitation court.¹¹ None purports to restrict third parties from asserting their rights under contracts to which the insurer is not a party and that are not subject to the jurisdiction of the rehabilitation court. The JeffCo Holders, moreover, are participants in the Jefferson County Chapter 9 proceeding currently pending in the United States Bankruptcy Court in Alabama. As a state tribunal, this Court cannot properly enjoin the JeffCo Holders, or any other party, from litigating to vindicate their rights in a federal court, let alone negotiating with respect to those rights. *See Gen. Atomic Co. v. Felter*, 434 U.S. 12, 18-19 (1977); *Donovan v. City of Dallas*, 377 U.S. 408, 413 (1964).

B. The Rehabilitator's Justifications for Misappropriating the Control Rights Lack Merit

In its Memorandum of Law, the Rehabilitator cites two principal justifications for the Control Rights Impairments. *First*, it argues that clauses providing for the transfer of control rights and/or the termination of FGIC's consent rights constitute *ipso facto* clauses that are unenforceable under Section 365(e)(1) of the Bankruptcy Code which bars the termination of a debtor's contractual rights as a result of, among other things, "the insolvency or financial condition of the debtor at any time before the closing of the case" or "the commencement of a [bankruptcy] case". (Memorandum of Law at 27-29.) *Second*, it contends that, absent the

¹⁰ Nothing in the New York Insurance Law ("NYIL"), including Sections 7403 or 7419, grants the Rehabilitator the unilateral right to amend a contract between third parties, or to declare that an acknowledged and indisputable fact has not occurred.

¹¹ *See, e.g.,* Ambac, Plan of Rehabilitation Case No. 10-CV-1576, § 8.01 (Wis. Cir. Ct. App. Jan. 24, 2011); *Muir v. Transp. Mut. Ins. Co.*, 523 A.D.2d 1190, 1193-94 (Pa. Commw. Ct. 1987).

Control Rights Impairments, certain policyholders and other counterparties may exercise their Control Rights to the detriment of policyholders generally. Neither argument is tenable, and the extraordinary relief the Plan seeks fails to withstand arbitrary and capricious review.

As an initial matter, Section 365(e) of the Bankruptcy Code does not apply here and the Rehabilitator cites no analogous New York authority. More importantly, the Rehabilitator misunderstands what an *ipso facto* clause is. “An ipso facto clause is an option to terminate a contract conditioned solely on the bankruptcy, insolvency or financial condition of the debtor.” *Nemko, Inc. v. Motorola, Inc. (In re Nemko, Inc.)*, 163 B.R. 927, 938 n.5 (Bankr. E.D.N.Y. 1994)). A contractual provision that triggers a remedy upon a *payment default* is not an *ipso facto* clause. See, e.g., *I.T.T. Small Bus. Fin. Corp. v. Frederique*, 82 B.R. 4, 5-6 (E.D.N.Y. 1987) (payment default provision not *ipso facto* clause); *In re Del. River Stevedores, Inc.*, 129 B.R. 38, 41 (Bankr. E.D. Pa. 1991) (*ipso facto* doctrine not applicable where “it was not the Debtor’s bankruptcy filing, but rather its failure to make the requisite payments” under a payment agreement that had resulted in debtor’s contractual liability).

In *In re C.A.F. Bindery*, the debtor sought to exercise certain rights that a lease provided were forfeited upon a payment default. 199 B.R. 828, 833 (Bankr. S.D.N.Y. 1996). Like the Rehabilitator, the debtor argued that the payment default provision was an unenforceable *ipso facto* provision. *Id.* at 832. The court rejected this, explaining that “[i]f the debtor’s default arises for some reason other than those set forth in section 365(e)(1), the prohibition against *ipso facto* clauses does not apply.” *Id.* at 833. This is true, moreover, even where “the debtor’s [payment] default could be regarded as having been the product of its distressed financial condition and also as having paved the way for its petition for relief” under the Bankruptcy Code. *In re Gaslight Vill., Inc.*, 6 B.R. 871, 875 (Bankr. D. Conn. 1980).

The Rehabilitator's contention that Sections 3.5 and 7.8(e) of the Plan are necessary to prevent "holders of bonds insured by FGIC who purchased such bonds at a discount" from directing the JeffCo Trustee to liquidate collateral underlying instruments insured by FGIC to obtain a "quick and certain recovery," (Rehabilitator's Memorandum of Law at 29), is unsupported and irrational and, in any event, cannot justify the relief the Rehabilitator seeks.

There is no rational basis to believe that the JeffCo Indenture Trustee, properly directed by the JeffCo Holders and other warrant holders, will not obtain the maximum recovery possible on the JeffCo Sewer Warrants. The JeffCo Holders are far better positioned than the Rehabilitator to obtain favorable treatment of the JeffCo Sewer Warrants in the Jefferson County bankruptcy case. The JeffCo Holders have a much greater economic stake in the JeffCo Sewer Warrants than will the Rehabilitator. Further, the JeffCo Holders have already been participating in the Chapter 9 case and their advisors have been engaged in negotiations with the County concerning the treatment of the warrants for months.

The JeffCo Sewer Warrants are currently trading at 77 cents on the dollar. If the Plan is approved, the Rehabilitator *projects* that it might pay, on a present value basis, only 24 to 25 cents on the dollar for those warrants. (Disclosure Statement at 48.) Based on current prices, the market believes that JeffCo Holders will therefore receive a far greater recovery on their warrants than they will in this rehabilitation proceeding, and are therefore highly motivated to extract the greatest possible value in that proceeding.

It is also simply irrational to suggest that investors who bought at a discount are less inclined to maximize recoveries on their investments. The purchase price of an investment has no bearing on the investor's objective to maximize recovery. Regardless, it is disingenuous for the Rehabilitator to make such an argument as the Rehabilitator is proposing to pay only 15

cents on the dollar in cash on policy claims up front – an amount far less than the 77 cents on the dollar that is being paid on the JeffCo Sewer Warrants in the market today.

The JeffCo Holders have invested, and continue to invest, substantial resources toward the maximization and realization of value from Jefferson County on account of the JeffCo Sewer Warrants. It would be perverse to allow the Rehabilitator – which holds a pronounced minority of the economic risk underlying the JeffCo Sewer Warrants – to usurp control over the exercise of remedies from the true economic parties in interest – the JeffCo Holders. In these circumstances, it is irrational to suggest that the JeffCo Holders would be any less vigorous than the Rehabilitator in pursuing and maximizing claims against Jefferson County.

For the Rehabilitator to predicate a determination that thousands of parties with contractual rights governed by the laws of other states should be prohibited from exercising those rights on the basis of such flimsy and speculative arguments is patently arbitrary and capricious. *See, e.g., Metro. Taxicab Bd. of Trade v. N.Y. City Taxi & Limousine Comm'n.*, 18 N.Y.3d 329, 334 (2011); *Daubman v. Nassau County Civil Serv. Comm'n.*, 195 A.D.2d 602, 603 (2d Dep't 1993) (2d Dep't 1993) (finding civil service commission disqualification of police officer candidate on basis that candidate may have heightened risk of disability because of existing medical condition to be “arbitrary and capricious because it is premised upon speculation rather than fact”); *Realmuto v. N.Y. State Liquor Auth.*, 181 A.D.2d 772, 774 (2d Dep't 1992) (affirming trial court's annulment of liquor authority's refusal to grant license as arbitrary and capricious where “the ground for disapproval is without any reasonable basis in fact, and is supported only by speculation and conjecture” as to potentially undisclosed aspects of applicant's business).

C. The Control Rights Impairments Constitute Unconstitutional Takings of the JeffCo Holders' Property

The Control Rights Impairments dictated by the Plan not only exceed this Court's jurisdiction and the Rehabilitator's statutory authority, but they also constitute an unlawful taking under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, §§ 6 and 7 of the New York Constitution.

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. This prohibition binds the states through the Fourteenth Amendment's mandate that no state shall deprive any person of property without due process of law. *See Chicago, Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 235-41 (1897). Similarly, Article 1, §§ 6 and 7 of the New York Constitution forbid the taking of private property for public use without just compensation. *Gangemi v. City of New York*, 13 Misc. 3d 1112, 1130 n.3 (Kings Cnty. 2006) (noting New York courts rely on federal cases in determination of "takings" claims under state constitution). As set forth below, the Plan neither accomplishes a valid public use nor compensates the JeffCo Holders for the Rehabilitator's appropriation of their contractual rights and other property.

The court in *Hager v. Anderson-Hutchinson Ins. Agency*, No. 86-841-E, 1989 U.S. Dist. LEXIS 13614, at *45-59 (S.D. Iowa July 19, 1989), considered an insurance liquidator's claim against an insurance agent for uncollected and unearned premiums, where no insurance was provided in exchange for the premiums. Before an insurer's insolvency, Iowa law did not require insurance agents to pay such premiums to the insurer, because the insurer would not be providing coverage to the insured. *Id.* at *56. Upon insolvency, however, the Iowa statute made the insurance agent fully liable to the liquidator for uncollected premiums, regardless of whether insurance was actually provided. The liquidator argued that the insolvency

statute should be upheld because it served a public purpose and benefited other claimants against the insolvent insurer. The court, however, struck down the statute as violative of the Fifth and Fourteenth Amendments. In effect, the Court held, the Iowa statute authorized the liquidator to claim property from the agent upon liquidation in which the insurer had no legal interest before insolvency, and for which it had provided no consideration. *Id.* at *55. The court accordingly found that it constituted “an unlawful taking of private property . . . for public use without just compensation.” *Id.* at *59.

The case is even more extreme here, where the Rehabilitator seeks (i) to retain the JeffCo Holders’ property – the Control Rights – in which FGIC would have had no property interest upon a payment default before insolvency, (ii) for the benefit of certain classes of policyholders, mostly those holding insured RMBS instruments and CDS counterparties, (iii) without compensation to the JeffCo Holders.

Furthermore, the United States Supreme Court has made clear that even a *compensated* taking is impermissible where it would confer a private benefit on private parties. *See, e.g., Thompson v. Consol. Gas Utils. Corp.*, 300 U.S. 55, 80 (1937) (“[O]ne person’s property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid.”); *see also Kelo v. City of New London*, 545 U.S. 469, 477-78 (2005) (“[I]t has long been accepted that the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation. . . . Nor would the [sovereign] be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit.”).

In *Thompson*, the Railroad Commission of Texas limited the production of a certain grade of natural gas by pipeline owners from their own land to compel them to purchase

gas from, and share their pipelines with, suppliers who did not have their own pipelines, thereby balancing access to the pipelines. *Thompson*, 300 U.S. at 57-58. The commissioner apparently sought to reduce the inequality between those whose investments had proven successful (*i.e.*, those who had built pipelines) and those who had not made similar investments and therefore lacked a market. *Id.* at 59-61.

The Supreme Court found no valid public purpose underlying its orders and therefore held that the limitations were takings in violation of the Fifth and Fourteenth Amendments. Endorsing the lower court's ruling, it held "[t]he necessary operation and effect of such orders is to take from complainant and others similarly situated substantial and valuable interests in their private marketing contracts and . . . the use of their pipe lines and other facilities for transmitting their gas to their markets, without compensation, and to confer same upon the owners of the approximately 180 sweet gas wells in the field not connected to pipe lines." *Id.* at 78. Rejecting the Texas commissioner's argument that "the situation in the Panhandle field presented a conflict of private interests so serious as to become a matter of public concern," *id.* at 80, the Court held that "[t]here is here no taking for the public benefit; nor is the payment of compensation provided." *Id.* at 78.

The same is true here. The Plan contemplates a deprivation of the JeffCo Holders' contractual rights for the imagined benefit of other private parties – namely those who invested in RMBS and CDS, and whose liabilities FGIC is unable to cover – without compensation. As in *Thompson*, the Rehabilitator claims a valid public interest in enforcement of the Plan (Memorandum of Law at 17), the effect of which would be to spread losses incurred by one class of investors across multiple classes of investors, whose "conflicting private interests" the Rehabilitator apparently believes rise to the level of a valid public purpose. The

Rehabilitator cannot support such a plain transfer of private rights under the guise of the state's police power, particularly where those being deprived of property are not being compensated. The Control Rights Impairments must therefore be rejected as violating both the United States Constitution and its New York State analogue.

II. The Plan Improperly Adjusts Policyholders' Rights to Payment Based on Recoveries from Third-Parties

As explained above, the Plan contemplates that Policyholder Claims will not be paid in full in cash, as the terms of their policies provide. Instead, under the Plan, parties holding Policy Claims will receive (i) an initial cash payment of 15% of the permitted amount of their claims and (ii) a right to future payments under the DPOs (*i.e.*, deferred payment obligations), provided that the Rehabilitator, in its discretion, determines sufficient assets are available. But holders of Policy Claims are not assured of receiving even these fractional and contingent amounts. Rather, the Plan creates new payment obligations for many creditors that at least partially offset their already diminished insurance recoveries.

The Plan first creates two concepts it styles "FGIC Payments" and "FGIC Payment Payors." "FGIC Payments" include "the then-current CPP multiplied by the amount of all recoveries, reimbursements, settlements and other amounts . . . which would be payable to [FGIC], or which [FGIC] would otherwise have a right to receive or recover . . . under the terms of or in connection with such Policy or any related Transaction Document, as if . . . FGIC had at all times paid Policy Claims in full in Cash." (Plan Ex. A (Definitions) at A-6.) A "FGIC Payment Payor" is defined in terms that would include the JeffCo Indenture Trustee and Jefferson County. (*Id.*).

The Plan then provides that:

Each FGIC Payment Payor shall pay in Cash to the FGIC Parties all FGIC Payments payable by such FGIC Payment Payor, or that would have been

payable had the Plan . . . been in effect at all times from and after the issuance of the 1310 Order, when due under the applicable Policy or any related Transaction Document, or if such FGIC Payment would have been due prior to the Effective Date

If FGIC determines in good faith that, notwithstanding the requirements of the foregoing paragraph, all or a portion of any FGIC Payment has not been paid to the FGIC Parties in accordance with the such paragraph, then, in addition to any other rights or remedies that FGIC may have, *Cash payments that would otherwise be payable by FGIC in respect of the applicable Policy shall be reduced by the amount of such unpaid FGIC Payment.*

(Plan Ex. B (Restructured Policy Terms) § 1.4(A).)

These provisions impose material new payment obligations on the JeffCo Indenture Trustee that are unlawful and prevent approval of the Plan.

A. The Forced Payover/Setoff Provisions Contravene the Express Terms of the JeffCo Policies and the JeffCo Indenture

Under the express terms of the JeffCo Policies and the JeffCo Indenture, FGIC has no right to payment from the JeffCo Indenture Trustee or Jefferson County unless and until FGIC pays all amounts due under its policies *in full and in cash*. The JeffCo Policies provide, in relevant part, as follows:

[FGIC] . . . agrees to pay . . . [the Fiscal Agent] for the benefit of [JeffCo Holders], that portion of the principal and interest on [the JeffCo Sewer Warrants] which shall become Due for Payment but shall be unpaid by reason of Nonpayment by [Jefferson County].

. . . The Fiscal Agent will disburse to the [JeffCo Holders] the *face amount of principal and interest which is then Due* for Payment but is unpaid by reason of Nonpayment by the Issuer *Upon such disbursement*, [FGIC] shall become the owner of the [JeffCo Sewer Warrants], appurtenant coupon or right to payment of principal or interest in such [JeffCo Sewer Warrants] and shall be fully subrogated to all of the [JeffCo Holders'] rights thereunder, including the . . . right to payment thereof.

(See Caton Aff. Ex. B (example of JeffCo Policy) (emphasis added).)

In other words, under the terms of the JeffCo Policies, FGIC may take ownership of the appropriate portion of the JeffCo Sewer Warrants upon FGIC's disbursement to the JeffCo Holders of "the face amount of principal and interest which is then due" but otherwise unpaid under the JeffCo Sewer Warrants. The JeffCo Indenture is clear that such principal and interest must be paid *in cash* – not a percentage of cash plus a deferred payment obligation of uncertain value. (*See* Caton Aff. Ex. A (JeffCo Indenture) § 7.6 (requiring payment "in lawful money of the United States of America."))

By its terms, the Plan purports to require the JeffCo Indenture Trustee to pay FGIC a portion of its recovery from Jefferson County, even though the holders will not be paid in full and in cash on their warrants. Accordingly, the Plan's Forced Payover/Setoff Provisions contravene the express terms of the JeffCo Policies.

B. The Forced Payover/Setoff Provisions Violate New York's "Made Whole" Doctrine

The Plan's Forced Payover/Setoff Provisions also violate the well-settled New York law principle – known as the "made whole" doctrine – that an insurer claiming subrogation rights may not recover until the insured is fully compensated for its insured loss. In New York, "[u]nder the common law of subrogation, an insurer has the right to 'stand in the shoes' of the insured and seek recompense from the third-party tortfeasor for the amount paid to the insured, *provided that the insured has been made whole.*" *USF&G v. Maggiore*, 299 A.D.2d 341, 344 (2d Dep't 2001) (citation omitted; emphasis in original). This rule is premised on bedrock insurance principles. Where an insurer has provided coverage, "the burden of loss should rest on the party paid to assume the risk, and not on an inadequately compensated insured, who is the least able to shoulder the loss." *Id.* To hold any other way would be "contrary to the principal purpose of an insurance contract: to protect an insured from loss, thereby placing the risk of loss

on the insurer, and the insurer has accepted payments from the insured to assume this risk of loss.” *Id.* (quoting 16 Couch, Insurance 3d § 223:136).¹²

Far from honoring the “made whole” doctrine, the Forced Payover/Setoff Provisions would grant FGIC a right of subrogation enforceable even though its insured will not be paid in full on its insured loss. They would require the JeffCo Indenture Trustee to turn over a portion of each distribution it receives from Jefferson County to FGIC when it receives that distribution – regardless of whether the JeffCo Holders have been made whole on their insured loss. Allowing FGIC to recover any amounts from Jefferson County or the JeffCo Indenture Trustee before the JeffCo Holders are paid in full would turn the subrogation and “made whole” doctrines on their heads.

Nor can the Rehabilitator contend that FGIC’s provision of a small cash payment and a deferred payment obligation satisfies the “made whole” doctrine. In fact, the Second Circuit recently rejected the same argument in *Northwestern Mutual Life Insurance Co. v. Delta Air Lines, Inc. (In re Delta Air Lines, Inc.)*, 608 F.3d 139 (2d Cir. 2010). There, certain parties to a leveraged leasing arrangement asserted claims against Delta under a tax indemnity agreement to recover the value of certain disallowed tax benefits. The tax indemnity agreement relieved Delta of the obligation to make these payments if it had paid a “stipulated loss value” to certain

¹² This is black-letter law both in New York and elsewhere. *See, e.g., Fasso v. Doerr*, 12 N.Y.3d 80, 87 (2009) (“If the sources of recovery ultimately available are inadequate to fully compensate the insured for its losses, then the insurer—who has been paid by the insured to assume the risk of loss—has no right to share in the proceeds of the insured’s recovery from the tortfeasor”) (citation omitted); *Niemann v. Luca*, 168 Misc. 2d 1023, 1026 (Suffolk Cnty. 1996) (“[The made-whole rule] is based upon the nature of the relationship between the insurer and the insured: if the loss of one of the two must go unsatisfied, it should be the insurer who bears such loss since it is has been paid to assume the risk of such loss.”); *AMERCO v. Comm’r*, 96 T.C. 18, 38-39 (T.C. 1991) (“Basic to any insurance transaction must be risk. An insured faces some hazard; an insurer accepts a premium and agrees to perform some act if or when the loss event occurs. If no risk exists, then insurance cannot be present.”); *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 673 (Tex. 2008) (“Insurance is an agreement by which one party assumes a risk faced by another in return for a premium payment. This risk-shifting is the purpose of insurance.”) (citation omitted); *McShane v. N.J. Mfrs. Ins. Co.*, 867 A.2d 1207, 1213 (N.J. App. Div. 2005) (citing *Wine v. Globe Am. Cas. Co.*, 917 S.W.2d 558, 562 (Ky. 1996), for proposition that placing burden of loss on the claimant instead of the insurer that was paid to bear risk would defeat the “age old” principles of subrogation).

bondholders in the transaction. Delta argued that it had paid the “stipulated loss value” by awarding the bondholders a claim in the bankruptcy in that amount and therefore had no obligation under the tax indemnity agreement.

The Second Circuit rejected this argument. In so ruling, it held that such an interpretation of the meaning of “pay” would require a “strained and improbable reading, which inevitably defeated the intentions of the contracting parties.” *Delta*, 608 F.3d at 147. The court emphasized further that, “[n]otwithstanding that dictionary definitions of ‘pay’ include this strained alternative, the bankruptcy court was not at liberty to adopt it as the meaning of the contractual term, when that was plainly not the understanding of the contracting parties.” *Id.*

Similarly, requiring Jefferson County or the JeffCo Indenture Trustee to pay over amounts to FGIC based on FGIC’s payment of “rehabilitation dollars” – a combination of cash and hope certificates – would impose a “strained and improbable” reading of “made whole” entirely unsupported by the law and plainly contradictory to the contracting parties’ intent. To permit FGIC to replace its cash payment obligations in the manner the Rehabilitator proposes would be to give FGIC the benefit of yet another legal fiction.

C. The Forced Payover/Setoff Provisions Constitute an Unconstitutional Taking of the JeffCo Holders’ Property

The Plan’s Forced Payover/Setoff Provisions also constitute a taking of the JeffCo Holders’ property in violation of the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article 1, §§ 6 and 7 of the New York Constitution. As explained above, both the United States and New York State Constitutions prohibit the taking of private property for public use without just compensation. *See Chicago, Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 235-41 (1897); *Gangemi v. City of New York*, 13 Misc. 3d 1112, 1130 n.3 (Kings Cnty. 2006).

Before rehabilitation, FGIC would have been subrogated to the rights of the JeffCo Holders only when those warrant holders were actually “made whole” under the JeffCo Sewer Warrants. This was consistent with the parties’ expectations and the “made whole” doctrine. The imposition of extra contractual obligations through the Forced Payover/Setoff Provisions would be no different than the forced payment of unearned premiums that was found unconstitutional in *Hager v. Anderson-Hutchinson Ins. Agency*, discussed in detail above. 1989 U.S. Dist. LEXIS 13614, at *56-59 (S.D. Iowa July 19, 1989) (forced payment of unearned premiums was unconstitutional as “completely contrary to contract law, basic insolvency law and perhaps most importantly contrary to the agents’ prior experiences and expectations”).

Consequently, the Forced Payover/Setoff Provisions constitute an unconstitutional taking under the Fifth and Fourteenth Amendments to the United States Constitution, as well as the New York Constitution. Under established principles of statutory construction, New York’s insurance laws should not be construed to yield such an unconstitutional result. *See, e.g., In re Vanderbilt’s Estate*, 281 N.Y. 297, 313 (1939) (“A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.”) (citation omitted); *People ex rel. Brown v. McNeill*, 35 Misc. 2d 53, 578-58 (Dutchess Cnty. 1962) (stating that court should construe statute to avoid the conclusion that it is unconstitutional, and that statute should be construed as to be freed from constitutional doubts).

D. The Forced Payover/Setoff Provisions Conflict with Federal Bankruptcy Law and Interfere with Claims Administration in the Jefferson County Bankruptcy Proceeding _____

The Plan’s Forced Payover/Setoff Provisions also purport to require Jefferson County (in addition to the JeffCo Indenture Trustee) to make payments to FGIC in accordance with the Plan. Those provisions, however, ignore that, as a Chapter 9 debtor, Jefferson County is

subject to the Bankruptcy Code, which does not permit it to make the payments contemplated by the Rehabilitator's Plan.

Section 509 of the Bankruptcy Code, which governs Jefferson County's Chapter 9 proceeding, creates a distinct right of subrogation for co-debtors such as FGIC – entirely apart from principles of equitable subrogation – and subordinates FGIC's subrogation claims to payment in full of the JeffCo Holders' claims. It provides, in relevant part:

(a) Except as provided in subsection (b) or (c) of this section, an entity that is liable with the debtor on . . . a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

[. . .]

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on . . . such creditor's claim, until such creditor's claim is paid in full

11 U.S.C. § 509(a), (c).¹³

In *In re Mulberry Chesterton Inn*, a guarantor of revenue bonds asserted a subrogation claim even though it had not satisfied its obligations in full. See *Days Inn of Am., Inc. v. Citizens and S. Trust Co. (In re Mulberry Chesterton Inn, L.P.)*, Adv. No. 91-4020, 1992 WL 489775, at *4 (Bankr. S.D. Ga. Apr. 1, 1992). Because Section 509(c) of the Bankruptcy Code creates a right of subrogation separate from the remedy of equitable subrogation, the

¹³ Section 502(e)(1)(C) of the Bankruptcy Code further provides that:

[T]he court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that . . . such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

11 U.S.C. § 502(e)-(e)(1)(C). The effect of this provision is to prevent a party asserting subrogation rights under section 509 of the Bankruptcy Code from asserting any alternate claim for reimbursement, such that a subrogated party's claim will always be subordinated pursuant to Section 509(c). Put differently, FGIC will have no claim with respect to the JeffCo Holders' warrants in Jefferson County's bankruptcy except a claim that would be subordinated under Section 509(c).

bankruptcy court permitted the guarantor to be subrogated “to the extent of” the partial payments it had made. *Id.* at *8-9. It emphasized however, that the subrogation claim was subordinated to the underlying creditor claim under Section 509(c) of the Bankruptcy Code. As such, any remaining claim of a creditor had to be satisfied in full before the guarantor could receive a distribution. *Id.* at *10.

FGIC is free to assert (and in fact has asserted) claims against Jefferson County in its Chapter 9 proceeding. By its terms, Section 509(c) of the Bankruptcy Code subordinates FGIC’s purported claims to the claims of the JeffCo Holders for principal and interest on their warrants. Accordingly, until the JeffCo Sewer Warrants have been paid in full, the Bankruptcy Code does not allow Jefferson County to pay any portion of the distribution on the warrant claims to FGIC. The Supremacy Clause of the United States Constitution, in turn, bars this Court from enforcing a different result in this proceeding. *See* U.S. Constitution Art. VI cl. 2; *Contemporary Indus. Corp. v. Frost*, 564 F.3d 981, 988 (8th Cir. 2009) (“Pursuant to the Supremacy Clause of the Constitution, federal law trumps state law ‘where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”) (quoting *North Dakota v. U.S. Dep’t of the Army (In re Operation of the Mo. River Sys. Litig.)*, 418 F.3d 915, 919 (8th Cir. 2005)).

While the Rehabilitator may attempt to argue that the McCarran-Ferguson Act preempts the claims allowance process and Section 509(c) of the Bankruptcy Code, that argument would be misguided. The McCarran-Ferguson Act, 15 U.S.C. § 1012, which generally provides that state law regulating insurance company preempts federal law, does not generally apply where, among other things, the federal law (here, Section 509(c) of the Bankruptcy Code) merely impairs the value of the insurer’s assets. *See In re First Assured Warranty Corp.*, 383

B.R. 502, 541 n.38 (Bankr. D. Colo. 2007) (for purposes of McCarran-Ferguson, “[t]he fact that a federal action may have a financial impact on the assets of the insolvent insurer’s estate does not necessarily indicate a state’s liquidation proceeding is ‘impaired.’”).¹⁴ And as the court in *First Assured* recognized, “[t]he McCarran-Ferguson Act is not so broad as to allow state insurance liquidators to strip non-insurance entities of their protections under the Bankruptcy Code” 383 B.R. at 542. But that is precisely what the Plan’s Forced Payover/Setoff Provisions would accomplish. Under the Bankruptcy Code, Jefferson County is not permitted to pay any amounts to FGIC until the JeffCo Holders are paid in full. Accordingly, the Plan cannot lawfully require Jefferson County to do otherwise.

Nor can the Rehabilitator circumvent this result by requiring the JeffCo Indenture Trustee (as opposed to Jefferson County) to make such payments or by otherwise creating a non-existent right of setoff to accomplish the same result. It has been well-settled for more than a century that the law does not permit one to do something indirectly which the law prohibits one from doing directly. *See e.g., Bigelow v. Provost*, 5 Hill 566 (N.Y. Sup. Ct. 1843) (“[W]here the law forbids a thing to be directly done, it shall not be done indirectly.”); *Employers Claim Control Serv. Corp. v. Workmen’s Comp. Bd.*, 35 N.Y.2d 492, 497 (1974) (affirming application of rule preventing representation of self-insurers by controlled subsidiaries or affiliates, as “[o]therwise that would be permitted to be done indirectly what is forbidden to be done directly”).

¹⁴ *See also In re Agway, Inc.*, 357 B.R. 195, 203 (Bankr. N.D.N.Y. 2006) (noting the absence of “a single case in which a bankruptcy court’s jurisdiction over a claim filed by a creditor against the bankruptcy estate has been precluded or reverse-preempted by a state insurance statute pursuant to the McCarran-Ferguson Act.”); *Koken v. Reliance Grp. Holdings, Inc. (In re Reliance Grp. Holdings, Inc.)*, 273 B.R. 374, 402 (Bankr. E.D. Pa. 2002) (“While the outcome of this matter may affect the amount of assets in the [insurer’s liquidation] proceeding [and in the Debtor’s bankruptcy cases], it will not directly impact the state’s regulation of insurers or the state’s ability to establish rules for the orderly rehabilitation or liquidation of insolvent insurers.”); *Ochs v. Simon (In re First Cent. Fin. Corp.)*, 269 B.R. 502, 519-20 (Bankr. E.D.N.Y. 2001) (bankruptcy trustee’s actions against directors and officers not preempted even though actions would impair insurance liquidator’s ability to collect on insurance proceeds).

III. The Plan Unlawfully Seeks to Relieve FGIC of its Policy Obligations Where the Underlying Insured Obligation is Released

Section 4.10 of the Plan provides that “[a] Permitted Policy Claim shall not include any . . . (v) payment obligation of FGIC or underlying obligation or risk of loss insured by FGIC that has, in either case, been released, satisfied, terminated, commuted, novated or otherwise extinguished (pursuant to the Plan or otherwise).” (Plan § 4.10.) While by no means a model of clarity, this provision would appear to disallow any claim of a Policyholder where the underlying insured obligations are released or discharged. If that is the case, the provision plainly violates New York law, as a New York Supreme Court held earlier this year. *See Oppenheimer AMT-Free Muns. v. ACA Fin. Guar. Corp.*, No. 653290/11, 2012 WL 3322682 (N.Y. Cnty. July 23, 2012).

In *Oppenheimer*, ACA, a monoline insurer like FGIC, denied a policy claim asserted by the holder of a municipal bond issued by Connector 2000 Association, a public benefits corporation that, like Jefferson County, was a debtor under Chapter 9 of the Bankruptcy Code. *Id.* at *2. ACA contended that the cancellation of the insured bonds and their exchange for new bonds in connection with Connector 2000’s Chapter 9 plan relieved ACA of its insurance obligations. *Id.* at *7-8. The court flatly rejected this contention, holding that, as a matter of New York law, the restructuring of Connector 2000’s obligations under the insured bonds could not relieve ACA’s obligations under its insurance policies and “did not work to erase Oppenheimer’s right to collect from ACA.” *Id.* at *14. In its conclusion, the court aptly noted that “[t]he viability of the bond market depends on the preservation of the protection granted to bondholders” and that “[b]ankruptcy is not intended to provide a means for an insurer to escape liability simply because of the financial trouble of an insured.” *Id.*

Here, because Jefferson County is a debtor under Chapter 9 of the Bankruptcy Code, it is very likely that its insured obligations under the JeffCo Sewer Warrants will be released, terminated or otherwise extinguished or restructured as a consequence of the bankruptcy case. To the extent Section 4.10 of the Plan could be read to relieve FGIC from its obligations under the JeffCo Policies as a result, the Plan violates New York law as set forth in *Oppenheimer* and therefore exceeds the Rehabilitator's authority. See *In re Frontier Ins. Co.*, 36 Misc. 3d 529, 541-42 (Albany Cnty. 2012) ("While the Court recognizes that deferential standard of review applicable to the Rehabilitator's actions, a plan of rehabilitation cannot be approved where it is inconsistent with law.").

* * *

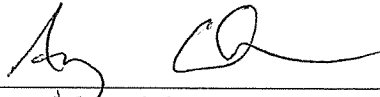
Accordingly, the Plan should not be approved unless it is amended to remove the Control Rights Impairments, the Forced Payover/Setoff provisions and that portion of Section 4.10 that would relieve FGIC of its obligations under its insurance policies if the underlying insured obligation is released, satisfied, terminated, commuted, novated or otherwise extinguished.

CONCLUSION

For the foregoing reasons, the JeffCo Holders respectfully request that the Court deny approval of the Plan unless the Plan is revised in the respects discussed above.

November 19, 2012

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By:  _____

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*Counsel to Certain Jefferson County
Warrantholders*

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

	x
	:
	: Index No. 401265/2012
	:
In the Matter of the Rehabilitation of	:
FINANCIAL GUARANTY INSURANCE	: Doris Ling-Cohan, J.
COMPANY.	:
	: Affirmation of Amy Caton
	: In Support of Objection to
	: Plan Of Rehabilitation
	:
	: Motion Sequence No. 4
	x

AMY CATON, pursuant to CPLR § 2106, and under the penalty of perjury, hereby affirms as follows:

1. I am an attorney duly admitted to practice law before this Court and the courts of the State of New York. I am a member of Kramer Levin Naftalis & Frankel LLP, whose offices are located at 1177 Avenue of the Americas, New York, New York 10036. I respectfully submit this affirmation in support of the Objection of Certain Jefferson County Warrantholders to Plan of Rehabilitation filed contemporaneously herewith (the “Plan Objection”).¹

2. The attached documents are true and correct copies of the following:

<u>Exhibit</u>	<u>Description</u>
A	JeffCo Indenture, dated February 1, 1997, with AmSouth Bank of Alabama, as indenture trustee.

¹ Capitalized terms used herein have the meanings set forth in the Plan Objection.

B. A representative example of one of FGIC's JeffCo Policies.

Date: New York, New York
November 19, 2012

A handwritten signature in black ink, appearing to read "Amy Eaton", written over a horizontal line.

AMY EATON
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-7772
acaton@kramerlevin.com

EXHIBIT A

9 7 0 3 / 8 4 1 9

TRUST INDENTURE

between

JEFFERSON COUNTY, ALABAMA

and

AMSOUTH BANK OF ALABAMA

Dated as of February 1, 1997

Relating to

JEFFERSON COUNTY, ALABAMA

\$211,040,000

Sewer Revenue Refunding Warrants
Series 1997-A

\$48,020,000

Taxable Sewer Revenue Refunding Warrants
Series 1997-B

\$52,880,000

Taxable Sewer Revenue Refunding Warrants
Series 1997-C

This instrument was
MAKED
1200 AmSouth / Natl
1901 Sixth Avenue
Birmingham, Alabama 35202

TABLE OF CONTENTS*
to
TRUST INDENTURE
between
JEFFERSON COUNTY, ALABAMA
and
AMSOUTH BANK OF ALABAMA

	<u>Page</u>
Parties	1
Recitals	1

ARTICLE I
DEFINITIONS AND USE OF PHRASES

Section 1.1	Definitions	1
Section 1.2	Use of Phrases	14

ARTICLE II
GRANTING CLAUSES

Section 2.1	Granting Clauses	14
Section 2.2	Parity Securities Not General Obligations	15

ARTICLE III
ISSUANCE OF PARITY SECURITIES IN SERIES

Section 3.1	Issuance of Parity Securities in Series	16
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*This Table of Contents appears here for convenience only and should not be considered a part of this Trust Indenture.

Section 3.2	Dates and Places of Payment of Parity Securities	16
Section 3.3	Form of Parity Securities, Etc	17

ARTICLE IV

**EXECUTION AND AUTHENTICATION
OF THE PARITY SECURITIES**

Section 4.1	Execution of Parity Securities	17
Section 4.2	Authentication Certificate of the Paying Agent	17
Section 4.3	Replacement of Mutilated, Lost, Stolen or Destroyed Parity Securities	18

ARTICLE V

**REGISTRATION, TRANSFERS AND EXCHANGES
OF THE PARITY SECURITIES**

Section 5.1	Book-Entry Procedures Applicable to Series 1997Warrants	18
Section 5.2	Registration and Transfer of Parity Securities	20
Section 5.3	Exchange of Parity Securities	21
Section 5.4	Persons Deemed Owners of Parity Securities	22
Section 5.5	Expenses of Transfer and Exchange	22

ARTICLE VI

**GENERAL PROVISIONS RESPECTING
REDEMPTION OF PARITY SECURITIES**

Section 6.1	Manner of Effecting Redemption of Parity Securities	22
Section 6.2	Presentation of Parity Securities for Redemption; Parity Securities Called for Redemption to Cease to Bear Interest	24
Section 6.3	Pro Rata Redemption of Parity Securities of Different Series Not Required	24

ARTICLE VII

THE SERIES 1997-A WARRANTS

Section 7.1	Authorization and Description of the Series 1997-A Warrants and Places of Payment	25
Section 7.2	Optional Redemption of Series 1997-A Warrants	25
Section 7.3	Scheduled Mandatory Redemption of Series 1997-A Warrants	26
Section 7.4	Purchase of Series 1997-A Warrants for Retirement	27
Section 7.5	Special Provisions Respecting Partial Redemption of Series 1997-A Warrants	28
Section 7.6	Form of Series 1997-A Warrants	28
Section 7.7	Execution and Delivery of Series 1997-A Warrants	34
Section 7.8	Application of Proceeds from the Sale of Series 1997-A Warrants	35

ARTICLE VIII

THE SERIES 1997-B WARRANTS

Section 8.1	Authorization and Description of the Series 1997-B Warrants and Places of Payment	35
Section 8.2	Purchase of Series 1997-B Warrants for Retirement	36
Section 8.3	Form of Series 1997-B Warrants	36
Section 8.4	Execution and Delivery of Series 1997-B Warrants	41
Section 8.5	Application of Proceeds from the Sale of Series 1997-B Warrants	41

ARTICLE IX

THE SERIES 1997-C WARRANTS

Section 9.1	Authorization and Description of the Series 1997-C Warrants and Places of Payment	42
Section 9.2	Optional Redemption of Series 1997-C Warrants	42
Section 9.3	Scheduled Mandatory Redemption of Series 1997-C Warrants	43
Section 9.4	Purchase of Series 1997-C Warrants for Retirement	43

Section 9.5	Special Provisions Respecting Partial Redemption of Series 1997-C Warrants	44
Section 9.6	Form of Series 1997-C Warrants	44
Section 9.7	Execution and Delivery of Series 1997-C Warrants	49

ARTICLE X

ADDITIONAL PARITY SECURITIES

Section 10.1	Additional Parity Securities—In General	50
Section 10.2	Conditions Precedent to Issuance of Additional Parity Securities	50
Section 10.3	Subordinate Indebtedness Permitted	55
Section 10.4	Related Obligations	55

ARTICLE XI

**APPLICATION OF SYSTEM REVENUES
AND ESTABLISHMENT OF SPECIAL FUNDS**

Section 11.1	Revenue Account	56
Section 11.2	Debt Service Fund	57
Section 11.3	Reserve Fund	60
Section 11.4	Rate Stabilization Fund	62
Section 11.5	Depreciation Fund	62
Section 11.6	Surplus Revenues	63
Section 11.7	Redemption Fund	63
Section 11.8	Investment of Indenture Fund Moneys	63
Section 11.9	Commingling of Moneys in Separate Indenture Funds	64
Section 11.10	Valuation of Indenture Funds	65
Section 11.11	Reserve Fund Surety Requirements	65
Section 11.12	Issuance Cost Account	68

ARTICLE XII

**PARTICULAR COVENANTS AND
AGREEMENTS OF THE COUNTY;
RELEASE OF PORTION OF THE SYSTEM**

Section 12.1	Budget for the System	68
Section 12.2	Maintenance of Books and Records; Annual Audits	69
Section 12.3	Restrictions as to Free Service	69
Section 12.4	Discontinuance of Service on Non-Payment of Bills and Charges	70
Section 12.5	Maintenance of Rates	70
Section 12.6	Continued Operation of the System; Transfer of the System	71
Section 12.7	Warranties and Representations Concerning Title to the System	72
Section 12.8	System to be Kept Free of Prior Liens	73
Section 12.9	Priority of Pledge	73
Section 12.10	Sale or Disposition of Personal Property	73
Section 12.11	Sale or Disposition of Portions of the System	74
Section 12.12	Insurance with Respect to the System	74
Section 12.13	Damage and Destruction Provisions	75
Section 12.14	Fidelity Bonds	77
Section 12.15	Tax Covenants	77
Section 12.16	Compliance with Requirements of Law	77
Section 12.17	Levy of Sewer Tax	78
Section 12.18	Payment of Parity Securities	78

ARTICLE XIII

**EVENTS OF DEFAULT AND REMEDIES
OF TRUSTEE AND PARITY SECURITYHOLDERS**

Section 13.1	Events of Default Defined	78
Section 13.2	Remedies on Default	79
Section 13.3	Application of Moneys Collected	80
Section 13.4	Parity Securityholders Need Not be Joined in Actions	81
Section 13.5	Rights of the Parity Securityholders to Direct Proceed- ings	82
Section 13.6	Limitation on Suits by Parity Securityholders	82
Section 13.7	Remedies Cumulative	83

Section 13.8	Delay or Omission Not a Waiver	83
Section 13.9	Remedies Subject to Applicable Law	83
Section 13.10	Waivers of Past Defaults Under the Indenture	83

ARTICLE XIV

THE TRUSTEE

Section 14.1	Certain Duties and Responsibilities	84
Section 14.2	Notice of Defaults	85
Section 14.3	Certain Rights of the Trustee	85
Section 14.4	Trustee not Responsible for Certain Matters Respecting Parity Securities or Security Therefor	86
Section 14.5	Trustee May Hold Parity Securities	86
Section 14.6	Right of the Trustee to Perform Certain Acts on Failure of the County	86
Section 14.7	Compensation of the Trustee; Lien Therefor	87
Section 14.8	Resignation and Removal of the Trustee; Appointment of Successor	87
Section 14.9	Acceptance of Appointment by Successor Trustee	88
Section 14.10	Merger or Consolidation of the Trustee	88
Section 14.11	Paying Agents	89

ARTICLE XV

**AMENDMENTS AND SUPPLEMENTS
TO THE INDENTURE**

Section 15.1	Supplemental Indentures Without Consent of Parity Secur- ityholders	90
Section 15.2	Supplemental Indentures With Consent of Parity Security- holders	91
Section 15.3	Discretion of the Trustee	92
Section 15.4	Effect of Supplemental Indentures	92

ARTICLE XVI

PAYMENT AND CANCELLATION OF
THE PARITY SECURITIES
AND SATISFACTION OF THE INDENTURE

Section 16.1	Satisfaction of Indenture	93
Section 16.2	Destruction of Surrendered Parity Securities	94
Section 16.3	Release of Funds Upon Payment of Parity Securities	95

ARTICLE XVII

PROVISIONS CONCERNING THE
INSURANCE POLICY

Section 17.1	Payments Under the Insurance Policy	95
Section 17.2	Information to be Provided to the Bond Insurer	96
Section 17.3	Miscellaneous Special Provisions Respecting the Bond Insurer and the Bond Insurance Policy	97

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

Section 18.1	Disclaimer of General Liability	99
Section 18.2	Counterparts	99
Section 18.3	Notices	99
Section 18.4	Retention of Moneys for Payment of Parity Securities	100
Section 18.5	Payments Not Due on Business Day	100
Section 18.6	Form of Requests, etc., by Parity Securityholders	100
Section 18.7	Notice to Rating Agencies	100
Section 18.8	Severability	101
Section 18.9	Article and Section Captions	101
Section 18.10	Indenture Governed by Alabama Law	101
Section 18.11	Binding Effect	101

Testimonium	102
Signatures	102
Acknowledgments	103

TRUST INDENTURE between JEFFERSON COUNTY, ALABAMA, a political subdivision of the State of Alabama, party of the first part (herein called the "County"), and AMSOUTH BANK OF ALABAMA, an Alabama banking corporation having its principal office in the City of Birmingham, Alabama, party of the second part (herein called the "Trustee");

RECITALS

The party of the first part makes the following recitals of facts as the basis for the undertaking following: it is a political subdivision of the State of Alabama; by proper official action it has duly authorized the issuance of the Series 1997 Warrants and Series 1997-C Warrants hereinafter referred to; and to secure payment of the principal of and the interest and premium (if any) on said Series 1997 Warrants and Series 1997-C Warrants and all additional securities that may be issued hereunder, it has by proper official action duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, THIS INDENTURE

WITNESSETH:

For the aforesaid purpose and in consideration of the respective agreements herein contained, it is hereby agreed between the parties signatory hereto and the holders of all Parity Securities issued hereunder (the holders of the said Parity Securities evidencing their consent hereto by their acceptance of the said Parity Securities and the parties signatory hereto evidencing their consent hereto by their execution hereof), each with each of the others, as follows (provided, that in the performance of any of the agreements of the party of the first part herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt on its part but shall be payable solely from the sources of payment hereinafter specified):

ARTICLE I

DEFINITIONS AND USE OF PHRASES

Section 1.1 **Definitions.** Unless the context clearly indicates a different meaning, the following words and phrases, as used herein, shall have the following respective meanings:

"Act" means the statutes codified as Chapter 28 of Title 11 of the Code of Alabama 1975, as amended and supplemented and at the time in force and effect.

"Additional Parity Securities" means those of the Parity Securities (whether consisting of warrants, bonds, notes or other forms of indebtedness) issued subsequent to the issuance of the Series 1997 Warrants and Series 1997-C Warrants pursuant to the provisions of Article X hereof.

"Additional 1997 Parity Securities" means a series of Parity Securities to be issued subsequent to the issuance of the Series 1997 Warrants and Series 1997-C Warrants (but no later than April 30, 1997) in a principal amount that shall not exceed \$350,000,000.

"Authority" means the Alabama Water Pollution Control Authority, an Alabama public corporation.

"Authority Trustee Prime Rate" means the rate of interest established (whether or not charged) from time to time by Compass Bank in Birmingham, Alabama, as its general reference rate of interest, after taking into account such factors as Compass Bank may from time to time deem appropriate in its sole discretion (it being understood, however, that Compass Bank may from time to time make various loans at rates of interest having no relationship to such general reference rate of interest).

"Authorized County Representative" means the person or persons at the time designated as such by written certificate furnished to the Trustee, containing the specimen signature or signatures of such person or persons and signed on behalf of the County by a member of the Governing Body.

"Bond Counsel" means Independent Counsel having nationally recognized standing in matters relating to the tax-exempt nature of interest on obligations issued by or on behalf of states or political subdivisions thereof.

"Bond Insurer" means Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto.

"Business Day" means any day other than (1) a Saturday, Sunday or day upon which commercial banks in Birmingham, Alabama, or New York, New York, are authorized or required to be closed, and (2) for purposes of payments and other actions relating to Parity Securities secured by a Letter of Credit, a day upon which commercial banks in the city in which the office of the Qualified Bank at which demands for payment under such Letter of Credit are to be presented is located are authorized to be closed.

"Code" means the Internal Revenue Code of 1986, as amended, or successor federal tax law at the time in force and effect.

"Counsel" means any attorney duly admitted to practice before the highest court of any state of the United States of America or the District of Columbia (including any full time

employee of the County who is so admitted to practice), it being understood that Counsel may also mean a firm of attorneys whose members are so admitted to practice.

"County" means the party of the first part hereto and, subject to the provisions of Section 12.6 hereof, includes its successors and assigns and any political subdivision of the State of Alabama resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Debt Service Fund" means the Jefferson County Sewer System Debt Service Fund established under Section 11.2 hereof.

"Depreciation Fund" means the Jefferson County Sewer System Funded Depreciation Fund established under Section 11.5 hereof.

"Eligible Bank Obligations" means demand and time deposits (whether or not interest-bearing and whether or not evidenced by certificates of deposit) in banks and acceptances by banks, provided that the banks obligated with respect to such deposits or acceptances, as the case may be, are organized under the laws of the United States of America or any state thereof and have, at the time any moneys are invested in such deposits or acceptances pursuant to the provisions of the Indenture, combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the bank obligated with respect to any such deposit or acceptance shall continuously secure such deposit or acceptance, to the extent not insured by the Federal Deposit Insurance Corporation (or any department, agency or instrumentality of the United States of America that may succeed to the functions of such corporation), by depositing with an independent third party, as collateral security therefor, Federal Obligations having a market value (exclusive of accrued interest) not less than the amount of the deposit or acceptance being secured.

"Eligible Investments" means any of the following: (i) Federal Obligations; (ii) Eligible Bank Obligations; (iii) obligations issued by any state of the United States of America or political subdivision or instrumentality thereof that are fully payable, as to principal, premium (if any) and interest, from payments of principal of or interest on any Federal Obligations held in an irrevocable trust, and that are rated not less favorably than AAA by S&P and Aaa by Moody's; (iv) any share or other investment unit representing a beneficial interest in an investment company or investment trust which is registered under the Investment Company Act of 1940, as from time to time amended (or successor provision of federal law), provided that the investment portfolio of such investment company or investment trust consists exclusively of obligations or securities that would independently qualify as Eligible Investments if directly acquired by the County; (v) to the extent at the time permitted by applicable law, either of the following: (A) any repurchase agreement or collateralized investment agreement issued or guaranteed by any financial institution which has a long-term rating of at least A- by S&P or A3 by Moody's, provided that (1) the obligations or securities subject to any such agreement shall be of the kind described in clauses (i), (ii) and (iii) of this definition, (2) no transfer of moneys shall be made by the County to invest in any such agreement unless the County obtains a

security interest in all obligations and securities covered by such agreement that shall be perfected, prior to or simultaneously with the transfer of such moneys, through the physical delivery of such obligations and securities to the County or to an independent third party, and (3) such obligations and securities shall be supplemented by additional collateral from time to time to the extent required to continuously maintain collateral having an aggregate market value (exclusive of accrued interest) that is not less than the amount invested pursuant to such agreement; or (B) any investment agreement issued or guaranteed by any financial institution which has a long-term rating of at least AA- by S&P or AA3 by Moody's; and (vi) any other investments at the time permitted by applicable law.

"Event of Default" means an "Event of Default" as specified in Section 13.1 hereof.

"Federal Obligations" means (i) any direct general obligations of the United States of America, (ii) obligations the payment of the principal of and the interest on which is unconditionally and irrevocably guaranteed by, or entitled to the full faith and credit of, the United States of America, and (iii) Treasury Receipts.

"Fiscal Year" means any twelve month period ending on September 30 or any other period of twelve consecutive calendar months that may hereafter be adopted as the fiscal year of the County.

"Fitch" means Fitch Investors Service, L.P., and any successor thereto.

"fully paid", "payment in full", or any similar expression with respect to the Indenture Indebtedness, means that the entire Indenture Indebtedness has been paid in full or duly provided for pursuant to Section 16.1 hereof and that the lien of the Indenture has been cancelled, satisfied and discharged in accordance with the provisions of said Section 16.1 hereof.

"Governing Body" means the County Commission of the County or any other governing body of the County, howsoever constituted, that may succeed to its function as such governing body.

"Holder", when used in conjunction with a Parity Security, means the Person in whose name such Parity Security is registered on the registry books of the Trustee pertaining to the Parity Securities.

"Improvement Costs" means the costs of acquiring, constructing, installing and making any System Improvements (including the purchase of all easements, rights of way and land, and all engineering, legal, financing and other expenses incidental to the acquisition, construction, installation and making of such System Improvements).

"Indenture" means this Trust Indenture, as supplemented and amended by any Supplemental Indenture executed by the County and the Trustee in accordance with the applicable provisions of Article XV hereof.

"Indenture Funds" means the Debt Service Fund, the Rate Stabilization Fund, the Depreciation Fund, the Reserve Fund and the Redemption Fund.

"Indenture Indebtedness" means all indebtedness of the County at the time secured by the Indenture, including, without limitation, all principal of and interest and premium (if any) on the Parity Securities, and all reasonable and proper fees, charges and disbursements of the Trustee for services performed under the Indenture.

"Independent Accountant" means a certified public accountant or a firm of certified public accountants that has no continuing employment or business relationship or other connection with the County which, in the opinion of the Trustee, might compromise or interfere with the independent judgment of such accountant or firm of accountants in the performance of any services to be performed hereunder as an Independent Accountant, or the State Examiner of Public Accounts of the State of Alabama or any successor to his duties.

"Independent Counsel" means Counsel having no continuing employment or business relationship or other connection with the County which, in the opinion of the Trustee, might compromise or interfere with the independent judgment of such Counsel in the performance of any services to be performed hereunder as Independent Counsel.

"Independent Engineer" means an engineer or engineering firm licensed to engage in the independent practice of engineering under the laws of the State of Alabama (i) that has no continuing employment or business relationship or other connection with the County which, in the opinion of the Trustee, might compromise or interfere with the independent judgment of such engineer or engineering firm in the performance of any services to be performed hereunder as an Independent Engineer and (ii) that is otherwise acceptable to the Trustee and the Bond Insurer for the purpose to be served hereunder by such Independent Engineer.

"Independent Investment Adviser" means a municipal securities dealer having no continuing employment or business relationship or other connection with the County which, in the opinion of the Trustee, might compromise or interfere with the independent judgment of such securities dealer in the performance of any services to be performed hereunder as Independent Investment Adviser.

"Insurance Policy" means the municipal bond new issue insurance policy issued by the Bond Insurer that guarantees payment of principal of and interest on the Series 1997 Warrants.

"Interest Payment Date" means (i) with respect to the Series 1997 Warrants, August 1, 1997, and each February 1 and August 1 thereafter, (ii) with respect to the Series 1997-C Warrants, August 15, 1997, and each February 15 and August 15 thereafter, and (iii) with respect to any Additional Parity Securities, any date on which interest on such securities is due and payable.

"**Issuance Cost Account**" means the Series 1997 Warrants Issuance Cost Account established under Section 11.12 hereof.

"**Issuance Costs**" means the reasonable costs and expenses of issuing and selling the Series 1997 Warrants and Series 1997-C Warrants, including, without limitation, the fees and expenses of Bond Counsel to the County, the acceptance fee of the Trustee, the fees of any Rating Agency rating the Series 1997 Warrants, bond insurance premiums, accounting fees, financial advisory fees, underwriters' commissions and discounts, the costs of printing the Official Statement for the Series 1997 Warrants, and other usual and customary expenses.

"**Letter of Credit**" means an irrevocable and unconditional letter of credit, a standby purchase agreement, a line of credit or any other similar credit arrangement issued by a Qualified Bank to secure payment of any Parity Securities or to satisfy all or a portion of the Reserve Fund Requirement.

"**Letter of Credit Agreement**" means an agreement between the County and a Qualified Bank pursuant to which the Qualified Bank agrees to issue a Letter of Credit and which sets forth the repayment obligation of the County to the Qualified Bank on account of any payment under the Letter of Credit.

"**Maximum Annual Debt Service**" means the maximum amount payable in a Fiscal Year as principal of and interest on the Parity Securities then outstanding and any Additional Parity Securities proposed to be issued, subject to the following assumptions and adjustments:

(1) that the principal amount of any such securities required by the terms thereof to be redeemed or prepaid during any Fiscal Year shall, for purposes of this definition, be considered as maturing in the Fiscal Year during which such redemption or prepayment is required and not in the Fiscal Year in which their stated maturity or due date occurs;

(2) for purposes of determining the amounts of principal and interest due in any Fiscal Year on any Parity Securities that constitute Tender Indebtedness, the options or obligations of the owners of such Parity Securities to tender the same for purchase or payment prior to their stated maturity or maturities shall be treated as a principal maturity occurring on the first date on which owners of such Parity Securities may or are required to tender such Parity Securities for purchase or payment, except that any such option or obligation to tender Parity Securities shall be ignored and not treated as a principal maturity, and such Parity Securities shall be deemed to mature in accordance with their stated maturity schedule, if (i) such Parity Securities are rated in one of the two highest long-term rating categories (without reference to gradations such as "plus" or "minus") by at least two Rating Agencies or such Parity Securities are rated in the highest short-term, note or commercial paper rating categories (without reference to gradations such as "plus" or "minus") by at least two Rating Agencies, and (ii)

the obligation, if any, the County may have to the issuer of a Letter of Credit that secures such Parity Securities shall either be subordinated to the obligation of the County on the Parity Securities or be incurred under the conditions and satisfy the tests for the issuance of Additional Parity Securities set forth in the Indenture;

(3) the interest rate on any outstanding or proposed Variable Rate Securities subsequent to the date of calculation shall be assumed to be the lowest of (A) the maximum rate of interest that may be applicable to such Parity Securities, under the provisions thereof, (B) for so long as any hedging agreement that establishes a cap rate for such Parity Securities is in effect, such cap rate, and (C) the highest of (i) the actual interest rate on the date of calculation, or if the Variable Rate Securities in question are not yet outstanding, the initial rate (if established and binding), (ii) if the Variable Rate Securities in question have been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, and (iii) (x) if interest on the Variable Rate Securities in question is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (y) if interest on such Variable Rate Securities is not so excludable, the interest rate on direct U.S. Treasury obligations with comparable maturities plus fifty (50) basis points;

(4) the debt service payable with respect to any Parity Securities for which the County has entered into a Qualified Swap pursuant to which the County has agreed to make payments calculated by reference to a fixed rate of interest shall be calculated as if the Parity Securities bore interest at such fixed rate during the term of such Qualified Swap;

(5) the debt service payable with respect to any Parity Securities for which the County has entered into a Qualified Swap pursuant to which the County has agreed to make payments calculated by reference to variable interest rates shall be calculated as if the Parity Securities in question bore interest, during the term of such Qualified Swap, at a rate equal to the lowest of (A) for so long as any hedging agreement that establishes a cap rate with respect to such Qualified Swap remains in effect, such cap rate, or (B) the highest of (i) the actual rate of such Qualified Swap on the date of calculation, or if such Qualified Swap is not yet in effect, the initial rate (if established and binding), (ii) if the Qualified Swap has been in effect for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, and (iii) (x) if interest on the Variable Rate Securities in question is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (y) if interest on such Variable Rate Securities is not so

excludable, the interest rate on direct U.S. Treasury obligations with comparable maturities plus fifty (50) basis points;

(6) there shall be excluded any principal of or interest on any Parity Securities to the extent there are available and held in escrow or under a trust agreement (i) moneys sufficient to pay such principal or interest, (ii) Permitted Defeasance Obligations which, if the principal thereof and the interest thereon are paid according to their tenor, will produce moneys sufficient to pay such principal of interest, or (iii) both moneys and such Permitted Defeasance Obligations which together will produce funds sufficient to pay such principal or interest; and

(7) the County may assume that all or any portion of outstanding Parity Securities that are subject to optional redemption provisions will be redeemed in one or more installments that are consistent with such provisions and may adjust the expected payment schedule with respect to such Parity Securities to reflect such assumed redemptions.

In any case where, for purposes of determining Maximum Annual Debt Service, a portion of the principal of any Parity Securities is to be excluded, there shall also be excluded interest on the principal so excluded.

"Moody's" means Moody's Investors Service and any successor thereto.

"Net Insurance Proceeds" means the total insurance proceeds recovered by the County and the Trustee on account of any damage to or destruction of the System or any part thereof, less all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such proceeds.

"Net Revenues Available for Debt Service" means, for any period, the difference between (A) the sum of (i) the total amount of System Revenues accrued during such period, and (ii) the amount of interest earned during such period on moneys held in those of the Indenture Funds other than the Rate Stabilization Fund (to the extent that such interest is not taken into account pursuant to the preceding clause (i)) and (B) the total amount of Operating Expenses incurred during such period (determined in accordance with generally accepted accounting principles).

"Operating Expenses" means, for the applicable period or periods, (a) the reasonable and necessary expenses of efficiently and economically administering and operating the System, including, without limitation, the costs of all items of labor, materials, supplies, equipment (other than equipment chargeable to fixed capital account), premiums on insurance policies and fidelity bonds maintained with respect to the System (including casualty, liability and any other types of insurance), fees for engineers, attorneys and accountants (except where such fees are chargeable to fixed capital account) and all other items, except depreciation, amortization, interest and payments made pursuant to Qualified Swaps, that by generally accepted accounting

principles are properly chargeable to expenses of administration and operation and are not characterized as extraordinary items, (b) the expenses of maintaining the System in good repair and in good operating condition, but not including items that by generally accepted accounting principles are properly chargeable to fixed capital account, and (c) the fees and charges of the Trustee. Payments or transfers of Sewer Revenues into the General Fund of the County shall constitute payments of Operating Expenses if and to the extent that the services or benefits for which such payments or transfers are made are such that payments to a Person other than the County for such services or benefits would constitute payments of Operating Expenses.

"**outstanding**", when used with reference to any of the Parity Securities, means, at the date as of which the amount of such Parity Securities outstanding is to be determined, all such Parity Securities which have been theretofore authenticated and delivered by the Trustee under the Indenture, except (i) those of such Parity Securities purchased for retirement which have been delivered to and cancelled by the Trustee, (ii) those of such Parity Securities cancelled by the Trustee because of payment at or after their respective maturities or redemption prior to their respective maturities, (iii) those of such Parity Securities for the payment or redemption of which provision shall have been made with the Trustee as provided in Section 16.1 hereof, and (iv) those of such Parity Securities in exchange for which, or in lieu of which, other Parity Securities have been authenticated and delivered hereunder. In determining whether the Holders of a requisite aggregate principal amount of outstanding Parity Securities have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of the Indenture, Parity Securities which are owned by the County shall be disregarded and deemed not to be outstanding hereunder for the purpose of any such determination.

"**Parity Securities**" means the Series 1997 Warrants, the Series 1997-C Warrants and any Additional Parity Securities at the time outstanding.

"**Parity Securityholder**" means the Holder of a Parity Security.

"**Paying Agent**" means (i) with respect to the Series 1997 Warrants and the Series 1997-C Warrants, the Trustee, and (ii) with respect to any series of Additional Parity Securities, the paying agent designated in the Supplemental Indenture providing for the issuance of such Additional Parity Securities.

"**Permitted Defeasance Obligations**" means any combination of (i) Federal Obligations and (ii) obligations issued by any state of the United States of America or political subdivision or instrumentality thereof that bear interest exempt from federal income taxation, that are fully payable, as to principal, premium (if any) and interest, from payments of principal of or interest on any Federal Obligations held in an irrevocable trust, and that are rated not less favorably than AAA by S&P or Aaa by Moody's.

"**Permitted Encumbrances**" means, as of any particular time, any of the following: (i) inchoate mechanic's, materialmen's, supplier's, vendor's and other similar liens; (ii) liens, encumbrances or pledges subordinate to the lien or pledge imposed hereby; and (iii) such other

minor defects, irregularities, encumbrances and clouds on title as customarily exist with respect to properties of the size and character as those comprising the System and that do not in the aggregate materially impair the use of such properties in the operation of the System.

"Person" means any natural person, corporation, partnership, trust, joint venture, government or governmental body, political subdivision or other legal entity as in the context may be possible or appropriate.

"Pledged Revenues" means those of the System Revenues that are pledged, pursuant to Section 2.1 hereof, to secure the payment of the Parity Securities.

"Prior Years' Surplus" means, with respect to any particular Fiscal Year, the aggregate amount on deposit in the Rate Stabilization Fund and the Depreciation Fund on the first day of such Fiscal Year.

"Qualified Bank" means a state or national bank or trust company, or a foreign bank with a domestic branch or agency, which is organized and in good standing under the laws of the United States or any state thereof, which has a capital and surplus of \$50,000,000 or more and which has a short-term debt rating in the highest category from at least two Rating Agencies.

"Qualified Swap" means, with respect to a series of Parity Securities or any portion thereof, any financial arrangement (i) that is entered into by the County with an entity that is a Qualified Swap Provider at the time of the execution and delivery of the documents governing such arrangement; (ii) that provides (a) that the County shall pay to such entity an amount based on the interest accruing at a fixed rate on a notional amount equal to all or a portion of the principal amount of the outstanding Parity Securities of such series, and that such entity shall pay to the County an amount based on the interest accruing on the same notional amount, at either a variable rate of interest or a fixed rate of interest computed according to a formula set forth in such arrangement (which need not be the same as the actual rate of interest borne by the Parity Securities), or that one shall pay to the other any net amount due under such arrangement, or (b) that the County shall pay to such entity an amount based on the interest accruing on a notional amount equal to all or a portion of the principal amount of the outstanding Parity Securities of such series at a variable rate of interest as set forth in the arrangement and that such entity shall pay to the County an amount based on interest accruing on the same notional amount at an agreed fixed rate, or that one shall pay to the other any net amount due under such arrangement; and (iii) which has been designated in writing to the Trustee by the County as a Qualified Swap with respect to any of the Parity Securities.

"Qualified Swap Provider" means an entity whose senior long term debt obligations, other senior unsecured long-term obligations or claims paying ability, or whose payment obligations under a Qualified Swap are guaranteed by an entity whose senior long-term debt obligations, other senior unsecured long-term obligations or claims paying ability, are rated (at

the time the subject Qualified Swap is entered into) at least A- by S&P and at least A3 by Moody's.

"**Rate Stabilization Fund**" means the Jefferson County Sewer System Rate Stabilization Fund established under Section 11.4 hereof.

"**Rate Stabilization Fund Requirement**" means, as of the date of any determination thereof, seventy-five percent (75%) of the Maximum Annual Debt Service on the then outstanding Parity Securities.

"**Rating Agency**" means Moody's, S&P, Fitch or any other nationally recognized securities rating agency.

"**Record Date**" means, with respect to any Interest Payment Date, the fifteenth day of the month immediately preceding such Interest Payment Date.

"**Redemption Fund**" means the Jefferson County Sewer System Redemption Fund established under Section 11.6 hereof.

"**Reserve Fund**" means the Jefferson County Sewer System Debt Service Reserve Fund established under Section 11.3 hereof.

"**Reserve Fund Requirement**" means, as of the date of any determination thereof, the lesser of (a) 125% of the average annual debt service on all Parity Securities at the time outstanding and secured by the Reserve Fund, (b) the maximum annual debt service on all Parity Securities at the time outstanding and secured by the Reserve Fund, or (c) an amount equal to the aggregate of 10% of the original principal amount (or, in the case of any series of Parity Securities sold with original issue discount in an amount greater than 2% of its original principal amount, the issue price) of each series of Parity Securities at the time outstanding and secured by the Reserve Fund. Any calculation of average annual debt service or maximum annual debt service for the purpose of determining the applicable Reserve Fund Requirement shall be made in accordance with the requirements and limitations imposed by the provisions of the Code and the regulations promulgated thereunder that pertain to reasonably required reserve or replacement funds.

"**Resolution**" means a resolution duly adopted by the Governing Body.

"**Revenue Account**" means the Jefferson County Sewer System Revenue Account established under Section 11.1 hereof.

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

"SRF Warrant" means the County's Sewer Revenue Warrant dated August 31, 1992, that was issued to the Alabama Water Pollution Control Authority, which warrant was issued originally in the principal amount of \$58,340,000 and is now outstanding in the principal amount of \$52,880,000.

"Series 1992 Warrants" means the County's Sewer Revenue Warrants, Series 1992, which warrants were originally issued in the aggregate principal amount of \$53,880,000 and are now outstanding in the aggregate principal amount of \$50,780,000.

"Series 1993 Warrants" means the County's Sewer Revenue Warrants, Series 1993, which warrants were originally issued in the aggregate principal amount of \$46,005,000 and are now outstanding in the aggregate principal amount of \$41,800,000.

"Series 1995-A Warrants" means the County's Sewer Revenue Warrants, Series 1995-A, originally issued and now outstanding in the aggregate principal amount of \$130,000,000.

"Series 1997 Warrants" means the Series 1997-A Warrants and the Series 1997-B Warrants.

"Series 1997-A Warrants" means those certain Sewer Revenue Refunding Warrants, Series 1997-A, authorized to be issued pursuant to Article VII hereof in an aggregate principal amount of \$211,040,000.

"Series 1997-B Warrants" means those certain Taxable Sewer Revenue Refunding Warrants, Series 1997-B, authorized to be issued pursuant to Article VIII hereof in an aggregate principal amount of \$48,020,000.

"Series 1997-C Warrants" means those certain Taxable Sewer Revenue Refunding Warrants, Series 1997-C, authorized to be issued pursuant to Article IX hereof in an aggregate principal amount of \$52,880,000.

"Sewer Tax" means that certain ad valorem tax levied by the County on an annual basis for the benefit of the System pursuant to Act No. 716 of the 1900-01 Session of the General Assembly of Alabama.

"Supplemental Indenture" means an agreement supplementing or amending the Indenture.

"System" means the entire sanitary sewer system owned by the County and all additions thereto and replacements thereof, consisting of mains, laterals, collectors, transmission mains, outfalls, pumping stations, sewage disposal plants, sewage treatment plants, and all properties, rights, easements and franchises appurtenant thereto, whether any of the said properties are now owned by the County or may be hereafter acquired by it.

"System Improvements" means (i) any capital improvements, extensions or additions to the System, (ii) any other capital improvements undertaken by the County as a consequence of its ownership and operation of the System, or (iii) any land or interest therein acquired as an addition to the System or as a consequence of the County's ownership and operation of the System.

"System Revenues" means the revenues derived from the Sewer Tax and all revenues, receipts, income and other moneys hereafter received by or on behalf of the County from whatever source derived from the operation of the System, including, without limitation, the fees, deposits and charges paid by users of the System and interest earnings on the Indenture Funds (other than the Rate Stabilization Fund) and any other funds held by the County or its agents that are attributable to or traceable from moneys derived from the operation of the System, but excluding, however, any federal or state grants to the County in respect of the System and any income derived from such grants.

"Tender Indebtedness" means any Parity Securities that are payable, at the option of the holder thereof, prior to their stated maturity or due date, or that the County (or an agent thereof) is required, at the option of such holder, to purchase prior to their stated maturity or due date.

"Treasury Receipts" means custodial receipts evidencing ownership in future principal or interest payments, or both, with respect to United States Treasury obligations that have been deposited with a custodian pursuant to a custody agreement which provides for the United States Treasury obligations underlying such custodial receipts to be held in a separate account and for all payments of principal and interest received by such custodian with respect to such underlying obligations to be immediately paid to the holders of such custodial receipts in accordance with their respective ownership interests in such underlying obligations, provided that (i) the custodian issuing such custodial receipts shall be a bank that is acceptable to the Trustee, that is organized under the laws of the United States of America or any state thereof, and that, at the time of the issuance of such custodial receipts, shall have capital, surplus and undivided profits in excess of \$100,000,000 and (ii) the custody agreement pursuant to which such custodial receipts are issued shall be acceptable to Bond Counsel.

"Trust Estate" means all properties, moneys, rights and interests that were granted, conveyed, assigned, transferred and pledged to and with the Trustee in Section 2.1 hereof or that are in any way subject to the lien of the Indenture.

"Trustee" means the party of the second part hereto and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Variable Rate Security" means any Parity Security that bears interest at a rate that is subject to change prior to the maturity of such security to one or more other interest rates that cannot be determined in advance.

Section 1.2 Use of Phrases. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to the Indenture as an entirety and not solely to the particular portion thereof in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders. Any percentage or fractional amount of all the Parity Securities or of the Parity Securities of any series, specified herein for any purpose, is to be figured on the aggregate principal amount of all the Parity Securities or of the Parity Securities of such series, as the case may be, then outstanding.

ARTICLE II

GRANTING CLAUSES

Section 2.1 Granting Clauses. In order to secure the payment of the principal of and the interest and premium (if any) on the Parity Securities and the performance and observance of the covenants and conditions herein and therein contained for the benefit of the Parity Securityholders, and in consideration of (i) the purchase and acceptance of the Parity Securities by the Holders thereof, and (ii) the acceptance by the Trustee of the trusts herein provided, the County does hereby grant, bargain, sell and convey, assign, transfer and pledge to and with the Trustee the following described properties, interests and rights of the County, whether the same are now owned by it or may be hereafter acquired:

I

The System Revenues (other than revenues derived from the Sewer Tax and any other tax revenues that constitute System Revenues) that remain after the payment of Operating Expenses, subject, however, to the right of the County to receive and use any or all of such revenues that are deemed "surplus revenues" under Section 11.6 hereof after all prior and current obligations of the County hereunder have been satisfied to the extent required to be satisfied from the System Revenues;

II

All moneys from whatever source derived that are required by the Indenture to be deposited from time to time in the Debt Service Fund and the Reserve Fund, together with any investments and reinvestments of such moneys and the income or proceeds thereof; provided that the pledge and assignment herein made with respect to the Reserve Fund shall be only for the benefit and security of the Holders of Parity Securities of those particular series that are secured by the Reserve Fund and, in particular, shall not be for the benefit and security of the Holders of the Series 1997-C Warrants; and

III

Any and all moneys, rights and properties of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with, the Trustee by the County or anyone on its part as additional security for the payment of all or any specified series of the Parity Securities, or which pursuant to any of the provisions hereof, may come into the possession or control of the Trustee as such additional security; and the Trustee is hereby authorized to receive any and all such moneys, rights and properties as and for additional security for the payment of all or any specified series of the Parity Securities and to hold and apply the same subject to the terms and conditions of the Indenture;

TO HAVE AND TO HOLD the same unto the Trustee, its successor trustees and assigns forever, subject to Permitted Encumbrances; IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and pro rata protection and benefit of the Holders, present and future, of the Parity Securities, equally and ratably, without preference, priority or distinction of any over others by reason of priority in issuance or acquisition or otherwise, as if all the Parity Securities at any time outstanding had been executed, sold, authenticated, delivered and negotiated simultaneously with the execution and delivery hereof; subject, however, to the conditions contained herein requiring the preferential application of certain moneys with respect to the various series of the Parity Securities, and subject further to the right and duty of the Trustee to apply solely for the benefit of the Holders of any particular series of the Parity Securities all moneys, rights and properties that are pledged or otherwise contractually obligated for the sole and exclusive benefit of the Holders of such particular series of the Parity Securities;

PROVIDED, HOWEVER, that this Indenture is upon the condition that if the County shall pay or cause to be paid the principal of and the interest and premium (if any) on all Parity Securities secured hereby at the times and in the manner provided in the Parity Securities, according to the true intent and meaning thereof, or shall provide for such payment as specified in Section 16.1 hereof, and shall pay or cause to be paid all other Indenture Indebtedness, then the Indenture and the estate and rights granted hereby shall cease, determine and be void; otherwise the Indenture shall be and remain in full force and effect.

Section 2.2 Parity Securities Not General Obligations. The principal of and the interest and premium (if any) on the Parity Securities shall be payable solely from the sources of payment provided therein and herein. Neither the Parity Securities nor the Indenture shall be a general indebtedness or pledge of the full faith and credit of the County or a claim on the taxing power of the County or charge against any debt limit imposed on the County by the constitution or laws of the State of Alabama.

ARTICLE III

ISSUANCE OF PARITY SECURITIES IN SERIES

Section 3.1 **Issuance of Parity Securities in Series.** The Parity Securities may be issued in different series, and each Parity Security shall have an appropriate series designation. All the Parity Securities of every series shall be equally and ratably secured by the Indenture, it being expressly understood and agreed that no Parity Securities issued hereunder shall be prior to any other Parity Securities thereafter issued hereunder, but shall be on a parity therewith with respect to the security afforded by the Indenture.

Section 3.2 **Dates and Places of Payment of Parity Securities.** Subject to any applicable provisions pertaining to the dating of Parity Securities issued pursuant to the provisions of either Section 5.2 or 5.3 hereof, the Parity Securities of each series shall bear such date or dates as shall be specified in the Indenture or Supplemental Indenture under which such series is issued. Subject to compliance with the Act, the Parity Securities of each series shall mature on such dates and in such amounts, shall be subject to redemption on such dates and on such terms and conditions, and shall bear interest for such periods, at such rate or rates and payable on such dates, all as shall be fixed, prior to the issuance of such Parity Securities, in this Indenture or in the Supplemental Indenture under which such Parity Securities shall be issued. All installments of principal of and interest and premium (if any) on each series of the Parity Securities shall bear interest after the respective due dates of such principal, interest and premium (if any) until paid or until moneys sufficient for payment thereof shall have been deposited for that purpose with the Trustee, whichever first occurs, at such per annum rate or rates and subject to such grace period (if any) as shall be specified prior to their issuance. The principal of and the interest and premium (if any) on the Parity Securities shall be payable in lawful money of the United States of America.

The principal of and the premium (if any) on the Parity Securities shall be payable at the principal office of the Paying Agent, upon presentation and surrender of the Parity Securities as the same become due. In case any Parity Security is called for partial redemption, the redemption price of the principal thereof so called for redemption shall be payable at the principal office of the Paying Agent (a) upon presentation and surrender of such Parity Security in exchange for a new Parity Security or Parity Securities of the same series and in authorized denominations having an aggregate principal amount equal to the unredeemed portion of the principal of the Parity Security so surrendered, or (b) upon presentation of such Parity Security for an appropriate endorsement by the Paying Agent of such partial redemption on such Parity Security or on any record of partial redemptions appertaining thereto and constituting a part thereof. The interest on the Parity Securities shall be paid by check or draft mailed or otherwise delivered by the Paying Agent to the respective Holders thereof as of the applicable Record Date at their addresses as they appear on the registry books of the Paying Agent pertaining to the

registration of the Parity Securities; provided, however, that the final payment of such interest shall be made only upon surrender of the appropriate Parity Security to the Paying Agent.

Section 3.3 **Form of Parity Securities, Etc.** The Series 1997-A Warrants, the Series 1997-B Warrants and the Series 1997-C Warrants, together with the authentication certificate of the Trustee applicable thereto, shall be in substantially the forms respectively provided therefor in Sections 7.6, 8.3 and 9.6 hereof. The Parity Securities of each series of Additional Parity Securities and the authentication certificate of the Paying Agent and the record of partial redemptions (if any) applicable thereto shall be in substantially the form respectively provided therefor in the Supplemental Indenture under which such Additional Parity Securities are issued, which shall in general be similar to the form applicable to the Series 1997 Warrants, with such insertions, omissions and other variations as may be necessary to conform to the provisions hereof and such Supplemental Indenture.

ARTICLE IV

EXECUTION AND AUTHENTICATION OF THE PARITY SECURITIES

Section 4.1 **Execution of Parity Securities.** The Parity Securities shall be executed by the President of the Governing Body, and the seal of the County shall be affixed thereto and attested by the Minute Clerk of the Governing Body; provided that the signatures of the said officers on the Parity Securities may be facsimiles of their actual signatures; and provided further that a facsimile of the seal of the County may be imprinted on the Parity Securities rather than manually affixed thereto. Signatures on the Parity Securities by persons who were officers of the County at the time such signatures were written or printed shall continue effective although such persons cease to be such officers prior to the authentication of the Parity Securities or the delivery thereof.

Section 4.2 **Authentication Certificate of the Paying Agent.** A duly executed authentication certificate by the Paying Agent shall be endorsed on each of the Parity Securities, and no Parity Security shall be valid or obligatory for any purpose unless and until such authentication certificate shall have been duly executed by the Paying Agent. Each such certificate shall recite, in substance, that the Parity Security on which it is endorsed is one of the Parity Securities described in the Indenture. The executed authentication certificate of the Paying Agent endorsed upon any Parity Security shall be conclusive evidence of the due authentication, issue and delivery of such Parity Security under the Indenture.

Section 4.3 Replacement of Mutilated, Lost, Stolen or Destroyed Parity Securities. In the event any Parity Security is mutilated, lost, stolen or destroyed, the County may execute, and the Paying Agent shall thereupon authenticate and deliver, a new Parity Security of like tenor as that mutilated, lost, stolen or destroyed; provided that (i) in the case of any such mutilated Parity Security, such Parity Security is first surrendered to the Paying Agent, and (ii) in the case of any such lost, stolen or destroyed Parity Security, there is first furnished to the Paying Agent evidence of such loss, theft or destruction satisfactory to the Paying Agent (with such evidence to be also furnished to the County if requested), together with indemnity satisfactory to the Paying Agent (and to the County if requested); provided that if the Person claiming ownership of such lost, stolen or destroyed Parity Security is a bank or an insurance company, its own written agreement of indemnity shall be deemed to be satisfactory. The County and the Paying Agent may charge the Holder with the expenses of issuing any such new Parity Security. In lieu of issuing a new Parity Security to replace any mutilated, lost, stolen or destroyed Parity Security which shall have already matured, the Paying Agent may pay such Parity Security at or after the maturity thereof if the Holder of such Parity Security satisfies the same terms and conditions as those provided in the preceding provisions of this section for the replacement of such Parity Security.

ARTICLE V

REGISTRATION, TRANSFERS AND EXCHANGES OF THE PARITY SECURITIES

Section 5.1 Book-Entry Procedures Applicable to Series 1997 Warrants. (a) Except as provided in Section 5.1(c) hereof, the registered owner of all of the Series 1997 Warrants shall be The Depository Trust Company ("DTC") and the Series 1997 Warrants shall be registered in the name of Cede & Co., as nominee of DTC. Payment of semiannual interest for any Series 1997 Warrant registered as of a Record Date in the name of Cede & Co. shall be made by wire transfer to the account of Cede & Co. on the Interest Payment Date at the address indicated on the Record Date for Cede & Co. in the registry books of the County kept by the Paying Agent.

(b) The Series 1997 Warrants shall be initially issued in the form of a separate single authenticated fully registered warrant in the principal amount of each separately stated maturity. Upon initial issuance, the ownership of each such Series 1997 Warrant shall be registered in the registry book of the County kept by the Paying Agent in the name of Cede & Co., as nominee of DTC. The Paying Agent and the County may treat DTC (or its nominee) as the sole and exclusive owner of the Series 1997 Warrants registered in its name for the purposes of payment of the principal or redemption price of or interest on such Series 1997 Warrants, selecting such Series 1997 Warrants or portions thereof to be redeemed, giving any notice permitted or required to be given to Holders of Series 1997 Warrants under the Indenture, registering the transfer of Series 1997 Warrants, obtaining any consent or other action to be taken by Holders

of Series 1997 Warrants and for all other purposes whatsoever; and neither the Paying Agent nor the County shall be affected by any notice to the contrary. Neither the Paying Agent nor the County shall have any responsibility or obligation to any DTC participant, any Person claiming a beneficial ownership interest in the Series 1997 Warrants under or through DTC or any DTC participant, or any other Person which is not shown on the registration books of the County kept by the Paying Agent as being a Holder of Series 1997 Warrants. The County and the Paying Agent shall have no responsibility with respect to the accuracy of any records maintained by DTC, Cede & Co. or any DTC participant with respect to any ownership interest in the Series 1997 Warrants; the payment by DTC or any DTC participant to any beneficial owner of any amount in respect of the principal or redemption price of or interest on the Series 1997 Warrants; the delivery to any DTC participant or any beneficial owner of any notice which is permitted or required to be given to Holders of the Series 1997 Warrants under the Indenture; the selection by DTC or any DTC participant of any Person to receive payment in the event of a partial redemption of the Series 1997 Warrants; or the authority for any consent given or other action taken by DTC as the Holder of Series 1997 Warrants. The Paying Agent shall pay all principal of and premium, if any, and interest on the Series 1997 Warrants only to Cede & Co., as nominee of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the County's obligations with respect to the principal of and premium, if any, and interest on such Series 1997 Warrants to the extent of the sum or sums so paid. Upon delivery by DTC to the Paying Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co. and direction to effect such change on the registry books maintained by the Paying Agent, the term "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(c) In the event the County determines that it is in the best interest of the beneficial owners of the Series 1997 Warrants that they be able to obtain warrant certificates, the County may notify DTC and the Paying Agent of the availability through DTC of warrant certificates. In such event, the Paying Agent shall issue, transfer and exchange warrant certificates as requested by DTC and any other Holders of Series 1997 Warrants in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Series 1997 Warrants at any time by giving notice to the County and the Paying Agent and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the County and Paying Agent shall be obligated to deliver warrant certificates as described in the Indenture. In the event warrant certificates are issued to Holders of the Series 1997 Warrants other than DTC, the provisions of Article V of the Indenture shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of and interest on such certificates. Whenever DTC requests the County and the Paying Agent to do so, the County and the Paying Agent will cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the Series 1997 Warrants to any DTC participant having Series 1997 Warrants credited to its DTC account or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the Series 1997 Warrants.

(d) Notwithstanding any other provision of the Indenture to the contrary, so long as any Series 1997 Warrant is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on such Series 1997 Warrant and all notices with respect to such Series 1997 Warrant shall be made and given to DTC as provided in the Representation Letter to be signed by the County and the Paying Agent on or prior to the date of issuance and delivery of the Series 1997 Warrants and accepted by DTC. Without limitation of the foregoing, so long as any Series 1997 Warrant is registered in the name of Cede & Co., as nominee of DTC, the Paying Agent shall send a copy of any notice of redemption by overnight delivery not less than thirty (30) days before the redemption date to DTC, but such mailing shall not be a condition precedent to such redemption and failure to so mail any such notice (or failure of DTC to advise any DTC participant, or any DTC participant to notify the beneficial owner, of any such notice or its content or effect) shall not affect the validity of the proceedings for the redemption of the Series 1997 Warrants.

(e) In connection with any notice or other communication to be provided to Holders of the Series 1997 Warrants pursuant to the Indenture by the County or the Paying Agent with respect to any consent or other action to be taken by Holders of the Series 1997 Warrants, so long as any Series 1997 Warrant is registered in the name of Cede & Co., as nominee of DTC, the County or the Paying Agent, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

(f) In the event of any inconsistency between the provisions of this Section 5.1 and any other provision of the Indenture or the forms of Series 1997 Warrants, the provisions of this Section 5.1 shall govern so long as warrant certificates have not been issued to the Holders of the Series 1997 Warrants other than DTC in accordance with Section 5.1(c) hereof.

Section 5.2 Registration and Transfer of Parity Securities. The Paying Agent for each series of Parity Securities shall be the registrar and transfer agent of the County with respect to such series and shall keep at its principal office proper registry and transfer books in which it will note the registration and transfer of such Parity Securities as are presented for those purposes, all in the manner and to the extent hereinafter specified.

The transfer of any Parity Security may be registered only upon the books kept by the Paying Agent, as registrar and transfer agent for the County, for the registration and registration of transfer of Parity Securities upon surrender thereof at the office of the Paying Agent with written power to transfer signed by the Holder thereof in person or by duly authorized attorney, properly stamped if required, in form and with guaranty of signature satisfactory to the Paying Agent. Upon any such transfer the County shall execute, and the Paying Agent shall authenticate and deliver to the transferee, a new Parity Security registered in the name of such transferee and of like tenor as that presented for transfer.

Any Series 1997-A Warrant or Series 1997-B Warrant authenticated and delivered pursuant to the provisions of this section shall be dated February 1, 1997. Any Series 1997-C Warrant authenticated and delivered pursuant to the provisions of this section shall be dated February 15, 1997. Any Additional Parity Security authenticated and delivered pursuant to the provisions of this section shall be dated in accordance with the provisions of the Supplemental Indenture under which such Additional Parity Security is issued.

The Paying Agent shall not be required to transfer any Parity Security during the period of fifteen days next preceding any Interest Payment Date with respect thereto or, if such Parity Security is duly called for redemption (in whole or in part), during the period of thirty days next preceding the date fixed for such redemption.

Section 5.3 Exchange of Parity Securities. The Parity Securities of each series shall be freely exchangeable within the limits provided in the Indenture or Supplemental Indenture under which such series is issued; provided, however, that under no circumstances shall a Parity Security be issuable in exchange for other Parity Securities unless all the Parity Securities being so exchanged are of the same series, bear interest at the same rate and have the same stated maturity. Upon the request of the Holder of any Parity Security in a principal amount greater than the minimum authorized denomination applicable to the series to which such Parity Security belongs, the County shall execute, and the Paying Agent shall thereupon authenticate and deliver, upon surrender to the Paying Agent of such Parity Security and in exchange therefor, two or more Parity Securities of like tenor as the Parity Security so surrendered and in authorized denominations aggregating the same principal amount as the Parity Security so surrendered. Upon the request of the Holder of two or more Parity Securities the County shall execute, and the Paying Agent shall thereupon authenticate and deliver, upon surrender to the Paying Agent of such Parity Securities and in exchange therefor, a new Parity Security or Parity Securities of like tenor in different authorized denominations and aggregating the same principal amount as the then unpaid principal amount of the Parity Securities so surrendered. Any Parity Securities surrendered for exchange pursuant to the provisions of this section shall be accompanied by a written power to transfer signed by the Holder thereof in person or by duly authorized attorney, properly stamped if required, in form and with guaranty of signature satisfactory to the Paying Agent.

Any Series 1997-A Warrant or Series 1997-B Warrant authenticated and delivered pursuant to the provisions of this section shall be dated February 1, 1997. Any Series 1997-C Warrant authenticated and delivered pursuant to the provisions of this section shall be dated February 15, 1997. Any Additional Parity Security authenticated and delivered pursuant to the provisions of this section shall be dated in accordance with the provisions of the Supplemental Indenture under which such Additional Parity Security is issued.

The Paying Agent shall not be required to exchange any Parity Security pursuant to the provisions of this section during the period of fifteen days next preceding any Interest Payment Date with respect thereto or, if such Parity Security shall be duly called for redemption (in

whole or in part), during the period of thirty days next preceding the date fixed for such redemption.

Section 5.4 Persons Deemed Owners of Parity Securities. The Person in whose name a Parity Security is registered on the books of the Paying Agent shall be the sole Person to whom or on whose order payments on account of the principal thereof and of the interest and premium (if any) thereon may be made. The County and the Paying Agent may deem and treat the Person in whose name a Parity Security is registered as the absolute owner thereof for all purposes; they shall not be affected by notice to the contrary; and all payments by either of them to the Person in whose name a Parity Security is registered shall to the extent thereof fully discharge and satisfy all liability for the same.

Section 5.5 Expenses of Transfer and Exchange. The County and the Paying Agent may charge the Holder with their reasonable fees and expenses in connection with any transfer or exchange of any of the Parity Securities (including, without limitation, the expenses of printing any new Parity Securities that may be necessitated by any transfer or exchange after the exhaustion of an initial supply of Parity Securities for a reasonable number of such transfers and exchanges); provided, however, that no charge shall be made for the issuance of a new Parity Security issued, pursuant to the provisions of Section 6.2 hereof, as a result of a call for partial redemption of any Parity Security. In every case involving any transfer or exchange of any of the Parity Securities that is requested by the Holder thereof, such Holder shall pay all taxes and other governmental charges required to be paid in connection with such transfer or exchange.

ARTICLE VI

GENERAL PROVISIONS RESPECTING REDEMPTION OF PARITY SECURITIES

Section 6.1 Manner of Effecting Redemption of Parity Securities. Any redemption of any Parity Securities of any series shall be effected in the following manner:

(a) Call. The Governing Body shall adopt a Resolution containing the following: (1) a call for redemption, on a specified date when they are by their terms subject to redemption, of Parity Securities bearing a stated series designation or designations and having specified maturities (and, in the case of the partial redemption of any Parity Securities, the respective principal amounts thereof to be redeemed); (2) unless all the Parity Securities then outstanding are to be redeemed (or unless a portion of all such outstanding Parity Securities are to be redeemed and the remainder are, simultaneously with or prior to such redemption, to be otherwise retired), a statement that no Event of Default has occurred

and is continuing; and (3) a summary of all applicable restrictions upon or conditions precedent to such redemption and the provisions made to comply therewith; provided, however, that it shall not be necessary for the Governing Body to adopt any such Resolution in the case of any redemption of Series 1997-A Warrants pursuant to the provisions of Section 7.3 hereof, any redemption of Series 1997-C Warrants pursuant to Section 9.3 hereof or the redemption of the Parity Securities of any series of Additional Parity Securities, if such redemption is required by the terms of the Supplemental Indenture under which such series of Additional Parity Securities is issued or if, in such Supplemental Indenture, the adoption of such Resolution is expressly stated to be unnecessary.

(b) Notice by Mail. With respect to any Parity Securities called for redemption, in whole or in part, the Paying Agent (on behalf of the County) shall cause to be forwarded to the Holder thereof a notice by registered or certified mail stating the following: that Parity Securities bearing a stated series designation or designations and having specified maturities (and, in the case of the partial redemption of any Parity Securities, the respective principal amounts thereof to be redeemed) have been called for redemption and will become due and payable at the applicable redemption price or redemption prices on a specified redemption date, and that all interest thereon will cease after such redemption date if prior to such date, or not later than 10:00 o'clock, A.M., on such date, the total redemption price of the Parity Securities (or portions thereof) so called for redemption, together with the accrued interest thereon to such date, has been deposited with the Paying Agent. Such notice shall be so mailed not more than sixty (60) nor less than thirty (30) days prior to the date fixed for redemption [or, in the case of Series 1997-C Warrants called for optional redemption, not more than ninety (90) nor less than forty-five (45) days prior to the date fixed for redemption], but Holders of any Parity Securities may waive the requirements of this subsection with respect to the Parity Securities held by them without affecting the validity of the call for redemption of any other Parity Securities.

(c) Deposit. Prior to the date fixed for redemption the County shall deposit or cause to be deposited with the Paying Agent the total redemption price of the Parity Securities (or portions thereof) so called for redemption (as such redemption price is specified herein or in the Supplemental Indenture under which such Parity Securities are issued) in funds that will be immediately available no later than the opening of business on the date fixed for redemption and shall furnish to the Paying Agent the following: (i) a certified copy of the Resolution required by subsection (a) of this section (if, under the circumstances, the adoption of any such Resolution is required); and (ii) when such redemption is made subject, by the terms of the Indenture or any Supplemental Indenture, to any other restriction or requirement, evidence satisfactory to the Paying Agent showing compliance with such restriction or requirement.

Section 6.2 Presentation of Parity Securities for Redemption; Parity Securities Called for Redemption to Cease to Bear Interest. Upon compliance by the County and the Paying Agent with the requirements of Section 6.1 hereof [and, unless all the Parity Securities then outstanding are to be redeemed (or unless a portion of such outstanding Parity Securities are to be redeemed and the remainder are, simultaneously with or prior to such redemption, to be otherwise retired), if the County is not on the redemption date in default in payment of the principal of or the interest (or premium, if any) on any of the Parity Securities], the Parity Securities so called for redemption (or, in the case of any Parity Securities called for partial redemption, the portions thereof called for redemption) shall become due and payable at the place or places at which the same shall be payable at the redemption price or prices and on the redemption date specified in such notice, anything herein or in the Parity Securities to the contrary notwithstanding and the Holders thereof shall then and there surrender them for redemption; provided, however, that with respect to any Parity Security called for partial redemption, (i) the Holder thereof shall surrender such Parity Security to the Paying Agent in exchange for one or more new Parity Securities of authorized denominations in an aggregate principal amount equal to the unredeemed portion of the Parity Security so surrendered or (ii) such Holder shall, in lieu of surrendering such Parity Security in exchange for a new Parity Security or Parity Securities, present the same to the Paying Agent for endorsement thereon (or on any record of partial redemptions appertaining thereto and constituting a part thereof) of the payment of the portion of the principal thereof so redeemed. All future interest on the Parity Securities so called for redemption (or, in the case of any Parity Securities called for redemption in part, the portions thereof called for redemption) shall, subject to the deposit required by subsection (c) of Section 6.1 hereof having been made, cease to accrue after the date fixed for redemption. The Parity Securities so called (or, in the case of any Parity Securities called for redemption in part, the portions thereof called for redemption) shall, subject to such deposit having been made, no longer be entitled to the benefit of the lien hereof but shall look solely to the moneys deposited with the Paying Agent under the provisions of this article; and out of the moneys so deposited with it, the Paying Agent shall pay on the redemption date the applicable redemption price or prices of the Parity Securities so called for redemption (or, in the case of any Parity Securities called for redemption in part, the portions thereof called for redemption).

Section 6.3 Pro Rata Redemption of Parity Securities of Different Series Not Required. Nothing contained in the Indenture shall be construed as requiring pro rata redemption of Parity Securities of different series, even though at the time that any redemption of Parity Securities is to be effected there are then outstanding Parity Securities of two or more series then subject to redemption.

ARTICLE VII

THE SERIES 1997-A WARRANTS

Section 7.1 Authorization and Description of the Series 1997-A Warrants and Places of Payment. Pursuant to the applicable provisions of the Act, and for the purpose of refunding the Series 1992 Warrants and the Series 1995-A Warrants, there is hereby authorized to be issued under the Indenture an issue or series of Parity Securities designated Sewer Revenue Refunding Warrants, Series 1997-A, limited in aggregate principal amount to \$211,040,000. The Series 1997-A Warrants shall be dated February 1, 1997, shall be numbered from R1 upwards in the order issued and shall be issued initially in the respective principal amounts of \$5,000 or any greater integral multiple thereof. The Series 1997-A Warrants shall mature and become payable on the dates and in the amounts set forth below and shall bear interest from their respective dates payable on August 1, 1997, and on each February 1 and August 1 thereafter until maturity or earlier redemption at the per annum rates set forth below:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
February 1, 2005	\$ 5,870,000	5.000%
February 1, 2006	3,675,000	5.375
February 1, 2017	5,535,000	5.650
February 1, 2018	7,220,000	5.625
February 1, 2019	9,135,000	5.625
February 1, 2022	41,640,000	5.625
February 1, 2027	137,965,000	5.375

The principal of and the interest on any Series 1997-A Warrant shall bear interest after their respective due dates until paid at the rate of interest borne by the principal of such Series 1997-A Warrant prior to maturity. The Series 1997-A Warrants shall be initially issued and registered in the names of such Holders as shall be designated by the initial purchasers of the Series 1997-A Warrants.

The principal of and the interest and premium (if any) on the Series 1997-A Warrants shall be payable in accordance with the provisions of Section 3.2 hereof.

Section 7.2 Optional Redemption of Series 1997-A Warrants. Those of the Series 1997-A Warrants having stated maturities after February 1, 2007, but prior to February 1, 2027, will be subject to redemption and prepayment prior to their stated maturities, at the option of the County, as a whole or in part on February 1, 2007, and on any date thereafter, at and for the following respective redemption prices (expressed in percentages of the principal amount of each Series 1997-A Warrant or portion thereof to be redeemed) plus accrued interest to the date fixed for redemption:

<u>Redemption Period</u>	<u>Redemption Price</u>
February 1, 2007, through January 31, 2008	101.0%
February 1, 2008, through January 31, 2009	100.5
February 1, 2009, or thereafter	100.0

The Series 1997-A Warrants maturing on February 1, 2027, will be subject to redemption and prepayment, prior to said maturity date, at the option of the County, as a whole or in part, on February 1, 2007, and on any date thereafter, at and for a redemption price, with respect to each Series 1997-A Warrant or portion thereof to be redeemed, equal to the principal amount to be redeemed plus accrued interest thereon to the date fixed for redemption. The Series 1997-A Warrants may be redeemed only in installments of \$5,000 or any integral multiple thereof. In the event that less than all of the Series 1997-A Warrants of a particular maturity are redeemed and prepaid pursuant to this Section 7.2, the Trustee shall select by lot the Series 1997-A Warrants (or portions of the principal thereof) of such maturity to be redeemed and prepaid. The redemption of Series 1997-A Warrants pursuant to this section shall comply with the applicable provisions of Article VI and Section 7.5 hereof, with the provisions of Section 7.5 particularly applicable to the Series 1997-A Warrants to govern in the case of any conflict.

Section 7.3 Scheduled Mandatory Redemption of Series 1997-A Warrants. Those of the Series 1997-A Warrants maturing on February 1, 2022, shall be subject to scheduled mandatory redemption on the following respective dates and in the following respective principal amounts:

<u>Redemption Date</u>	<u>Principal Amount</u>
February 1, 2020	\$ 11,310,000
February 1, 2021	13,775,000

Series 1997-A Warrants in the aggregate principal amount of \$16,555,000 will remain to be paid at their scheduled maturity on February 1, 2022.

Those of the Series 1997-A Warrants maturing on February 1, 2027, shall be subject to scheduled mandatory redemption on the following respective dates and in the following respective principal amounts:

<u>Redemption Date</u>	<u>Principal Amount</u>
February 1, 2023	\$ 19,700,000
February 1, 2024	23,190,000
February 1, 2025	27,115,000
February 1, 2026	31,515,000

Series 1997-A Warrants in the aggregate principal amount of \$36,445,000 will remain to be paid at their scheduled maturity on February 1, 2027.

The Series 1997-A Warrants shall be redeemed pursuant to the provisions of this section at and for a redemption price, with respect to each such warrant (or portion of the principal thereof) to be redeemed, equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date fixed for redemption, and such redemption shall be effected in accordance with the applicable provisions of Article VI and Section 7.5 hereof, with the provisions of Section 7.5 particularly applicable to the Series 1997-A Warrants to govern in the case of any conflict.

Section 7.4 Purchase of Series 1997-A Warrants for Retirement. The County may at any time and from time to time purchase Series 1997-A Warrants for retirement using funds from any source. Any Series 1997-A Warrants so purchased for retirement shall be delivered by the County to the Trustee, together with a written order of an authorized officer of the County for their cancellation, whereupon such purchased Series 1997-A Warrants shall be cancelled by the Trustee. The principal amount of any Series 1997-A Warrants maturing on February 1, 2022, or February 1, 2027, that are so purchased by the County and cancelled by the Trustee or redeemed by the County pursuant to Section 7.2 hereof shall be credited against the aggregate principal amount of Series 1997-A Warrants maturing on February 1, 2022, or February 1, 2027, as the case may be, that are required to be redeemed pursuant to the provisions of Section 7.3 hereof on such date or dates succeeding the date on which such purchased or redeemed Series 1997-A Warrants shall be delivered to the Trustee as shall be specified by the County, and the effect of such credit shall be to reduce by the principal amount thereof the aggregate principal amount of Series 1997-A Warrants required to be redeemed on such specified date or dates; provided, however, that no credit in respect of the redemption of Series 1997-A Warrants required on any February 1 shall be allowed for any Series 1997-A Warrants maturing on February 1, 2022, or February 1, 2027, and purchased or redeemed unless the same shall be delivered to the Trustee, or the optional redemption which is the basis for such credit shall be effected, prior to December 15 of the year preceding the year in which such mandatory redemption is to be effected. In the event that the County elects to purchase any Series 1997-A Warrants for retirement, the Trustee may, if requested to do so by the County, solicit for tenders of Series 1997-A Warrants by holders thereof who wish to sell such Series 1997-A Warrants to the County.

Section 7.5 Special Provisions Respecting Partial Redemption of Series 1997-A Warrants. The principal of any Series 1997-A Warrants shall be redeemed only in the amount of \$5,000 or any integral multiple thereof. If less than all the outstanding Series 1997-A Warrants are to be redeemed on any single redemption date pursuant to Section 7.2 hereof, those to be redeemed shall be called for redemption from such maturity or maturities as shall be specified by the County. If less than all the Series 1997-A Warrants of a single maturity are to be called for redemption on any single redemption date, the Trustee shall assign a number or other unique designation to each \$5,000 in principal amount of the Series 1997-A Warrants of such maturity then outstanding and select by lot, from among all such numbers or other unique designations associated with the Series 1997-A Warrants then outstanding, numbers or other unique designations representing an aggregate principal amount equal to the principal amount of the Series 1997-A Warrants of such maturity to be so called for redemption, whereupon there shall be called for redemption an amount of the unpaid principal of each Series 1997-A Warrant of such maturity equal to the principal amount represented by the numbers or other unique designations related thereto that were so selected.

Section 7.6 Form of Series 1997-A Warrants. The Series 1997-A Warrants and the Trustee's authentication certificate applicable thereto shall be in substantially the following forms, respectively, with such insertions, omissions and other variations as may be necessary to conform to the provisions hereof:

[Form of Series 1997-A Warrant]

No. R _____

\$ _____

UNITED STATES OF AMERICA

STATE OF ALABAMA

JEFFERSON COUNTY, ALABAMA

SEWER REVENUE REFUNDING WARRANT

Series 1997-A

Interest Rate

Maturity Date

CUSIP

JEFFERSON COUNTY, ALABAMA, a political subdivision of the State of Alabama (herein called the "County"), hereby acknowledges that it is indebted to, and hereby directs the County Treasurer of the County to pay to _____, or registered assigns, solely out of the revenues hereinafter referred to, the principal sum of

D O L L A R S

on the date specified above with interest thereon from the date hereof until the maturity hereof at the per annum rate of interest specified above (computed on the basis of a 360-day year of twelve consecutive 30-day months), payable on August 1, 1997, and semiannually thereafter on each February 1 and August 1 until maturity or earlier redemption. The principal of and the interest and premium (if any) on this warrant shall be payable in lawful money of the United States of America and shall bear interest after their respective due dates until paid at the rate of interest borne by the principal hereof prior to maturity. The principal of and premium (if any) on this warrant shall be payable only upon presentation and surrender of this warrant at the principal office of the Trustee hereinafter referred to. The interest on this warrant shall be remitted by said Trustee by check or draft mailed or otherwise delivered to the registered holder hereof at the address shown on the registry books of said Trustee.

This warrant is one of a duly authorized issue or series of warrants authorized to be issued in the aggregate principal amount of \$211,040,000 and designated Sewer Revenue Refunding Warrants, Series 1997-A (herein called the "Series 1997-A Warrants"). The Series 1997-A Warrants have been issued under and pursuant to the constitution and laws of the State of Alabama and a Trust Indenture dated as of February 1, 1997 (herein called the "Indenture"),

between the County and AmSouth Bank of Alabama, as trustee (herein, together with its successors in trust, called the "Trustee"). Simultaneously with the issuance of the Series 1997-A Warrants, the County issued, under the Indenture, \$48,020,000 principal amount of its Taxable Sewer Revenue Refunding Warrants, Series 1997-B (herein called the "Series 1997-B Warrants"), and \$52,880,000 principal amount of its Taxable Sewer Revenue Refunding Warrants, Series 1997-C (herein called the "Series 1997-C Warrants").

The Series 1997-A Warrants having stated maturities after February 1, 2007, are subject to redemption and prepayment prior to maturity, at the option of the County, as a whole or in part, from such maturity or maturities as shall be specified by the County, on February 1, -2007, and on any date thereafter, such redemption (except in the case of Series 1997-A Warrants maturing on February 1, 2027) to be at and for the following respective redemption prices (expressed as a percentage of the principal amount redeemed) plus accrued interest to the date fixed for redemption:

<u>Redemption Period</u>	<u>Redemption Price</u>
February 1, 2007, through January 31, 2008	101.0%
February 1, 2008, through January 31, 2009	100.5
February 1, 2009, or thereafter	100

The redemption price for any Series 1997-A Warrant maturing on February 1, 2027, that is called for optional redemption, in whole or in part, shall be equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date fixed for redemption.

The Series 1997-A Warrants having a stated maturity on February 1, 2022, are subject to scheduled mandatory redemption, at and for a redemption price, with respect to each such warrant (or portion of the principal thereof) to be redeemed, equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date fixed for redemption, in the following principal amounts on the following dates:

<u>Redemption Date</u>	<u>Principal Amount</u>
February 1, 2020	\$ 11,310,000
February 1, 2021	13,775,000
February 1, 2022 (maturity)	16,555,000

The Series 1997-A Warrants having a stated maturity on February 1, 2027, are subject to scheduled mandatory redemption, at and for a redemption price, with respect to each such warrant (or portion of the principal thereof) to be redeemed, equal to the principal amount

thereof to be redeemed plus accrued interest thereon to the date fixed for redemption, in the following principal amounts on the following dates:

<u>Redemption Date</u>	<u>Principal Amount</u>
February 1, 2023	\$ 19,700,000
February 1, 2024	23,190,000
February 1, 2025	27,115,000
February 1, 2026	31,515,000
February 1, 2027 (maturity)	36,445,000

If less than all of the outstanding Series 1997-A Warrants of a particular maturity are to be called for redemption, the Series 1997-A Warrants (or principal portions thereof) to be redeemed shall be selected by the Trustee by lot in the principal amounts designated to the Trustee by the County or otherwise as required by the Indenture. In the event any of the Series 1997-A Warrants are called for redemption, the Trustee shall give notice, in the name of the County, of the redemption of such Warrants, which notice shall state that on the redemption date the Series 1997-A Warrants to be redeemed shall cease to bear interest. Such notice shall be given by mailing a copy thereof by registered or certified mail at least thirty (30) days prior to the date fixed for redemption to the holders of the Series 1997-A Warrants to be redeemed at the addresses shown on the registration books of the Trustee; provided, however, that failure to give such notice, or any defect therein, shall not affect the validity of the redemption of any of the Series 1997-A Warrants for which notice was properly given. Any Series 1997-A Warrants which have been duly selected for redemption and which are deemed to be paid in accordance with the Indenture shall cease to bear interest on the date fixed for redemption and shall thereafter cease to be entitled to any lien, benefit or security under the Indenture.

Under the Indenture, the Series 1997-A Warrants, the Series 1997-B Warrants and the Series 1997-C Warrants are equally and ratably secured by a pledge of certain revenues from the sanitary sewer system of the County (herein, as it may at any time exist, called the "System") that remain after the payment of the expenses of operating and maintaining the System. Upon compliance with certain conditions specified in the Indenture, the County may issue additional securities (without limitation as to principal amount) that are secured by the Indenture on a parity with the Series 1997-A Warrants, the Series 1997-B Warrants and the Series 1997-C Warrants with respect to the pledge of the aforesaid revenues from the System (the Series 1997-A Warrants, the Series 1997-B Warrants, the Series 1997-C Warrants and all such additional securities being herein together called the "Parity Securities").

The holders of the Parity Securities shall never have the right to demand payment of the Parity Securities out of any funds raised or to be raised by taxation or from any source whatsoever, except the payments and amounts described in this warrant and the Indenture. Except for the revenues from the System and the other moneys that may be held by the Trustee

under the Indenture, no property of the County is encumbered by any lien or security interest for the benefit of the holder of this warrant. Neither the faith and credit, nor the taxing power, of the State of Alabama or the County, or any other public corporation, subdivision or agency of the State of Alabama or the County, is pledged to the payment of the principal of or the interest or premium (if any) on this warrant.

The transfer of this warrant shall be registered upon the registration books kept at the principal corporate office of the Trustee, at the written request of the holder hereof or his attorney duly authorized in writing, upon surrender of this warrant at said office, together with a written instrument of transfer satisfactory to the Trustee duly executed by the holder hereof or his duly authorized attorney. Upon payment of any required tax or other governmental charge, this warrant may, upon the surrender hereof at the principal corporate trust office of the Trustee, be exchanged for an equal aggregate principal amount of Series 1997-A Warrants of the same maturity in any other authorized denominations.

The Trustee shall not be required to transfer or exchange this warrant during the period of fifteen days next preceding any interest payment date with respect hereto. In the event that this warrant (or any principal portion hereof) is duly called for redemption and prepayment, the Trustee shall not be required to transfer or exchange this warrant during the period of thirty days next preceding the date fixed for such redemption and prepayment.

Except as provided in the Indenture, the registered holder of this warrant shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto.

With certain exceptions as provided therein, the Indenture may be modified or amended only with the consent of the holders of a majority in aggregate principal amount of all Parity Securities outstanding under the Indenture.

Reference is hereby made to the Indenture, a copy of which is on file with the Trustee, for the provisions thereof concerning the nature and extent of the rights, duties and obligations of the County, the Trustee and the holders of the Parity Securities. The registered holder of this warrant, by the acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Indenture.

The County and the Trustee may deem and treat the person in whose name this warrant is registered as the absolute owner hereof for all purposes, whether or not any principal of or interest on this warrant is overdue, and neither the County nor the Trustee shall be affected by any notice to the contrary.

It is hereby certified, recited and declared that all acts, conditions and things required by the constitution and laws of the State of Alabama to exist, to have happened and to have been performed, precedent to and in the execution and delivery of the Indenture and the issuance of

this warrant, do exist, have happened and have been performed in regular and due form as required by law.

No covenant or agreement contained in this warrant or the Indenture shall be deemed to be a covenant or agreement of any official, officer, agent or employee of the County in his individual capacity, and neither the members of the governing body of the County, nor any official executing this warrant, shall be liable personally on this warrant or be subject to any personal liability or accountability by reason of the issuance or sale of this warrant.

This warrant shall not be entitled to any right or benefit under the Indenture, or be valid or become obligatory for any purpose, until this warrant shall have been authenticated by the execution by the Trustee of the certificate of authentication inscribed hereon.

IN WITNESS WHEREOF, the County has caused this warrant to be executed in its name and behalf with the facsimile signature of the President of its County Commission, has caused a facsimile of its official seal to be hereunto imprinted, has caused the signature of the aforesaid President to be attested by the Minute Clerk of its County Commission, who has caused a facsimile of her signature to be imprinted hereon, and has caused this warrant to be dated February 1, 1997.

JEFFERSON COUNTY, ALABAMA

By _____
President of the County Commission

ATTEST:

Minute Clerk of the
County Commission

[S E A L]

[Form for Assignment]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within warrant and hereby irrevocably constitutes and appoints _____ attorney, with full power of substitution in the premises, to transfer the within warrant on the books kept for registration thereof by the within-mentioned Trustee.

Dated this _____ day of _____, _____.

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears upon the face of the within warrant in every particular, without alteration or enlargement or any change whatsoever.

AUTHENTICATION CERTIFICATE

DATE OF AUTHENTICATION: _____

This warrant is one of the Series 1997-A Warrants described in the within-mentioned Trust Indenture.

AMSOUTH BANK OF ALABAMA,
as Trustee

By _____
Its Authorized Officer

Section 7.7 Execution and Delivery of Series 1997-A Warrants. The Series 1997-A Warrants shall be forthwith executed and delivered to the Trustee and shall be authenticated and delivered by the Trustee from time to time upon receipt by the Trustee of an order signed on behalf of the County by the President of the Governing Body requesting such authentication and delivery and designating the Person or Persons to receive the same or any part thereof.

Section 7.8 **Application of Proceeds from the Sale of Series 1997-A Warrants.** The entire proceeds derived from the sale of the Series 1997-A Warrants shall be paid to the Trustee and promptly thereafter applied by the Trustee for the following purposes and in the following order:

- (a) payment into the Debt Service Fund of that portion of such proceeds (if any) that is allocable to accrued interest;
- (b) payment of the sum of \$533,029.80 to the Bond Insurer;
- (c) payment of the sum of \$130,321,616.44 to Bayerische Landesbank Girozentrale, acting through its New York Branch, to provide immediate reimbursement for moneys drawn under said bank's letter of credit to effect the purchase of the Series 1995-A Warrants;
- (d) payment of the sum of \$51,439,061.58 to AmSouth Bank of Alabama, in its capacity as escrow trustee with respect to the Series 1992 Warrants under an Escrow Trust Agreement dated as of February 1, 1997, between the County and said bank;
- (e) payment into the Reserve Fund of the sum of \$19,323,212.94; and
- (f) payment of the balance of such proceeds into the Issuance Cost Account.

ARTICLE VIII

THE SERIES 1997-B WARRANTS

Section 8.1 **Authorization and Description of the Series 1997-B Warrants and Places of Payment.** Pursuant to the applicable provisions of the Act, and for the purpose of refunding the Series 1993 Warrants, there is hereby authorized to be issued under the Indenture an issue or series of Parity Securities designated Taxable Sewer Revenue Refunding Warrants, Series 1997-B, limited in aggregate principal amount to \$48,020,000. The Series 1997-B Warrants shall be dated February 1, 1997, shall be numbered from R1 upwards in the order issued and shall be issued initially in the respective principal amounts of \$5,000 or any greater integral multiple thereof. The Series 1997-B Warrants shall mature and become payable on the dates and in the amounts set forth below and shall bear interest from their respective dates payable on August 1, 1997, and on each February 1 and August 1 thereafter until maturity or earlier redemption at the per annum rates set forth below:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
February 1, 1998	\$ 4,200,000	5.80%
February 1, 1999	4,700,000	6.10
February 1, 2000	8,880,000	6.32
February 1, 2001	13,335,000	6.46
February 1, 2002	6,100,000	6.55
February 1, 2003	10,805,000	6.63

The principal of and the interest on any Series 1997-B Warrant shall bear interest after their respective due dates until paid at the rate of interest borne by the principal of such Series 1997-B Warrant prior to maturity. The Series 1997-B Warrants shall be initially issued and registered in the names of such Holders as shall be designated by the initial purchasers of the Series 1997-B Warrants.

The principal of and the interest on the Series 1997-B Warrants shall be payable in accordance with the provisions of Section 3.2 hereof.

Section 8.2 Purchase of Series 1997-B Warrants for Retirement. The County may at any time and from time to time purchase Series 1997-B Warrants for retirement using funds from any source. Any Series 1997-B Warrants so purchased for retirement shall be delivered by the County to the Trustee, together with a written order of an authorized officer of the County for their cancellation, whereupon such purchased Series 1997-B Warrants shall be cancelled by the Trustee.

Section 8.3 Form of Series 1997-B Warrants. The Series 1997-B Warrants and the Trustee's authentication certificate applicable thereto shall be in substantially the following forms, respectively, with such insertions, omissions and other variations as may be necessary to conform to the provisions hereof:

[Form of Series 1997-B Warrant]

No. R _____

\$ _____

UNITED STATES OF AMERICA

STATE OF ALABAMA

JEFFERSON COUNTY, ALABAMA

TAXABLE SEWER REVENUE REFUNDING WARRANT
Series 1997-B

Interest Rate

Maturity Date

CUSIP

JEFFERSON COUNTY, ALABAMA, a political subdivision of the State of Alabama (herein called the "County"), hereby acknowledges that it is indebted to, and hereby directs the County Treasurer of the County to pay to _____, or registered assigns, solely out of the revenues hereinafter referred to, the principal sum of

D O L L A R S

on the date specified above with interest thereon from the date hereof until the maturity hereof at the per annum rate of interest specified above (computed on the basis of a 360-day year of twelve consecutive 30-day months), payable on August 1, 1997, and semiannually thereafter on each February 1 and August 1 until maturity or earlier redemption. The principal of and the interest on this warrant shall be payable in lawful money of the United States of America and shall bear interest after their respective due dates until paid at the rate of interest borne by the principal hereof prior to maturity. The principal of this warrant shall be payable only upon presentation and surrender of this warrant at the principal office of the Trustee hereinafter referred to. The interest on this warrant shall be remitted by said Trustee by check or draft mailed or otherwise delivered to the registered holder hereof at the address shown on the registry books of said Trustee.

This warrant is one of a duly authorized issue or series of warrants authorized to be issued in the aggregate principal amount of \$48,020,000 and designated Taxable Sewer Revenue Refunding Warrants, Series 1997-B (herein called the "Series 1997-B Warrants"). The Series 1997-B Warrants have been issued under and pursuant to the constitution and laws of the State of Alabama and a Trust Indenture dated as of February 1, 1997 (herein called the "Indenture"),

between the County and AmSouth Bank of Alabama, as trustee (herein, together with its successors in trust, called the "Trustee"). Simultaneously with the issuance of the Series 1997-B Warrants, the County issued, under the Indenture, \$211,040,000 principal amount of its Sewer Revenue Refunding Warrants, Series 1997-A (herein called the "Series 1997-A Warrants"), and \$52,880,000 principal amount of its Taxable Sewer Revenue Refunding Warrants, Series 1997-C (herein called the "Series 1997-C Warrants").

Under the Indenture, the Series 1997-A Warrants, the Series 1997-B Warrants and the Series 1997-C Warrants are equally and ratably secured by a pledge of certain revenues from the sanitary sewer system of the County (herein, as it may at any time exist, called the "System") that remain after the payment of the expenses of operating and maintaining the System. Upon compliance with certain conditions specified in the Indenture, the County may issue additional securities (without limitation as to principal amount) that are secured by the Indenture on a parity with the Series 1997-A Warrants, the Series 1997-B Warrants and the Series 1997-C Warrants with respect to the pledge of the aforesaid revenues from the System (the Series 1997-A Warrants, the Series 1997-B Warrants, the Series 1997-C Warrants and all such additional securities being herein together called the "Parity Securities").

The holders of the Parity Securities shall never have the right to demand payment of the Parity Securities out of any funds raised or to be raised by taxation or from any source whatsoever, except the payments and amounts described in this warrant and the Indenture. Except for the revenues from the System and the other moneys that may be held by the Trustee under the Indenture, no property of the County is encumbered by any lien or security interest for the benefit of the holder of this warrant. Neither the faith and credit, nor the taxing power, of the State of Alabama or the County, or any other public corporation, subdivision or agency of the State of Alabama or the County, is pledged to the payment of the principal of or the interest on this warrant.

The transfer of this warrant shall be registered upon the registration books kept at the principal corporate office of the Trustee, at the written request of the holder hereof or his attorney duly authorized in writing, upon surrender of this warrant at said office, together with a written instrument of transfer satisfactory to the Trustee duly executed by the holder hereof or his duly authorized attorney. Upon payment of any required tax or other governmental charge, this warrant may, upon the surrender hereof at the principal corporate trust office of the Trustee, be exchanged for an equal aggregate principal amount of Series 1997-B Warrants of the same maturity in any other authorized denominations.

The Trustee shall not be required to transfer or exchange this warrant during the period of fifteen days next preceding any interest payment date with respect hereto.

Except as provided in the Indenture, the registered holder of this warrant shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto.

With certain exceptions as provided therein, the Indenture may be modified or amended only with the consent of the holders of a majority in aggregate principal amount of all Parity Securities outstanding under the Indenture.

Reference is hereby made to the Indenture, a copy of which is on file with the Trustee, for the provisions thereof concerning the nature and extent of the rights, duties and obligations of the County, the Trustee and the holders of the Parity Securities. The registered holder of this warrant, by the acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Indenture.

The County and the Trustee may deem and treat the person in whose name this warrant is registered as the absolute owner hereof for all purposes, whether or not any principal of or interest on this warrant is overdue, and neither the County nor the Trustee shall be affected by any notice to the contrary.

It is hereby certified, recited and declared that all acts, conditions and things required by the constitution and laws of the State of Alabama to exist, to have happened and to have been performed, precedent to and in the execution and delivery of the Indenture and the issuance of this warrant, do exist, have happened and have been performed in regular and due form as required by law.

No covenant or agreement contained in this warrant or the Indenture shall be deemed to be a covenant or agreement of any official, officer, agent or employee of the County in his individual capacity, and neither the members of the governing body of the County, nor any official executing this warrant, shall be liable personally on this warrant or be subject to any personal liability or accountability by reason of the issuance or sale of this warrant.

This warrant shall not be entitled to any right or benefit under the Indenture, or be valid or become obligatory for any purpose, until this warrant shall have been authenticated by the execution by the Trustee of the certificate of authentication inscribed hereon.

IN WITNESS WHEREOF, the County has caused this warrant to be executed in its name and behalf with the facsimile signature of the President of its County Commission, has caused a facsimile of its official seal to be hereunto imprinted, has caused the signature of the aforesaid President to be attested by the Minute Clerk of its County Commission, who has caused a facsimile of her signature to be imprinted hereon, and has caused this warrant to be dated February 1, 1997.

JEFFERSON COUNTY, ALABAMA

By _____
President of the County Commission

ATTEST:

Minute Clerk of the
County Commission

[S E A L]

[Form for Assignment]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within warrant and hereby irrevocably constitutes and appoints _____ attorney, with full power of substitution in the premises, to transfer the within warrant on the books kept for registration thereof by the within-mentioned Trustee.

Dated this _____ day of _____, _____.

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears upon the face of the within warrant in every particular, without alteration or enlargement or any change whatsoever.

AUTHENTICATION CERTIFICATE

DATE OF AUTHENTICATION: _____

This warrant is one of the Series 1997-B Warrants described in the within-mentioned Trust Indenture.

AMSOUTH BANK OF ALABAMA,
as Trustee

By _____
Its Authorized Officer

Section 8.4 Execution and Delivery of Series 1997-B Warrants. The Series 1997-B Warrants shall be forthwith executed and delivered to the Trustee and shall be authenticated and delivered by the Trustee from time to time upon receipt by the Trustee of an order signed on behalf of the County by the President of the Governing Body requesting such authentication and delivery and designating the Person or Persons to receive the same or any part thereof.

Section 8.5 Application of Proceeds from the Sale of Series 1997-B Warrants. The entire proceeds derived from the sale of the Series 1997-B Warrants shall be paid to the Trustee and promptly thereafter applied by the Trustee for the following purposes and in the following order:

- (a) payment into the Debt Service Fund of that portion of such proceeds (if any) that is allocable to accrued interest;
- (b) payment of the sum of \$63,275.51 to the Bond Insurer;
- (c) payment of the sum of \$43,113,758.97 to AmSouth Bank of Alabama, in its capacity as escrow trustee with respect to the Series 1993 Warrants under an Escrow Trust Agreement dated as of February 1, 1997, between the County and said bank;
- (d) payment of the sum of \$4,396,800.06 into the Reserve Fund; and
- (e) payment of the balance of such proceeds into the Issuance Cost Account.

ARTICLE IX

THE SERIES 1997-C WARRANTS

Section 9.1 Authorization and Description of the Series 1997-C Warrants and Places of Payment. Pursuant to the applicable provisions of the Act, and for the purpose of refunding by exchange the SRF Warrant, there is hereby authorized to be issued under the Indenture an issue or series of Parity Securities designated Taxable Sewer Revenue Refunding Warrants, Series 1997-C, limited in aggregate principal amount to \$52,880,000. The Series 1997-C Warrants shall be dated February 15, 1997, shall be numbered from R1 upwards in the order issued and shall be issued initially in the respective principal amounts of \$5,000 or any greater integral multiple thereof. The Series 1997-C Warrants shall mature and become payable on February 15, 2015, and shall bear interest from their date payable on August 15, 1997, and on each February 15 and August 15 thereafter until maturity or earlier redemption at the rate of 4.05% per annum. The principal of and the interest on any Series 1997-C Warrant shall bear interest after their respective due dates until paid at a per annum rate of interest equal to 2% above the Authority Trustee Prime Rate; provided that if, as a result of a failure by the County to pay when due the principal of or interest on the Series 1997-C Warrants, a withdrawal of moneys from the Bond Proceeds Account of the Debt Service Fund created in that certain Trust Indenture dated as of August 15, 1992, between the Authority and Central Bank of the South, as trustee, is necessary in order to prevent a default in the payment of the bonds of the Authority issued pursuant to said Trust Indenture, then the amount so withdrawn from said account shall be immediately due and payable by the County and shall bear interest until paid at the Authority Trustee Prime Rate. The Series 1997-C Warrants shall be initially issued as a single warrant registered in the name of the Authority.

The principal of and the interest on the Series 1997-C Warrants shall be payable in accordance with the provisions of Section 3.2 hereof.

Section 9.2 Optional Redemption of Series 1997-C Warrants. The Series 1997-C Warrants will be subject to redemption and prepayment prior to their stated maturities, at the option of the County, as a whole or in part on August 15, 2002, and on any February 15 or August 15 thereafter, at and for a redemption price, for each Series 1997-C Warrant or portion thereof to be redeemed equal to the principal amount thereof plus accrued interest to the date fixed for redemption. The Series 1997-C Warrants may be redeemed only in installments of \$5,000 or any integral multiple thereof. In the event that less than all of the Series 1997-C Warrants are redeemed and prepaid pursuant to this Section 9.2, the Trustee shall select by lot the Series 1997-C Warrants (or portions of the principal thereof) to be redeemed and prepaid. The redemption of Series 1997-C Warrants pursuant to this section shall comply with the applicable provisions of Article VI and Section 9.5 hereof, with the provisions of Section 9.5 particularly applicable to the Series 1997-C Warrants to govern in the case of any conflict.

Section 9.3 **Scheduled Mandatory Redemption of Series 1997-C Warrants.** The Series 1997-C Warrants shall be subject to scheduled mandatory redemption on the following respective dates and in the following respective principal amounts:

<u>Redemption Date</u>	<u>Principal Amount</u>
February 15, 1998	\$ 2,035,000
February 15, 1999	2,120,000
February 15, 2000	2,210,000
February 15, 2001	2,300,000
February 15, 2002	2,395,000
February 15, 2003	2,495,000
February 15, 2004	2,595,000
February 15, 2005	2,705,000
February 15, 2006	2,815,000
February 15, 2007	2,935,000
February 15, 2008	3,055,000
February 15, 2009	3,180,000
February 15, 2010	3,310,000
February 15, 2011	3,450,000
February 15, 2012	3,590,000
February 15, 2013	3,740,000
February 15, 2014	3,895,000

Series 1997-C Warrants in the aggregate principal amount of \$4,055,000 will remain to be paid at their scheduled maturity on February 15, 2015.

The Series 1997-C Warrants shall be redeemed pursuant to the provisions of this section at and for a redemption price, with respect to each such warrant (or portion of the principal thereof) to be redeemed, equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date fixed for redemption, and such redemption shall be effected in accordance with the applicable provisions of Article VI and Section 9.5 hereof, with the provisions of Section 9.5 particularly applicable to the Series 1997-C Warrants to govern in the case of any conflict.

Section 9.4 **Purchase of Series 1997-C Warrants for Retirement.** The County may at any time and from time to time purchase Series 1997-C Warrants for retirement using funds from any source. Any Series 1997-C Warrants so purchased for retirement shall be delivered by the County to the Trustee, together with a written order of an authorized officer of the County for their cancellation, whereupon such purchased Series 1997-C Warrants shall be cancelled by the Trustee.

Section 9.5 Special Provisions Respecting Partial Redemption of Series 1997-C Warrants. The principal of any Series 1997-C Warrants shall be redeemed only in the amount of \$5,000 or any integral multiple thereof. If less than all the Series 1997-C Warrants are to be called for redemption on any single redemption date, the Trustee shall assign a number or other unique designation to each \$5,000 in principal amount of the Series 1997-C Warrants then outstanding and select by lot, from among all such numbers or other unique designations associated with the Series 1997-C Warrants then outstanding, numbers or other unique designations representing an aggregate principal amount equal to the principal amount of the Series 1997-C Warrants to be so called for redemption, whereupon there shall be called for redemption an amount of the unpaid principal of each Series 1997-C Warrant equal to the principal amount represented by the numbers or other unique designations related thereto that were so selected.

Section 9.6 Form of Series 1997-C Warrants. The Series 1997-C Warrants and the Trustee's authentication certificate applicable thereto shall be in substantially the following forms, respectively, with such insertions, omissions and other variations as may be necessary to conform to the provisions hereof:

[Form of Series 1997-C Warrant]

No. R _____

\$ _____

UNITED STATES OF AMERICA

STATE OF ALABAMA

JEFFERSON COUNTY, ALABAMA

TAXABLE SEWER REVENUE REFUNDING WARRANT
Series 1997-C

JEFFERSON COUNTY, ALABAMA, a political subdivision of the State of Alabama (herein called the "County"), hereby acknowledges that it is indebted to, and hereby directs the County Treasurer of the County to pay to _____, or registered assigns, solely out of the revenues hereinafter referred to, the principal sum of

D O L L A R S

on February 15, 2015 with interest thereon from the date hereof until the maturity hereof at the rate of 4.05% per annum (computed on the basis of a 360-day year of twelve consecutive 30-day

months), payable on August 15, 1997, and semiannually thereafter on each February 15 and August 15 until maturity or earlier redemption. The principal of and the interest on this warrant shall be payable in lawful money of the United States of America and shall bear interest after their respective due dates until paid at a per annum rate of interest equal to 2% above the Authority Trustee Prime Rate (as defined in the Indenture hereinafter referred to); provided that if, as a result of a failure by the County to pay when due the principal of or interest on the Series 1997-C Warrants hereinafter referred to, a withdrawal of moneys from the Bond Proceeds Account of the Debt Service Fund created in that certain Trust Indenture dated as of August 15, 1992, between the Alabama Water Pollution Control Authority (herein called the "Authority"), and Central Bank of the South, as trustee, is necessary in order to prevent a default in the payment of the bonds of the Authority issued pursuant to said Trust Indenture, then the amount so withdrawn from said account shall be immediately due and payable by the County and shall bear interest until paid at the Authority Trustee Prime Rate (as defined in the Indenture hereinafter referred to). The principal of this warrant shall be payable only upon presentation and surrender of this warrant at the principal office of the Trustee hereinafter referred to. The interest on this warrant shall be remitted by said Trustee by check or draft mailed or otherwise delivered to the registered holder hereof at the address shown on the registry books of said Trustee.

This warrant is one of a duly authorized issue or series of warrants authorized to be issued in the aggregate principal amount of \$52,880,000 and designated Taxable Sewer Revenue Refunding Warrants, Series 1997-C (herein called the "Series 1997-C Warrants"). The Series 1997-C Warrants have been issued under and pursuant to the constitution and laws of the State of Alabama and a Trust Indenture dated as of February 1, 1997 (herein called the "Indenture"), between the County and AmSouth Bank of Alabama, as trustee (herein, together with its successors in trust, called the "Trustee"). Simultaneously with the issuance of the Series 1997-C Warrants, the County issued, under the Indenture, \$211,040,000 principal amount of its Sewer Revenue Refunding Warrants, Series 1997-A (herein called the "Series 1997-A Warrants") and \$48,020,000 principal amount of its Taxable Sewer Revenue Refunding Warrants, Series 1997-B (herein called the "Series 1997-B Warrants").

The Series 1997-C Warrants are subject to redemption and prepayment prior to maturity, at the option of the County, as a whole or in part, on August 15, 2002, and on any February 15 or August 15 thereafter, such redemption to be at and for a redemption price, for each Series 1997-C Warrant or portion thereof to be redeemed, equal to the principal amount thereof plus accrued interest to the date fixed for redemption.

The Series 1997-C Warrants are subject to scheduled mandatory redemption, at and for a redemption price, with respect to each such warrant (or portion of the principal thereof) to be redeemed, equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date fixed for redemption, in the following principal amounts on the following dates:

<u>Redemption Date</u>	<u>Principal Amount</u>
February 15, 1998	\$ 2,035,000
February 15, 1999	2,120,000
February 15, 2000	2,210,000
February 15, 2001	2,300,000
February 15, 2002	2,395,000
February 15, 2003	2,495,000
February 15, 2004	2,595,000
February 15, 2005	2,705,000
February 15, 2006	2,815,000
February 15, 2007	2,935,000
February 15, 2008	3,055,000
February 15, 2009	3,180,000
February 15, 2010	3,310,000
February 15, 2011	3,450,000
February 15, 2012	3,590,000
February 15, 2013	3,740,000
February 15, 2014	3,895,000
February 15, 2015 (maturity)	4,055,000

If less than all of the outstanding Series 1997-C Warrants are to be called for redemption, the Series 1997-C Warrants (or principal portions thereof) to be redeemed shall be selected by the Trustee by lot in the principal amounts designated to the Trustee by the County or otherwise as required by the Indenture. In the event any of the Series 1997-C Warrants are called for redemption, the Trustee shall give notice, in the name of the County, of the redemption of such Warrants, which notice shall state that on the redemption date the Series 1997-C Warrants to be redeemed shall cease to bear interest. Such notice shall be given by mailing a copy thereof by registered or certified mail at least forty-five (45) days prior to the date fixed for redemption to the holders of the Series 1997-C Warrants to be redeemed at the addresses shown on the registration books of the Trustee; provided, however, that failure to give such notice, or any defect therein, shall not affect the validity of the redemption of any of the Series 1997-C Warrants for which notice was properly given. Any Series 1997-C Warrants which have been duly selected for redemption and which are deemed to be paid in accordance with the Indenture shall cease to bear interest on the date fixed for redemption and shall thereafter cease to be entitled to any lien, benefit or security under the Indenture.

Under the Indenture, the Series 1997-A Warrants, the Series 1997-B Warrants and the Series 1997-C Warrants are equally and ratably secured by a pledge of certain revenues from the sanitary sewer system of the County (herein, as it may at any time exist, called the "System") that remain after the payment of the expenses of operating and maintaining the System. Upon compliance with certain conditions specified in the Indenture, the County may

issue additional securities (without limitation as to principal amount) that are secured by the Indenture on a parity with the Series 1997-A Warrants, the Series 1997-B Warrants and the Series 1997-C Warrants with respect to the pledge of the aforesaid revenues from the System (the Series 1997-A Warrants, the Series 1997-B Warrants, the Series 1997-C Warrants and all such additional securities being herein together called the "Parity Securities").

The holders of the Parity Securities shall never have the right to demand payment of the Parity Securities out of any funds raised or to be raised by taxation or from any source whatsoever, except the payments and amounts described in this warrant and the Indenture. Except for the revenues from the System and the other moneys that may be held by the Trustee under the Indenture, no property of the County is encumbered by any lien or security interest for the benefit of the holder of this warrant. Neither the faith and credit, nor the taxing power, of the State of Alabama or the County, or any other public corporation, subdivision or agency of the State of Alabama or the County, is pledged to the payment of the principal of or the interest on this warrant.

The transfer of this warrant shall be registered upon the registration books kept at the principal corporate office of the Trustee, at the written request of the holder hereof or his attorney duly authorized in writing, upon surrender of this warrant at said office, together with a written instrument of transfer satisfactory to the Trustee duly executed by the holder hereof or his duly authorized attorney. Upon payment of any required tax or other governmental charge, this warrant may, upon the surrender hereof at the principal corporate trust office of the Trustee, be exchanged for an equal aggregate principal amount of Series 1997-C Warrants in any other authorized denominations.

The Trustee shall not be required to transfer or exchange this warrant during the period of fifteen days next preceding any interest payment date with respect hereto. In the event that this warrant (or any principal portion hereof) is duly called for redemption and prepayment, the Trustee shall not be required to transfer or exchange this warrant during the period of thirty days next preceding the date fixed for such redemption and prepayment.

Except as provided in the Indenture, the registered holder of this warrant shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto.

With certain exceptions as provided therein, the Indenture may be modified or amended only with the consent of the holders of a majority in aggregate principal amount of all Parity Securities outstanding under the Indenture.

Reference is hereby made to the Indenture, a copy of which is on file with the Trustee, for the provisions thereof concerning the nature and extent of the rights, duties and obligations of the County, the Trustee and the holders of the Parity Securities. The registered holder of this

warrant, by the acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Indenture.

The County and the Trustee may deem and treat the person in whose name this warrant is registered as the absolute owner hereof for all purposes, whether or not any principal of or interest on this warrant is overdue, and neither the County nor the Trustee shall be affected by any notice to the contrary.

It is hereby certified, recited and declared that all acts, conditions and things required by the constitution and laws of the State of Alabama to exist, to have happened and to have been performed, precedent to and in the execution and delivery of the Indenture and the issuance of this warrant, do exist, have happened and have been performed in regular and due form as required by law.

No covenant or agreement contained in this warrant or the Indenture shall be deemed to be a covenant or agreement of any official, officer, agent or employee of the County in his individual capacity, and neither the members of the governing body of the County, nor any official executing this warrant, shall be liable personally on this warrant or be subject to any personal liability or accountability by reason of the issuance or sale of this warrant.

This warrant shall not be entitled to any right or benefit under the Indenture, or be valid or become obligatory for any purpose, until this warrant shall have been authenticated by the execution by the Trustee of the certificate of authentication inscribed hereon.

IN WITNESS WHEREOF, the County has caused this warrant to be executed in its name and behalf with the facsimile signature of the President of its County Commission, has caused a facsimile of its official seal to be hereunto imprinted, has caused the signature of the aforesaid President to be attested by the Minute Clerk of its County Commission, who has caused a facsimile of her signature to be imprinted hereon, and has caused this warrant to be dated February 15, 1997.

JEFFERSON COUNTY, ALABAMA

By _____
President of the County Commission

ATTEST:

Minute Clerk of the
County Commission

[S E A L]

[Form for Assignment]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within warrant and hereby irrevocably constitutes and appoints _____ attorney, with full power of substitution in the premises, to transfer the within warrant on the books kept for registration thereof by the within-mentioned Trustee.

Dated this _____ day of _____, _____.

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears upon the face of the within warrant in every particular, without alteration or enlargement or any change whatsoever.

AUTHENTICATION CERTIFICATE

DATE OF AUTHENTICATION: _____

This warrant is one of the Series 1997-C Warrants described in the within-mentioned Trust Indenture.

AMSOUTH BANK OF ALABAMA,
as Trustee

By _____
Its Authorized Officer

Section 9.7 Execution and Delivery of Series 1997-C Warrants. The Series 1997-C Warrants shall be forthwith executed and delivered to the Trustee and shall be authenticated and

delivered by the Trustee from time to time upon receipt by the Trustee of an order signed on behalf of the County by the President of the Governing Body requesting such authentication and delivery and designating the Person or Persons to receive the same or any part thereof.

ARTICLE X

ADDITIONAL PARITY SECURITIES

Section 10.1 **Additional Parity Securities—In General.** If no Event of Default shall have occurred and be continuing, the County may at any time and from time to time issue Additional Parity Securities, within the limitations of and upon compliance with the provisions of this Article X, for any one or more of the following purposes:

- (a) for the purpose of constructing or otherwise acquiring any System Improvements,
- (b) for the purpose of refunding any obligations issued or incurred by the County for the purpose of constructing or otherwise acquiring any System Improvements,
- (c) for the purpose of refunding or otherwise retiring all or any portion of any one or more series of Parity Securities then outstanding under the Indenture,
- (d) for any other purpose at the time permitted by applicable law, or
- (e) for any combination of the foregoing purposes.

The Additional Parity Securities shall be in such denomination or denominations, shall bear interest at such rate or rates, shall bear such dates, shall mature in such amounts and on such dates, shall be in such form, and may be subject to redemption prior to maturity under such conditions, all as shall be provided in the Supplemental Indenture under which they are issued. Any redemption of Additional Parity Securities prior to maturity shall be effected in the manner set forth in and shall be subject to the provisions of Article VI hereof. All Additional Parity Securities so issued shall contain an appropriate series designation.

Section 10.2 **Conditions Precedent to Issuance of Additional Parity Securities.** Prior to the issuance of any Additional Parity Securities, the County shall deliver to the Trustee those of the Additional Parity Securities proposed to be issued, duly executed and sealed, accompanied by the following:

(a) Supplemental Indenture. A Supplemental Indenture between the County and the Paying Agent for the Additional Parity Securities proposed to be issued, duly executed, sealed and acknowledged on behalf of the County and said Paying Agent and containing the following: (i) a description of such Additional Parity Securities, including the aggregate principal amount, the numbers and series designation, the denomination or denominations, the date, the interest rate or rates and the maturity or maturities thereof, the provisions for redemption thereof prior to maturity and the forms of such Additional Parity Securities and various certificates applicable thereto; (ii) a confirmation of the lien of the Indenture on all revenues, properties and rights then constituting the Trust Estate; (iii) provisions for the establishment of a separate account within the Debt Service Fund to provide for the payment of such Additional Parity Securities; (iv) if the proposed Additional Parity Securities are to be secured by the Reserve Fund, provisions requiring any increase in the Reserve Fund Requirement that may result from the issuance of such Additional Parity Securities to be fully funded out of proceeds derived by the County from the sale of such Additional Parity Securities or, alternatively, provisions requiring any requisite increase in the Reserve Fund Requirement to be funded by such additional periodic payments from the System Revenues into the Reserve Fund as, when added to the moneys held in the Reserve Fund when such Additional Parity Securities are issued and any payment to be made into the Reserve Fund simultaneously with the issuance of such Additional Parity Securities, will cause the amount held in the Reserve Fund to equal the Reserve Fund Requirement within sixty (60) months after the issuance of such Additional Parity Securities; and (v) any other matters deemed appropriate by the County and not inconsistent with the terms of this Indenture;

(b) Proceedings. A certified copy of the proceedings taken by the Governing Body authorizing the issuance of such Additional Parity Securities and the execution and delivery of the Supplemental Indenture providing therefor, which said proceedings shall include a Resolution requesting the applicable Paying Agent to authenticate and deliver such Additional Parity Securities and reciting the following: (i) that no Event of Default has occurred and is continuing and no event which, with the giving of notice or the passage of time or both, would constitute an Event of Default has occurred and is continuing; (ii) the Person or Persons to whom such Additional Parity Securities have been sold and awarded and shall be delivered; (iii) the purchase price of such Additional Parity Securities; (iv) a list of all Additional Parity Securities previously issued by the County hereunder and at the time outstanding and of the Supplemental Indentures under which they were issued; (v) if any of such Additional Parity Securities are to be issued for the purpose of refunding or otherwise retiring any Parity Securities then outstanding, a brief description of such Parity Securities to be so refunded or otherwise retired; and (vi) whether or not such Additional Parity Securities are to be secured by the Reserve Fund;

(c) Revenue Certificate or Revenue Forecast. Either a Revenue Certificate or a Revenue Forecast, as such terms are defined and used in the succeeding paragraphs of this Section 10.2 (provided, however, that the delivery of a Revenue Certificate or a Revenue Forecast shall not be a condition precedent to the issuance of the Additional 1997 Parity Securities);

(d) Certificate Required for Variable Rate Securities. In the case of any Additional Parity Securities that are being issued as Variable Rate Securities, a certificate signed by an Independent Accountant, the President of the Governing Body or the County's Director of Finance certifying that, immediately following the issuance of such Additional Parity Securities, the aggregate principal amount of all outstanding Variable Rate Securities would not exceed 50% of the aggregate principal amount of all outstanding Parity Securities;

(e) Opinion of Bond Counsel Respecting Previously Issued Parity Securities. An opinion of Bond Counsel that (i) the issuance of the Additional Parity Securities will not adversely affect the exemption from federal income taxation of interest payable on the Parity Securities theretofore issued, and (ii) the Additional Parity Securities, when issued, will be entitled to the benefit and security of this Indenture in like manner as Parity Securities theretofore issued under and pursuant to this Indenture;

(f) Opinion of Independent Counsel. An opinion, acceptable to the Trustee and dated as of the date of the issuance of such Additional Parity Securities, of Independent Counsel acceptable to the Trustee [which Independent Counsel may, but need not, be the Bond Counsel rendering the opinion required by subsection (g) of this section] approving the forms of all documents required by the preceding portions of this section to be delivered to the Trustee and stating that they comply with the applicable requirements of this Article X; and

(g) Opinion of Bond Counsel as to Validity of Additional Parity Securities. An opinion, dated as of the date of the issuance of such Additional Parity Securities, of Bond Counsel approving the validity of such Additional Parity Securities.

As used in this Section 10.2, the term "Revenue Certificate" means a certificate signed by an Independent Accountant, the President of the Governing Body or the County's Director of Finance that satisfies whichever of the following is applicable:

(I) If such Revenue Certificate is delivered with respect to Additional Parity Securities issued prior to October 1, 2007, such certificate shall state the following:

(i) the sum of (A) the Prior Years' Surplus as of the beginning of the Fiscal Year that immediately preceded the Fiscal Year in which such certificate

is delivered and (B) the Net Revenues Available for Debt Service during the then most recently completed Fiscal Year or during any period of twelve consecutive months in the eighteen-month period next preceding the date of issuance of the proposed Additional Parity Securities was not less than one hundred and five percent (105%) of the Maximum Annual Debt Service payable during the then current or any succeeding Fiscal Year with respect to the then outstanding Parity Securities and the Additional Parity Securities with respect to which such certificate is made; and

(ii) the Net Revenues Available for Debt Service during the then most recently completed Fiscal Year or during any period of twelve consecutive months in the eighteen-month period next preceding the date of issuance of the proposed Additional Parity Securities was not less than seventy-five percent (75%) of the Maximum Annual Debt Service payable during the then current or any succeeding Fiscal Year with respect to the then outstanding Parity Securities and the Additional Parity Securities with respect to which such certificate is made; or

(II) If such Revenue Certificate is delivered with respect to Additional Parity Securities issued on or after October 1, 2007, such certificate shall state that the Net Revenues Available for Debt Service during the then most recently completed Fiscal Year or during any period of twelve consecutive months in the eighteen-month period next preceding the date of issuance of the proposed Additional Parity Securities was not less than one hundred and five percent (105%) of the Maximum Annual Debt Service payable during the then current or any succeeding Fiscal Year with respect to the then outstanding Parity Securities and the Additional Parity Securities with respect to which such certificate is made.

If rates and charges for services furnished by the System were increased and put into effect by the County after the beginning of the Fiscal Year or other twelve-month period to which a Revenue Certificate refers and not thereafter reduced, an Independent Engineer may certify the amount of gross revenues from the System that would have been received by the County had such increased rates and charges been in effect during the entire Fiscal Year or other twelve-month period, and the Independent Accountant, the President of the Governing Body or the County's Director of Finance, as the case may be, preparing and signing the Revenue Certificate, may compute Net Revenues Available for Debt Service during such Fiscal Year or other twelve-month period based on the amount of revenues that would have been derived from the System during such period with such increased rates and charges, as so certified by such Independent Engineer.

As used in this Section 10.2, the term "Revenue Forecast" means a report prepared by an Independent Engineer with respect to a period that shall begin on the first day of the Fiscal Year that succeeds the Fiscal Year in which the proposed Additional Parity Securities are issued and that shall not be longer than five Fiscal Years (such period being herein called the "Forecast Period"), which report shall make the following projections with respect to the last Fiscal Year in the Forecast Period (such year being herein called the "Test Year"):

(I) If such Revenue Forecast is delivered with respect to Additional Parity Securities issued prior to October 1, 2007,

(i) the sum of (A) the projected Prior Years' Surplus as of the beginning of the Test Year and (B) the projected Net Revenues Available for Debt Service for the Test Year shall not be less than one hundred and five percent (105%) of the Maximum Annual Debt Service payable during the Test Year or any succeeding Fiscal Year with respect to the then outstanding Parity Securities and the Additional Parity Securities with respect to which such report is made; and

(ii) the projected Net Revenues Available for Debt Service for the Test Year shall not be less than seventy-five percent (75%) of the Maximum Annual Debt Service payable during the Test Year or any succeeding Fiscal Year with respect to the then outstanding Parity Securities and the Additional Parity Securities with respect to which such report is made.

(II) If such Revenue Forecast is delivered with respect to Additional Parity Securities issued on or after October 1, 2007, the projected Net Revenues Available for Debt Service for the Test Year shall not be less than one hundred and five percent (105%) of the Maximum Annual Debt Service payable during the Test Year or any succeeding Fiscal Year with respect to the then outstanding Parity Securities and the Additional Parity Securities with respect to which such report is made.

In preparing its Revenue Forecast, the Independent Engineer shall be entitled (a) to make projections with respect to the rates and charges to be imposed for services furnished by the System during each of the Fiscal Years in the Forecast Period (so long as such Independent Engineer certifies, with respect to any projected rates and charges that are higher than the actual rates and charges in effect as of the date of the Revenue Forecast, that such projected rates and charges would be reasonable for public sanitary sewer systems similar in size and character to the System) and (b) to rely upon estimates prepared by an Independent Investment Advisor with respect to the aggregate amount of debt service on the Parity Securities to become due and payable during each of the Fiscal Years in the Forecast Period.

Upon receipt of the documents required by the provisions of this section to be furnished to it, the Trustee shall, unless it has cause to believe any of the statements set out in said documents to be incorrect, thereupon acknowledge its receipt of the Supplemental Indenture so presented and, if required by pertinent law, cause the same to be filed for record at the expense of the County in the public office or offices in the State of Alabama in which such document is then required by law to be filed in order to constitute constructive notice thereof. The Trustee shall then authenticate (or direct the applicable Paying Agent to authenticate) the Additional Parity Securities with respect to which the said documents shall have been provided and shall, upon receipt of evidence satisfactory to it that the County has received the purchase price or other consideration therefor, deliver (or direct the applicable Paying Agent to deliver) such

Additional Parity Securities to the Person or Persons to whom the Resolution provided for in subsection (b) of this section directed that they be delivered.

Section 10.3 Subordinate Indebtedness Permitted. Nothing contained herein shall be construed as a restriction upon the right of the County to issue subordinate lien bonds or warrants or other obligations secured by a pledge of the Pledged Revenues that is subject and subordinate in all respects to the pledge of revenues herein made or provided for the payment of the Parity Securities.

Section 10.4 Related Obligations. In connection with the initial issuance of any series of Parity Securities, the County may obtain or cause to be obtained letters of credit, lines of credit, bond insurance or similar obligations, agreements or instruments (herein collectively called "Credit Facilities") securing or providing for the payment of all or a portion of the principal or redemption price of or interest on that series of Parity Securities or providing for the purchase of that series of Parity Securities or a portion thereof by the issuer or obligor of any such Credit Facility. In connection therewith, the County may enter into agreements with the issuer of or obligor on any such Credit Facility providing for, among other things, the payment of fees and expenses to such issuer or obligor for the issuance of such Credit Facility, the terms and conditions of such Credit Facility and the series of Parity Securities affected thereby, and the security, if any, to be provided for the issuance of such Credit Facility and the payment of such fees and expenses or the obligations of the County with respect thereto. The County may also, to the extent permitted by then applicable law, enter into an interest rate swap agreement, an interest rate cap agreement, an interest rate floor agreement, an interest rate collar agreement or any similar agreement with respect to any series of Parity Securities or portion thereof.

In addition to any other security permitted by applicable law, the County may, if it elects to do so, secure all or any portion of its contractual obligations with respect to any Credit Facility or any Qualified Swap (any such contractual obligations being herein called "Related Obligations") by a pledge of the Pledged Revenues which may be on a parity with the pledge made in the Indenture (except to the extent that any such pledge secures the payment of any amount payable by the County as a consequence of an early termination of a Qualified Swap) so long as no default exists on the part of the Person providing such Credit Facility or on the part of the related Qualified Swap Provider, as the case may be. Notwithstanding any pledge that may be made pursuant to the preceding sentence, Related Obligations shall not constitute or be treated as Parity Securities for any purpose in applying the provisions of this Indenture (including, without limitation, the conditions precedent to the issuance of Additional Parity Securities contained in Section 10.2 and the covenants contained in Article XII).

ARTICLE XI

APPLICATION OF SYSTEM REVENUES AND ESTABLISHMENT OF SPECIAL FUNDS

Section 11.1 **Revenue Account.** There is hereby established a special account in the name of the County, the full name of which shall be the "Jefferson County Sewer System Revenue Account". All System Revenues and all amounts received by the County pursuant to Qualified Swaps shall be deposited in the Revenue Account promptly upon receipt by the County, provided that amounts received by the County as (a) grants or borrowed funds for improvements or extensions to the System, (b) deposits or payments by contractors to offset the cost of extensions or new connections, and (c) customer deposits to ensure payment for utility services may be held by the County in a separate account or accounts pending use thereof for the said purposes.

On or before the last Business Day of each calendar month, the County will apply the moneys in the Revenue Account for the payment of all Operating Expenses that are then due and that were incurred during the then-current or in any then-preceding calendar month. On or before the various dates specified in Sections 11.2 through 11.5, the County will apply the moneys in the Revenue Account that remain after payment of Operating Expenses for payment into the Debt Service Fund, the Reserve Fund, the Rate Stabilization Fund and the Depreciation Fund, in the order named, of such amounts as are required hereby to be paid therein on or before the pertinent dates specified in the aforesaid sections, to the respective extents provided in such sections and to the extent that moneys on deposit in the Revenue Account are sufficient therefor.

Revenues derived from the Sewer Tax that are deposited into the Revenue Account shall be applied for the payment of Operating Expenses in preference to any other moneys at the time held in the Revenue Account, it being the County's intention and expectation that such tax revenues be applied for no purpose other than the payment of Operating Expenses. No payments or withdrawals shall at any time be made from the Revenue Account other than the transfers, payments or withdrawals provided for in this article.

The Governing Body may at any time and from time to time designate any banking institution or institutions as depository or depositories for the Revenue Account, provided that each such depository so designated shall at all times while acting as such be and remain a member of the Federal Deposit Insurance Corporation or of any agency of the United States of America that may succeed to its functions, if there be any such, and shall be and remain duly qualified to do business in the State of Alabama. Each such depository shall be fully protected in paying out moneys from the Revenue Account on checks, vouchers or drafts signed by any duly authorized officer, employee or agent of the County, and no such depository shall be liable for the misapplication by the County of any moneys so withdrawn if such moneys shall be so withdrawn without knowledge or reason on the part of such depository to believe that such

disbursement constitutes a misapplication of funds. So long as no Event of Default shall have occurred and be continuing, the County may combine moneys held in the Revenue Account with other moneys of the County for purposes of custody, safekeeping and investments.

Section 11.2 Debt Service Fund. There is hereby established a special trust fund, the full name of which shall be the "Jefferson County Sewer System Debt Service Fund." The Trustee shall be the depository, custodian and disbursing agent for the Debt Service Fund. Out of the moneys on deposit in the Debt Service Fund, the Trustee shall (i) pay the principal of and the interest on those of the Parity Securities for which it serves as Paying Agent, as said principal and interest respectively become due, (ii) make provision for the payment of the principal of and the interest on all other Parity Securities by transferring sufficient moneys to the applicable Paying Agent or Agents on or before the respective dates on which such principal and interest become due and payable, and (iii) pay or make provision for the payment of any Related Obligations (as defined in Section 10.4) that have been secured by a pledge of the Pledged Revenues that is on a parity with the pledge made in the Indenture (any such Related Obligation being herein called a "Secured Related Obligation").

The following amounts shall be transferred and paid into the Debt Service Fund at the following times:

(a) Amounts Referable to Series 1997 Warrants. In order to provide funds for the payment of the principal of and interest on the Series 1997 Warrants, there shall be transferred or paid into the Debt Service Fund, out of moneys held in the Revenue Account [except as otherwise provided in clause (1)], the following amounts at the following times:

(1) simultaneously with the issuance and sale of the Series 1997 Warrants and out of the proceeds derived therefrom, that portion of such proceeds allocable to accrued interest;

(2) on or before the third day preceding August 1, 1997, an amount equal to the difference between (i) the amount of interest on the Series 1997 Warrants that will become due on August 1, 1997, and (ii) the amount deposited in the Debt Service Fund pursuant to the foregoing clause (1);

(3) on or before the third day preceding February 1, 1998, and on or before the third day preceding each February 1 and August 1 thereafter until and including the third day preceding February 1, 2027, an amount equal to the interest becoming due with respect to the then outstanding Series 1997 Warrants on the then next succeeding Interest Payment Date; and

(4) on or before the third day preceding August 1, 1997, and on or before the third day preceding each February 1 and August 1 thereafter until and including the third day preceding February 1, 2027, an amount equal to one-half

(1/2) of the principal amount of Series 1997 Warrants maturing or required to be redeemed on the then next succeeding February 1.

(b) Amounts Referable to Series 1997-C Warrants. In order to provide funds for the payment of the principal of and interest on the Series 1997-C Warrants, there shall be transferred or paid into the Debt Service Fund, out of moneys held in the Revenue Account, the following amounts at the following times:

(1) on or before August 15, 1997, and on or before each February 15 and each August 15 thereafter until and including February 15, 2015, an amount equal to the interest becoming due with respect to the then outstanding Series 1997-C Warrants on each such date; and

(2) on or before February 15, 1998, and on or before each February 15 thereafter until and including February 15, 2015, an amount equal to the principal amount of Series 1997-C Warrants maturing or required to be redeemed on each such date.

(c) Amounts Referable to Additional Parity Securities. In order to provide for the payment of the principal of and interest on any Additional Parity Securities, there shall be transferred or paid into the Debt Service Fund the following amounts:

(1) simultaneously with the issuance and sale of such Additional Parity Securities and out of the proceeds derived therefrom, there shall be transferred or paid into the Debt Service Fund that portion of such proceeds allocable to premium (if any) and accrued interest;

(2) there shall be transferred or paid into the Debt Service Fund any portion of the principal proceeds derived from the sale of such Additional Parity Securities that is to be used to pay interest thereon (i.e., capitalized interest), with such capitalized interest to be applied for payment of interest on such Additional Parity Securities according to such schedule and through such arrangements as may be provided in the Supplemental Indenture under which such Additional Parity Securities are issued; and

(3) there shall be transferred or paid into the Debt Service Fund, out of moneys on deposit in the Revenue Account, such moneys as, when added to any other funds provided for the payment of such Additional Parity Securities, shall be necessary to pay the principal and interest maturing with respect to such Additional Parity Securities, as well as the redemption price of such Additional Parity Securities that are required to be redeemed prior to the maturity thereof, such moneys to be paid into the Debt Service Fund in such amounts and on such dates as shall be provided in the Supplemental Indenture under which such Additional Parity Securities are issued.

(d) Amounts Referable to Secured Related Obligations. In order to provide for the payment of Secured Related Obligations, there shall be transferred or paid into the Debt Service Fund, out of moneys on deposit in the Revenue Account, such moneys as shall be necessary to pay such obligations on or before the respective dates on which such obligations become due and payable.

(e) General. There shall be transferred or paid into the Debt Service Fund any other moneys that are expressly required to be transferred or paid therein by the provisions of the Indenture.

There may be credited against any transfer or payment required to be made into either account of the Debt Service Fund pursuant to the preceding provisions of this section any amount then held in such account, but only to the extent that such amount does not itself consist of prior transfers or payments made pursuant to any of the preceding provisions of this section and has not theretofore been credited against any transfer or payment previously required by any of such provisions; provided, however, that moneys in the Debt Service Fund shall not be so credited against any required transfer or payment into such fund if such moneys (i) are held therein for payment of matured but unpaid Parity Securities, Parity Securities called for redemption but not yet redeemed, and matured but unpaid interest on the Parity Securities, (ii) are held therein pursuant to instructions from the County for the future redemption or purchase of Parity Securities, (iii) are held therein for the payment of unmatured Parity Securities not called for redemption if such Parity Securities are considered fully paid pursuant to the provisions of Section 16.1 hereof by reason of the fact that such moneys are so held in the Debt Service Fund, or (iv) are held therein subject to the provisions of a Supplemental Indenture providing for the issuance of Additional Parity Securities which requires such moneys to be credited in a manner inconsistent with the provisions hereof, in which case such moneys shall be credited in the manner provided by such Supplemental Indenture.

Subject to the provisions of Section 11.8 hereof, the Trustee shall hold and apply moneys in the Debt Service Fund for the payment of principal of and interest on the Parity Securities on or after the respective due dates of such principal and interest, for the redemption of Parity Securities prior to their maturity, and for the purchase of Parity Securities for retirement at a purchase price not greater than the original principal amount thereof plus accrued interest thereon. The Trustee shall pay or provide for the payment of the principal and interest maturing with respect to the Parity Securities, as well as the redemption price of any Parity Securities that are required by the provisions of the Indenture to be redeemed prior to the stated maturity thereof, out of the moneys held in the Debt Service Fund, as and when such principal, interest or redemption price shall be due and payable.

The County and the Trustee covenant that (i) all funds transferred to or deposited in the Debt Service Fund shall be applied to the payment of the principal and premium (if any) and interest on the Parity Securities within twelve months from the date of such transfer or deposit and (ii) all income and profits received from the investment of moneys in the Debt Service Fund

shall be applied to the payment of the principal and premium (if any) and interest on the Parity Securities within twelve months from the date of receipt of such income or profits.

Section 11.3 Reserve Fund. There is hereby established a special trust fund, the full name of which shall be the "Jefferson County Sewer System Debt Service Reserve Fund". The Trustee shall be the depository, custodian and disbursing agent for the Reserve Fund. Simultaneously with the delivery hereof, the County shall cause to be deposited into the Reserve Fund proceeds of the Series 1997-A Warrants in the amount of \$19,323,212.94 and proceeds of the Series 1997-B Warrants in the amount of \$4,396,800.06.

If on the first Business Day of any calendar month the total amount held in the Reserve Fund is less than the Reserve Fund Requirement, then, on or before the fifteenth day of such calendar month, the County shall pay into the Reserve Fund (from any moneys remaining in the Revenue Account after there shall have been made therefrom all payments required to be made during such month into the Debt Service Fund) an amount obtained by dividing (i) the amount by which the Reserve Fund Requirement exceeds the amount then held in the Reserve Fund by (ii) the number of months between the first day of such calendar month and the last day of the fifth calendar month next succeeding that during which the amount held in the Reserve Fund is first determined to be below the Reserve Fund Requirement, all to the end that the monthly amounts to be paid into the Reserve Fund pursuant to this paragraph will cause any deficiency in the Reserve Fund to be restored within six months after such deficiency first occurred.

In the event that the County hereafter issues any Additional Parity Securities that are secured by the Reserve Fund, the County will cause to be added to the moneys then on deposit in the Reserve Fund an amount equal to the difference obtained by subtracting (a) the Reserve Fund Requirement immediately prior to the issuance of those of the Additional Parity Securities that have been most recently issued from (b) the Reserve Fund Requirement immediately following the issuance of those of the Additional Parity Securities that have been most recently issued. Any such addition of moneys to the Reserve Fund that is required to be made in connection with the issuance of any such Additional Parity Securities may be effected through any of the following methods:

(i) a single deposit to the Reserve Fund out of the proceeds of the Additional Parity Securities with respect to which such deposit is required to be made, such deposit to be made at the time of issuance of such Additional Parity Securities;

(ii) a series of ten (10) equal semiannual deposits to the Reserve Fund out of the moneys remaining in the Revenue Account after compliance with the then applicable provisions of Section 11.2 hereof, such deposits to be made on or before the February 15 or August 15, as the case may be, next succeeding the month during which the Additional Parity Securities with respect to which such deposits are required to be made were issued and on or before each February 15

and each August 15 thereafter until the ten (10) required deposits have been made; or

(iii) any series of deposits to the Reserve Fund out of the moneys remaining in the Revenue Account after compliance with the then applicable provisions of Section 11.2 hereof that will result in the moneys required to be added to the Reserve Fund being accumulated at a faster rate than the series of deposits described in the foregoing clause (ii).

If, upon the issuance of any Additional Parity Securities, any required addition of moneys to the Reserve Fund is effected through a method described in the preceding clause (ii) or (iii), then the Reserve Fund shall be divided into two or more accounts and all moneys and securities held in the Reserve Fund upon the issuance of such Additional Parity Securities shall be allocated first on a proportionate basis to the account or accounts that secure those of the Parity Securities that were outstanding prior to the issuance of such Additional Parity Securities, until each such account is funded in an amount equal to the Reserve Fund Requirement for those of the Parity Securities to which such account is referable, and the balance of such moneys and securities shall be allocated to the account that secures such Additional Parity Securities.

The moneys on deposit in the Reserve Fund shall be used to pay interest coming due on the Parity Securities secured thereby on any Interest Payment Date, or to pay the principal of such Parity Securities as it comes due, whether at maturity or by mandatory redemption, but only in the event that, at the time of any Interest Payment Date, the moneys then held in the Debt Service Fund shall be insufficient for the said payments; provided, however, that, if any of the Parity Securities are issued in a form which permits the holders thereof to require the County or an agent thereof to purchase such Parity Securities prior to maturity, moneys in the Reserve Fund shall not be used to effect any such mandatory purchase or to pay the principal of any such Parity Securities which become due solely because of an inability to remarket them following any such mandatory purchase. In no event shall any moneys withdrawn from the Reserve Fund be used to provide for the payment of any principal of or interest on the Series 1997-C Warrants.

If on any date on which a valuation of the investments held in the Reserve Fund is made the amount on deposit in the Reserve Fund exceeds the Reserve Fund Requirement, the Trustee shall withdraw the amount of such excess and deposit the same in the Debt Service Fund. The Governing Body hereby finds and determines that the Reserve Fund will constitute a reasonable reserve for payment of principal of and interest on the Parity Securities and that the period of time herein provided for the restoration of any deficiency in the Reserve Fund will constitute a reasonable period for the restoration of any such deficiency.

The Reserve Fund Requirement may be satisfied, in whole or in part, with an insurance policy, surety bond or letter of credit that satisfies the various requirements specified in Section 11.11 of this Indenture.

Section 11.4 Rate Stabilization Fund. There is hereby established a special trust fund, the name of which shall be the "Jefferson County Sewer System Rate Stabilization Fund." The Governing Body may at any time and from time to time designate any banking institution or institutions as depository or depositories for the Rate Stabilization Fund, provided that each such depository so designated shall at all times while acting as such be and remain a member of the Federal Deposit Insurance Corporation or of any agency of the United States of America that may succeed to its functions, if there be any such, and shall be and remain duly qualified to do business in the State of Alabama. Simultaneously with the issuance of the Series 1997 Warrants, the County shall deposit into the Rate Stabilization Fund the sum of \$10,000,000 from moneys that are not proceeds of the Series 1997 Warrants or of any other obligations of the County.

At any time when the total amount held in the Rate Stabilization Fund is less than the Rate Stabilization Fund Requirement, the County shall pay into the Rate Stabilization Fund from the Revenue Account, on or before each February 15 and each August 15 and after there shall have been made from the Revenue Account all payments required to be made on or before such date into the Debt Service Fund and the Reserve Fund, an amount equal to 10% of the then effective Rate Stabilization Fund Requirement (or such lesser amount as shall result in the amount held in the Rate Stabilization Fund being equal to the Rate Stabilization Fund Requirement). In addition, the County may from time to time deposit into the Rate Stabilization Fund other moneys that do not constitute System Revenues.

The County may, from time to time at the election of the County's Director of Finance, transfer moneys from the Rate Stabilization Fund into the Revenue Account.

Section 11.5 Depreciation Fund. There is hereby established a special trust fund, the name of which shall be the "Jefferson County Sewer System Funded Depreciation Fund." The Governing Body may at any time and from time to time designate any banking institution or institutions as depository or depositories for the Depreciation Fund, provided that each such depository so designated shall at all times while acting as such be and remain a member of the Federal Deposit Insurance Corporation or of any agency of the United States of America that may succeed to its functions, if there be any such, and shall be and remain duly qualified to do business in the State of Alabama.

At any time when the total amount held in the Depreciation Fund is less than the amount of accumulated depreciation referable to the System (as known in the then most recent audited financial statements of the County), the County shall pay into the Depreciation Fund from the Revenue Account, on or before each February 15 and each August 15 and after there shall have been made from the Revenue Account all payments required to be made on or before such date into the Debt Service Fund, the Reserve Fund and the Rate Stabilization Fund, the sum of \$5,000,000. If on any such date the moneys available in the Revenue Account are not sufficient to permit a deposit of said sum into the Depreciation Fund, such shortfall shall not increase the required amount of any subsequent deposit to the Depreciation Fund. Moneys held in the

Depreciation Fund may be withdrawn from time to time by the County, but only to pay the costs of System Improvements or to purchase or redeem Parity Securities.

Section 11.6 Surplus Revenues. After making the transfers and payments required by Sections 11.1 through 11.5 hereof, and after making good any delinquency or deficit existing in the Debt Service Fund or the Reserve Fund by reason of withdrawals therefrom or the failure during any prior period to pay therein the amounts respectively required to be paid therein by the provisions of Sections 11.2 and 11.3 hereof, the balance remaining in the Revenue Account on each February 15 and each August 15 shall be deemed "surplus revenues" and may be withdrawn from the Revenue Account by the County and used for any lawful purpose related to the County's ownership and operation of the System.

For purposes of this section a deficiency in the Debt Service Fund or the Reserve Fund shall be the difference between the amount then held in such fund and the amount scheduled to be held therein pursuant to the respectively applicable provisions of Section 11.2 or 11.3 hereof.

Section 11.7 Redemption Fund. There is hereby created a special trust fund, the name of which shall be the "Jefferson County Sewer System Redemption Fund" and which shall be maintained as long as any of the Parity Securities are outstanding. There shall be paid into the Redemption Fund only such moneys as are herein expressly required to be paid therein. The Trustee shall, subject to the provisions of Section 11.8 hereof, use and apply the moneys in the Redemption Fund solely for the purpose of redeeming Parity Securities prior to their maturity; provided that if at any time the aggregate of available moneys held in the Debt Service Fund shall not be sufficient to pay the principal of or the interest on any of the Parity Securities at the respective maturities of such principal and interest or the redemption price of any of the Parity Securities on the date on which, under the terms hereof, they are required to be redeemed, then the moneys held in the Redemption Fund shall be used to pay said principal or interest so maturing or the redemption price of any such Parity Securities, but only to such extent as may be necessary to prevent default in the payment thereof.

Not more than sixty (60) days and not less than forty-five (45) days prior to each Interest Payment Date, the Trustee will determine the amount then held in the Redemption Fund, and if such amount is sufficient to effect the redemption of at least \$5,000 in principal amount of Parity Securities, the Trustee shall so notify the County, whereupon the County will take such action as may be necessary under the provisions hereof to exhaust, as nearly as may be practicable, the moneys held in the Redemption Fund by effecting the redemption of Parity Securities on the earliest practicable date thereafter on which such redemption may be effected.

Section 11.8 Investment of Indenture Fund Moneys. Moneys on deposit in the Indenture Funds shall be invested by the Trustee or the depository therefor in accordance with the succeeding provisions of this section in Eligible Investments; provided, however, that the moneys

at any time held in the Debt Service Fund may be invested only in Federal Obligations having stated maturities, or being redeemable at the option of the holder thereof at a stated price and time, not later than the date upon which such moneys will be needed for the payment of principal of or interest on the Parity Securities. The investments held in each of the other Indenture Funds shall have such maturities as shall result in the availability at all times of sufficient cash moneys for the various purposes to be served by each of such funds.

Subject to the limitations imposed by the provisions of the first paragraph of this section, the County hereby reserves the right to control the investment of the moneys at any time on deposit in the Indenture Funds and hereby designates the County's Director of Finance as its representative for the purpose of communicating investment decisions to the Trustee. In particular, and without limiting the generality of the foregoing, County's Director of Finance may from time to time specify to the Trustee the types and maturities of the Eligible Investments to be acquired with the moneys held in the Indenture Funds, the price to be paid for such investments and the securities dealer or dealers from which such investments are to be acquired. So long as such directions from the County's Director of Finance are not inconsistent with the provisions of the first paragraph of this section, the Trustee will acquire the specified investments from the specified dealer or dealers and at any specified price, regardless of its opinion as to the prudence of such investments or its ability to acquire such investments upon more favorable terms from another source; provided, however, that the County's Director of Finance shall have no right to require, and the Trustee shall be prohibited from making, any investment that would result in any of the Parity Securities being considered "arbitrage bonds" within the meaning of Section 148 of the Code and the applicable regulations thereunder. In the absence of general or specific investment directions from the County's Director of Finance, the Trustee shall invest the moneys held in the Indenture Funds in accordance with its general practices respecting the investment of public moneys held in trust. The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance with the provisions of this paragraph.

All Eligible Investments in which any portion of the moneys in any Indenture Fund are invested, together with all income therefrom, shall become a part of the particular Indenture Fund from which moneys were used to make such investment; provided that (a) so long as the balance in the Reserve Fund is equal to the Reserve Fund Requirement, any income or profits derived from the investment of moneys held in the Reserve Fund shall be transferred to the Debt Service Fund Primary Account and (b) so long as the balance in the Rate Stabilization Fund is equal to the Rate Stabilization Fund Requirement, any income or profits derived from the investment of moneys held in the Rate Stabilization Fund shall be paid to the County.

Section 11.9 Commingling of Moneys in Separate Indenture Funds. Any provision hereof to the contrary notwithstanding, moneys on deposit in any Indenture Fund may be commingled and combined with moneys in any of the other Indenture Funds for the purpose of making investments under the provisions of Section 11.8 hereof, subject to the following conditions:

(a) all interest, income or profit realized from any such commingled investment shall be credited, and all losses resulting therefrom shall be charged, to each such fund in the same respective proportions as the amount invested from each such fund bears to the total amount so invested (subject, however, to the provisions of the said section which, under certain circumstances, provide for a different disposition of the earnings from the Reserve Fund or the Rate Stabilization Fund); and

(b) no moneys forming a part of any such fund shall be invested in any investments other than such as are expressly authorized herein.

Section 11.10 Valuation of Indenture Funds. Any investments constituting a part of the Indenture Funds shall, for purposes of this Indenture, be valued at their fair market value (exclusive of accrued interest), except that any investments having a term of less than six months may be valued at par. The Trustee shall make a valuation of investments in the Reserve Fund on the first Business Day of each calendar month and at such other times as the County may request or as may be necessary to ascertain compliance with the provisions of the Indenture. If as a result of such valuation the balance in such fund is determined to be less than the balance required to be maintained therein under the terms of this Indenture, then monthly transfers to such fund shall be resumed and continued as required by Section 11.3 hereof.

Section 11.11 Reserve Fund Surety Requirements. The County may satisfy all or a portion of the Reserve Fund Requirement by the deposit with the Trustee of a surety bond, insurance policy or letter of credit that satisfies the succeeding requirements of this Section 11.11.

A surety bond or insurance policy issued to the Trustee by a company licensed to issue insurance policies guaranteeing the timely payment of debt service on municipal bonds (a "municipal bond insurer") may be deposited in the Reserve Fund to meet the Reserve Fund Requirement if the claims paying ability of the issuer thereof is rated "AAA" or "Aaa" by S&P or Moody's, respectively. A surety bond or insurance policy issued to the Trustee by an entity other than a municipal bond insurer may be deposited in the Reserve Fund to meet the Reserve Fund Requirement if the form and substance of such instrument and the issuer thereof are approved by the Bond Insurer.

An unconditional irrevocable letter of credit issued to the Trustee by a bank may be deposited in the Reserve Fund to meet the Reserve Fund Requirement if the issuer thereof is rated at least "AA" by S&P or "Aa" by Moody's. Any such letter of credit shall be payable in one or more draws upon presentation by the Trustee of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal of or interest on the Parity Securities. Any such draw shall be payable within two days of presentation of the related sight draft. Any such letter of credit shall be for a term of not less

than three years. The issuer of any such letter of credit shall be required to notify the County and the Trustee, not later than 30 months prior to the stated expiration date of such letter of credit, as to whether such expiration date will be extended, and if so, shall indicate the new expiration date. If any such notice indicates that the expiration date will not be extended, the County shall deposit in the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund, together with any other qualifying credit instruments, to equal the Reserve Fund Requirement on all outstanding Parity Securities, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the letter of credit in question is replaced by another Reserve Fund credit instrument. Any letter of credit in the Reserve Fund shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trustee shall, in turn, draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Reserve Fund is fully funded in its required amount. The use of any Reserve Fund credit instrument pursuant to this section shall be subject to receipt of an opinion of counsel acceptable to the Bond Insurer and in form and substance satisfactory to the Bond Insurer as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the Bond Issuer. In addition, the use of an irrevocable letter of credit to satisfy all or a portion of the Reserve Fund Requirement shall be subject to receipt of an opinion of counsel acceptable to the Bond Insurer and in form and substance satisfactory to the Bond Insurer to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the United States Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the United States Bankruptcy Code or similar state laws by or against the County.

The obligation to reimburse the issuer of a Reserve Fund credit instrument for any fees, expenses, claims or draws upon such Reserve Fund credit instrument shall be subordinate to the payment of debt service on the Parity Securities. The right of the issuer of a Reserve Fund credit instrument to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Reserve Fund, and, subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Reserve Fund. Any Reserve Fund credit instrument shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Reserve Fund credit instrument to reimbursement will be further subordinated to cash replenishment of the Reserve Fund to an amount equal to the difference between the full original amount available under the Reserve Fund credit instrument and the amount then available for further draws or claims. If (a) the issuer of a Reserve Fund credit instrument becomes insolvent or (b) the issuer of a Reserve Fund credit instrument defaults in its payment obligations thereunder or (c) the claims-paying ability of the issuer of a Reserve Fund insurance policy or surety bond falls below an S&P "AAA" or a Moody's "Aaa" or (d) the rating of the issuer of a Reserve Fund letter of credit falls below an S&P "AA", the

obligation to reimburse the issuer of such Reserve Fund credit instrument shall be subordinate to the cash replenishment of the Reserve Fund.

If (a) the revolving reinstatement feature of a Reserve Fund credit instrument described in the preceding paragraph is suspended or terminated or (b) the rating of the claims paying ability of the issuer of a Reserve Fund surety bond or insurance policy falls below an S&P "AAA" or a Moody's "Aaa" or (c) the rating of the issuer of a Reserve Fund letter of credit falls below an S&P "AA", the County shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund to equal the Reserve Fund Requirement on all outstanding Parity Securities, such amount to be paid over the ensuing five years in equal installments deposited at least semi-annually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements of this section within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of a Reserve Fund surety bond or insurance policy falls below "A" or (b) the rating of the issuer of a Reserve Fund letter of credit falls below "A" or (c) the issuer of a Reserve Fund credit instrument defaults in its payment obligations or (d) the issuer of a Reserve Fund credit instrument becomes insolvent, the County shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund to equal the Reserve Fund Requirement on all outstanding Parity Securities, such amount to be paid over the ensuing year in equal installments on at least a monthly basis or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements of this section within six months of such occurrence. Where applicable, the amount available for draws or claims under a Reserve Fund credit instrument may be reduced by the amount of cash or Eligible Investments deposited in the Reserve Fund pursuant to the preceding provisions of this paragraph.

If the County chooses any of the permitted alternatives to a fully cash-funded Reserve Fund described in the preceding provisions of this Section 11.11, any amounts owed by the County to the issuer of any such credit instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of debt service requirements required to be made pursuant to the Indenture for any purpose.

The Trustee shall ascertain the necessity for a claim or draw upon any Reserve Fund credit instrument and provide notice to the issuer of the Reserve Fund credit instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Reserve Fund credit instrument) prior to each Interest Payment Date.

Cash on deposit in the Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Reserve Fund credit instrument. If and to the extent that more than one Reserve Fund credit instrument is deposited in the Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

Section 11.12 **Issuance Cost Account.** There is hereby created a special account the full name of which shall be the "Series 1997 Warrants Issuance Cost Account." The Issuance Cost Account shall be maintained as a separate account until the moneys in said account shall have been fully expended as hereinafter provided. The Trustee shall be the depository and disbursing agent for the Issuance Cost Account.

The County will apply the moneys in the Issuance Cost Account solely for payment of the Issuance Costs, as and when such costs become due and payable. The President of the Governing Body or any Authorized County Representative is hereby authorized and directed to cause the said costs to be paid, as promptly as may be feasible following the issuance of the Series 1997 Warrants and Series 1997-C Warrants, by submitting to the Trustee requisitions signed by any one of said officers directing the payment of the costs specified in said requisition.

In the event the moneys deposited in or transferred to the Issuance Cost Account are not sufficient to pay all Issuance Costs, the President of the Governing Body is hereby authorized and directed to pay, out of any other funds of the County available therefor, the remainder of such costs. If any moneys remain in the Issuance Cost Account after the payment of all costs of issuing the Series 1997 Warrants and Series 1997-C Warrants, the Trustee shall transfer such moneys to the County upon receipt of a certificate signed by the President of the Governing Body or any Authorized County Representative stating that all expenses of issuing the Series 1997 Warrants and Series 1997-C Warrants, to the extent known to or anticipated by the County, have been paid in full.

ARTICLE XII

PARTICULAR COVENANTS AND AGREEMENTS OF THE COUNTY; RELEASE OF PORTION OF THE SYSTEM

Section 12.1 **Budget for the System.** No later than the first Tuesday in the month of October at the beginning of each Fiscal Year, beginning with the Fiscal Year that begins on October 1, 1997, the County shall cause to be prepared and approved by the Governing Body an annual budget and monthly budgets for the System. Each such budget shall include the following:

- (a) the estimated gross revenues and income to be derived from the System during such Fiscal Year and in each month thereof;
- (b) an estimated sum sufficient to provide for the payment of all Operating Expenses during such Fiscal Year and in each month thereof;

(c) the sum required by this Indenture to be paid into the Debt Service Fund during such Fiscal Year and in each month thereof;

(d) the sum (if any) required by this Indenture to be paid into the Reserve Fund during such Fiscal Year and in each month thereof; and

(e) the sum (if any) expected to be transferred from the Rate Stabilization Fund into the Revenue Account during such Fiscal Year and in each month thereof.

The budget in effect for any Fiscal Year may be amended or revised by the County in accordance with changed circumstances and conditions at any time during such Fiscal Year. The County shall submit a copy of each such budget as initially approved to the Trustee.

Section 12.2 Maintenance of Books and Records; Annual Audits. The County will maintain complete and separate books and records pertaining to the System and all receipts and disbursements with respect thereto. Within ninety (90) days following the close of each Fiscal Year, the County will provide the Trustee with unaudited financial statements respecting the System prepared by the County's financial officers. The County will cause an audit of the books and records for the System to be completed as soon as practicable after the close of each Fiscal Year. Each such audit shall be made by an Independent Accountant and shall include: (a) a statement in reasonable detail of the revenues derived from the System and of Operating Expenses during such Fiscal Year; (b) a statement of changes in fund balances for such Fiscal Year; (c) a balance sheet respecting the System as of the end of such Fiscal Year; (d) a statement of the amounts on deposit in the Indenture Funds at the end of such Fiscal Year; (e) the Independent Accountant's comments regarding the manner in which the County has carried out the requirements of the Indenture; (f) the Independent Accountant's recommendations for any changes or improvements in the financial operation of the System; (g) a list of the insurance policies and fidelity bonds in force with respect to the System at the end of such Fiscal Year, setting out with respect to each such policy the amount thereof, the risk covered, the name of the insurer and the expiration date of the policy; and (h) the number of customers connected to and served by the System at the end of such Fiscal Year, as disclosed by the records of the County and without any requirement of verification thereof by the Independent Accountant. Within one hundred and eighty (180) days following the close of each Fiscal Year, the County will furnish a copy of such audit to the Trustee and to each Rating Agency which has a rating outstanding respecting any series of the Parity Securities, and each of them is granted the right to discuss the contents of the audit with the Independent Accountant making the same and to secure from the Independent Accountant such additional information respecting the matters therein set out as may be reasonably required.

Section 12.3 Restrictions as to Free Service. The County will not furnish or permit to be furnished any free service from the System to the State of Alabama, any county or incor-

porated municipality or any agency, instrumentality, person, firm or corporation whatsoever, other than to itself and its agencies. All services furnished from the System shall be charged for at the rates at the time established therefor (except for those instances in which the County has entered into specific agreements with particular customers, which special agreements will not, in the aggregate, affect System Revenues by more than \$100,000).

Section 12.4 Discontinuance of Service on Non-Payment of Bills and Charges. If the account of any user of utility service supplied by the System shall remain unpaid for a period of thirty days after such account shall become due (or such longer period, if any, as may be required for compliance with applicable federal and state law), the County thereupon will use its best efforts promptly to discontinue furnishing service to such user whose account shall so remain unpaid, but upon subsequent payment of the account, including any penalties which may be provided for in the applicable schedule of rates of the County, the County may thereafter furnish service to such user until such time as his account shall again remain unpaid for a period of thirty days after such account shall become due (or such longer period, if any, as may be required for compliance with applicable federal and state laws), whereupon the County will again use its best efforts to the end that the furnishing of service shall again be discontinued. The schedule of rates for service furnished by and from the System shall provide that all accounts for such service shall become due not less often than once each calendar quarter.

Section 12.5 Maintenance of Rates. (a) The County hereby covenants and agrees to fix, revise and maintain such rates for services furnished by the System as shall be sufficient (i) to provide for the payment of the interest and premium (if any) on and the principal of the Parity Securities, as and when the same become due and payable, (ii) to provide for the payment of the Operating Expenses and (iii) to enable the County to perform and comply with all of its covenants contained in the Indenture.

(b) The County will make from time to time, to the extent permitted by law, such increases and other changes in such rates and charges as may be necessary to comply with the provisions of the preceding paragraph and to provide, in each Fiscal Year, Net Revenues Available for Debt Service in an amount that shall result in compliance with each of the following two requirements (such requirements being referred to herein collectively as the "Rate Covenant"):

(i) the sum of (A) Net Revenues Available for Debt Service for a given Fiscal Year and (B) the Prior Years' Surplus as of the beginning of such Fiscal Year shall not be less than one hundred and ten percent (110%) of the aggregate amount payable during such Fiscal Year as debt service on all outstanding Parity Securities; and

(ii) the Net Revenues Available for Debt Service for a given Fiscal Year shall not be less than eighty percent (80%) [or, in the case of any Fiscal

Year beginning on or after October 1, 2007, one hundred percent (100%)] of the aggregate amount payable during such Fiscal Year as debt service on all outstanding Parity Securities.

For purposes of the Rate Covenant, (a) debt service on the Parity Securities shall not include any interest (i.e., accrued interest or capitalized interest) paid with proceeds of Parity Securities, (b) debt service shall be reduced by any amounts received by the County during the Fiscal Year in question pursuant to Qualified Swaps, and (c) debt service shall be increased by any amounts paid by the County during such Fiscal Year pursuant to Qualified Swaps.

(c) The County's Director of Finance shall, within sixty (60) days after the end of each Fiscal Year, (i) determine whether or not the Net Revenues Available for Debt Service and Prior Years' Surplus for the then most recently completed Fiscal Year were sufficient to result in compliance with the Rate Covenant for such Fiscal Year (the "Historical Evaluation"), (ii) determine whether or not the combination of the Net Revenues Available for Debt Service for the then most recently completed Fiscal Year (subject to adjustment in the manner hereinafter described) and the Prior Years' Surplus as of the beginning of the then current Fiscal Year would be sufficient to result in compliance with the Rate Covenant for the then current Fiscal Year (the "Immediate Prospective Evaluation"), and (iii) determine whether or not the Net Revenues Available for Debt Service for the then most recently completed Fiscal Year (subject to adjustment in the manner hereinafter described) were equal to or greater than 100% of Maximum Annual Debt Service (the "Extended Prospective Evaluation"). For purposes of the Immediate Prospective Evaluation and the Extended Prospective Evaluation, the Net Revenues Available for Debt Service for the preceding Fiscal Year may be adjusted to give effect to any increase in the rates and charges for services furnished by the System that was put into effect after the beginning of such Fiscal Year.

If at the beginning of any Fiscal Year the County's Director of Finance makes the afore-said determinations and concludes that the County has failed to satisfy the Historical Evaluation, the Immediate Prospective Evaluation or the Extended Prospective Evaluation, then a written notice setting forth such determinations and the conclusions reached shall be delivered, no later than December 10 in such Fiscal Year, to the Trustee and to each member of the Governing Body. The County hereby covenants, in the event of the delivery of any such notice of failure to satisfy the Historical Evaluation or the Immediate Prospective Evaluation (or both), to make an increase in the rates and charges for services furnished by the System, in an amount intended to result in compliance with the rate covenant contained in subsection (b), with such rate increase to be effective no later than January 1 in such Fiscal Year.

Section 12.6 Continued Operation of the System; Transfer of the System. The County will not hereafter sell, transfer, lease or otherwise dispose of or cease control of the whole or any essential operating part of the System (except pursuant to Section 12.10 or 12.11 hereof) until all principal of and interest and premium (if any) on the Parity Securities shall have been paid in full, or unless and until provision for such payment shall have been made, as per-

mitted in Article XVI hereof. So long as any of the Parity Securities shall remain outstanding, the County will keep the System in good repair and efficient operating condition, making from time to time all needed repairs and replacements thereto, and it will continuously operate the System in an economical and efficient manner.

If the laws of Alabama at the time shall permit such action to be taken, nothing contained in this section shall prevent the transfer by the County of the entire System to a public corporation whose property and income are not subject to taxation and which has the power to own and operate the System; provided that (a) upon any such transfer, the due and punctual payment of the principal of and interest on the Parity Securities according to their tenor and the due and punctual performance and observance of all the agreements and conditions provided in this Indenture to be kept and performed by the County shall be expressly assumed in writing by the corporation to which the System shall be so transferred; (b) such transfer shall not cause or result in any mortgage or other lien being affixed to or imposed on the System or the revenues therefrom that will be prior to or on a parity with the lien of the pledge herein made for the benefit of the Parity Securities; and (c) the County shall deliver to the Trustee an opinion of Bond Counsel to the effect that such transfer shall not result in the interest on the Parity Securities becoming subject to federal income taxation.

Nothing contained in this section shall be construed to prevent the County from disposing of portions of the System that may become obsolete or worn out or that may no longer be needed for the efficient operation of the System.

Section 12.7 Warranties and Representations Concerning Title to the System. The County warrants its title to the System as it presently exists to be free and clear of every lien, encumbrance or charge other than Permitted Encumbrances. The County further warrants and represents that no pledges of, or agreements respecting, the revenues from the System are now outstanding other than those made herein.

Except to the extent specifically permitted otherwise by the provisions of the third paragraph of this section, the County will maintain its existence, will not dissolve, and will not consolidate with or merge into another county or political subdivision or permit one or more other counties or political subdivision to consolidate with or merge into it. Further, the County will use its best efforts to maintain, preserve and renew all the rights and powers provided to it by the constitution or any applicable laws of the State of Alabama or of the United States of America.

If the constitution and laws of the State of Alabama at the time shall permit such action to be taken, nothing contained in this section shall prevent the consolidation of the County with, or the merger of the County into, any county or political subdivision which has authority to undertake and perform the obligations and agreements of the County under the Indenture; provided that upon any such consolidation or merger the following conditions shall be satisfied: (i) the due and punctual payment of the principal of and the interest and premium (if any) on the

Parity Securities according to their tenor and the due and punctual performance and observance of all the agreements and conditions contained in the Indenture to be kept and performed by the County shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger; (ii) such consolidation or merger shall not cause or result in any pledge or lien being imposed on the moneys pledged under the Indenture that will be prior to the pledge made in the Indenture for the benefit of the Parity Securities; and (iii) the County shall deliver to the Trustee an opinion of Bond Counsel to the effect that such consolidation or merger shall not cause or result in the interest income on any of the Parity Securities becoming subject to income taxation by the United States of America, the State of Alabama or any political subdivision of either thereof.

Section 12.8 System to be Kept Free of Prior Liens. The County will keep the System free and clear from all liens, encumbrances and charges other than Permitted Encumbrances, but it may defer payment of any claim against the System or the revenues therefrom pending the bona fide contest of any such claim unless by such action the title of the County to the System or any part thereof or the revenues therefrom shall be materially endangered or the System or any part thereof shall be subject to loss or forfeiture, in which event any such payment then due shall not be deferred. Nothing herein contained shall be construed to prevent the County from hereafter acquiring from other governmental entities properties that are to constitute additions or improvements to the System, even though the properties to be acquired, or the revenues derived therefrom, have been subjected, prior to the County's acquisition thereof, to a lien that is or may be prior to the lien of the Indenture.

Section 12.9 Priority of Pledge. The pledge of the Pledged Revenues herein made shall be prior and superior to any pledge thereof hereafter made for the benefit of any securities hereafter issued by the County (other than Additional Parity Securities), and the County agrees that in the event it should hereafter issue any securities (other than Additional Parity Securities) or make any contract payable out of the Pledged Revenues or for which any part of the said revenues may be pledged, the County will, in the proceedings under which any such securities or contract are authorized, recognize the priority of the pledge of the Pledged Revenues herein made. The County will not place any mortgage, lien or other encumbrance on the System unless such mortgage, lien or other encumbrance is junior or subordinate in all respects to the pledge herein made and the lien herein created.

Section 12.10 Sale or Disposition of Personal Property. While the County is not in default under this Indenture, it may, without the consent of or any release from the Trustee, sell or otherwise dispose of any machinery, equipment or other personal property (including mains and pipes embedded in land but not including land itself or any building thereon) that shall have become inadequate, obsolete, worn out, unsuitable for use or undesirable or unnecessary for use as a part of the System. The proceeds of any such sale or other disposition shall not be regarded

as revenues of the System which are subject to the lien of this Indenture or which are required by the provisions hereof to be paid into the Revenue Account.

Section 12.11 Sale or Disposition of Portions of the System. While the County is not in default under this Indenture, the County may sell or otherwise dispose of any part of the System (including, without limitation, real property or improvements or buildings thereon or machinery, equipment and other personal property not described in Section 12.10 hereof), and the Trustee shall consent to such sale or other disposition, upon deposit by the County with the Trustee of the following:

(i) a resolution of the Governing Body describing in reasonable detail the property to be released, stating the consideration to be received by the County for such sale or disposition, stating that the County is not in default under any of the provisions of this Indenture, and requesting such release;

(ii) a certificate of a licensed engineer, who may be an employee of the County, stating that the property to be released is not and will not be needed by the County for the safe, efficient and economical operation of the remaining portions of the System and that the consideration to be received by the County for such sale or disposition is not less than the reasonable value of the property to be released; and

(iii) the proceeds from such sale or other disposition.

Upon compliance by the County with the foregoing conditions, the Trustee shall, at the expense of the County, execute and deliver to the County any and all instruments that may be necessary to release such property from the lien or encumbrance imposed by this Indenture.

Subject to the provisions of the next paragraph, the proceeds from any such sale or other disposition of any part or parts of the System shall be deposited in the Revenue Account, unless the Governing Body shall provide the Trustee with written directions to apply all or a portion of such proceeds for the redemption of Parity Securities prior to maturity in accordance with the terms of the Indenture and on the earliest practicable date permitted thereby, in which event the proceeds from such sale or other disposition to be used for such purpose shall be deposited in the Redemption Fund.

Section 12.12 Insurance with Respect to the System. The County will take out and continuously maintain in effect insurance with respect to those components of the System other than underground mains, laterals and collection lines against such risks as are customarily insured against by systems similar in size and character to the System, paying as the same become due all premiums with respect thereto, including but not limited to:

(a) insurance to the extent of the full insurable value of the insured portions of the System against loss or damage by fire or other casualty, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State of Alabama;

(b) comprehensive public liability insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the properties comprising the System or as a result of operation of the System (including the operation of vehicles owned or leased by the County and used in connection with the System) in such amounts as are customarily carried by systems similar in size and character to the System; provided that the County may, at its election, be self-insured for such risks to the extent customary at the time for systems similar in size and character to the System; and

(c) workmen's compensation insurance respecting all employees of the System in such amount as is customarily carried by systems similar in size and character to the System; provided that the County may, at its election, be self-insured for such risk to the extent customary at the time for systems similar in size and character to the System.

All policies evidencing the insurance required by the terms of this section shall be taken out and maintained in generally recognized responsible insurance companies qualified under the laws of the State of Alabama to assume the respective risks undertaken.

Each insurance policy required to be carried by this section shall contain, to the extent obtainable, an agreement by the insurer that (i) the County may not, without the consent of the Trustee, cancel such insurance or sell, assign or dispose of any interest in such insurance, such policy, or any proceeds thereof, (ii) such insurer will notify the Trustee if any premium shall not be paid when due or any such policy shall not be renewed prior to the expiration thereof, and (iii) such insurer shall not cancel any such policy except on sixty (60) days' prior written notice to the Trustee.

All policies evidencing the insurance required to be carried by this section shall be deposited with the Trustee; provided, however, that in lieu thereof the County may deposit with the Trustee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration of any such policy, the County will furnish to the Trustee evidence reasonably satisfactory to the Trustee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Indenture.

Section 12.13 Damage and Destruction Provisions. If the System is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the System resulting therefrom is not greater than \$25,000,000, the County will promptly repair,

replace or restore the property destroyed or damaged to substantially the same condition as prior to the event causing such damage or destruction with such changes, alterations or modifications (including the substitution and addition of other property) as will not significantly impair the operating utility of the System. The County will apply so much as may be necessary of any Net Insurance Proceeds referable to such damage or destruction to the payment of the costs of such repair, replacement or restoration, and if such costs exceed the available Net Insurance Proceeds, the County will provide any additional moneys required for the payment of such costs. In the event that the total costs of such repair, replacement and restoration are less than such Net Insurance Proceeds, the County will pay into the Revenue Account the amount by which such proceeds exceed said total costs.

If the System is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the System resulting therefrom is greater than \$25,000,000, the County will promptly so notify the Trustee in writing. The Net Insurance Proceeds recovered by the County and the Trustee on account of such damage or destruction shall be paid to and held by the Trustee. Pursuant to written directions to be given to the Trustee by the Governing Body not more than sixty (60) days following the event causing such damage or destruction, such proceeds shall be applied by the Trustee in one or both of the following ways (the amount, if any, to be applied in each such way to be specified in such written directions):

(a) payment of the costs of repairing, replacing or restoring the property damaged or destroyed to the extent necessary for it to have substantially the same operating utility that it had prior to the event causing such damage or destruction, with such changes, alterations or modifications as shall be specified by the Governing Body;

(b) the redemption of Parity Securities prior to maturity in accordance with the terms of the Indenture and on the earliest practicable date permitted thereby, in which case such portion of the Net Insurance Proceeds to be used therefor shall be deposited in the Redemption Fund.

In the event that the Net Insurance Proceeds held by the Trustee (or any specified portion thereof) are to be applied for payment of the costs of repairing, replacing or restoring the property damaged or destroyed, a special construction fund shall be established with the Trustee and such proceeds (or specified portion thereof) shall be deposited therein, and the Trustee will provide for such proceeds (or specified portion thereof) to be disbursed as needed for the payment of such costs pursuant to requisitions submitted by the County. Any balance of the Net Insurance Proceeds (or any balance of the portion thereof specified for the payment of such costs) remaining after the payment of all such costs shall be paid into the Revenue Account. In the event that the Net Insurance Proceeds (or the portion thereof specified for the payment of such costs) are not sufficient to pay in full the costs of such repair, replacement or restoration, the County will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the Net Insurance Proceeds (or specified portion thereof) available for the payment of such costs.

All property acquired in connection with the repair, replacement or restoration of any part of the System pursuant to the provisions of this Section 12.13 shall be and become part of the System, with the revenues derived therefrom being subject to the pledge made herein for the benefit of the Holders of the Parity Securities.

Section 12.14 Fidelity Bonds. The County will at all times carry fidelity bonds on all of its officers and employees who may handle funds of the County appertaining to the System, such bonds to be in such amounts as are customarily carried by systems similar in size and character to the System.

Section 12.15 Tax Covenants. The County recognizes that the Holders of the Series 1997-A Warrants from time to time will have accepted them on, and paid therefor a price which reflects, the understanding that interest on the Series 1997-A Warrants is excluded from gross income for federal income tax purposes under the laws in force at the time the Series 1997-A Warrants shall have been delivered. In this connection the County covenants (i) that it will not take any action or omit to take any action if the taking of such action or the failure to take such action, as the case may be, will result in the interest on any of the Series 1997-A Warrants becoming includable in gross income for purposes of federal income taxation, (ii) that it will use the "proceeds" of the Series 1997-A Warrants and any other funds of the County in such a manner that the use thereof, as reasonably expected by the County at the time of issuance of the Series 1997-A Warrants, will not cause the Series 1997-A Warrants to be "arbitrage bonds" under Section 103(b)(2) and Section 148 of the Code and the regulations thereunder and (iii) that it will satisfy the requirements of Section 148(f) of the Code and the applicable regulations thereunder. The County further covenants and agrees that it will not permit at any time any "proceeds" of the Series 1997-A Warrants or any other funds of the County to be used, directly or indirectly, in a manner which would result in any Series 1997-A Warrant being classified as a "private activity bond" within the meaning of Section 141(a) of the Code. The officers and employees of the County shall execute and deliver from time to time, on behalf of the County, such certificates, instruments and documents as shall be deemed necessary or advisable to evidence compliance by the County with said Section 103(b)(2) and Section 148 and the regulations thereunder with respect to the use of the proceeds of the Series 1997-A Warrants. Such certificates, instruments and documents may contain such stipulations as shall be necessary or advisable in connection with the stated purpose of this section and the foregoing provisions hereof, and the County hereby covenants and agrees to comply with the provisions of any such stipulations throughout the term of the Series 1997-A Warrants.

Section 12.16 Compliance with Requirements of Law. The County will comply with all of the terms, provisions and requirements of the Act and any other state or federal laws which are applicable to the County by reason of the ownership and operation of the System or the issuance of the Parity Securities. Without limiting the generality of the foregoing, the County will use its best efforts to comply with the requirements imposed on it by the Consent

Decree entered in those civil actions consolidated in the United States District Court, Northern District of Alabama, and styled *United States of America v. Jefferson County, Alabama, et al.*, Civil Action No. 94-G-2947-S, and *R. Allen Kipp, Jr., et al. and Cahaba River Society, Inc. v. Jefferson County, Alabama, et al.*, Civil Action No. 93-G-2492-S.

Section 12.17 **Levy of Sewer Tax.** As long as it is permitted to do so by applicable law, the County will levy and collect, on an annual basis, the Sewer Tax and will apply the revenues derived therefrom solely for purposes related to the System.

Section 12.18 **Payment of Parity Securities.** The County will pay or cause to be paid, out of the sources of payment provided in the Indenture, the principal of and the interest and premium (if any) on the Parity Securities as specified therein, and it will otherwise perform all obligations that either expressly or by reasonable implication are imposed on it in the Indenture and it will not default hereunder.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES OF TRUSTEE AND PARITY SECURITYHOLDERS

Section 13.1 **Events of Default Defined.** Any of the following shall be "Events of Default" under the Indenture, and the term "Event of Default" shall mean, whenever it is used in the Indenture, any one or more of the following conditions or events:

(a) failure by the County to pay the principal of or the interest or premium (if any) on any Parity Security as and when the same become due as therein and herein provided (whether such shall become due at maturity or by redemption, acceleration or otherwise);

(b) failure by the County to satisfy the Rate Covenant, provided that any such failure shall not constitute an Event of Default if (i) the Trustee receives evidence satisfactory to it that an increase in the rates charged for services furnished by the System has occurred pursuant to the provisions of the ordinance of the County that governs such rates, or (ii) the County employs a utility system consultant to review the System and its existing rates and fees and makes a good faith effort to comply with the recommendations of such consultant;

(c) failure by the County to perform or observe any agreement, covenant or condition required by the Indenture to be performed or observed by it [other than its agreement to pay the principal of and the interest and premium

m (if any) on the Parity Securities or the Rate Covenant] after thirty (30) days' written notice (which said notice must state that it is a "notice of default" hereunder) to it of such failure given by the Trustee or by the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Parity Securities then outstanding hereunder, unless during such period or any extension thereof the County has commenced and is diligently pursuing appropriate corrective action;

(d) any material warranty, representation or other statement by or on behalf of the County contained in the Indenture, or in any document furnished by the County in connection with the issuance and sale of any of the Parity Securities, being false or misleading in any material respect at the time made; or

(e) an order, judgment or decree shall be entered by any court of competent jurisdiction (i) appointing a receiver, trustee or liquidator for the System, (ii) approving a petition filed by the County under the federal or any state bankruptcy laws, (iii) granting relief to the County under federal or state bankruptcy laws or relief substantially similar to that afforded under the said laws or (iv) assuming the custody or control of the System (or any part thereof) under the provisions of any other law for the relief or aid of debtors, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof, or the County shall file a petition in bankruptcy or make an assignment for the benefit of its creditors or consent to the appointment of a receiver of the whole or any substantial part of its properties or shall file a petition or answer seeking relief under the federal or any state bankruptcy laws.

Section 13.2 Remedies on Default. Upon the occurrence and continuation of any Event of Default, the Trustee shall have the following rights and remedies:

(a) Upon the occurrence and continuation of any Event of Default described in clause (a) of Section 13.1 hereof, the Trustee shall, and, upon the occurrence and continuation of any other Event of Default described in Section 13.1 hereof, the Trustee may, declare the Parity Securities to be immediately due and payable, whereupon they shall, without further action, become and be immediately due and payable, anything in this Indenture or in the Parity Securities to the contrary notwithstanding.

(b) The Trustee may, by civil action, mandamus or other proceedings, protect, enforce and compel performance of all duties of the officials of the County, including the fixing of sufficient rates, the collection of revenues, the proper segregation of the revenues of the System and the proper application thereof and may, without limitation of the foregoing, proceed to protect and

enforce its rights and the rights of the Parity Securityholders by a suit or suits, whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power granted herein or for the enforcement of any other proper, legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce its rights and the rights of the Parity Securityholders hereunder.

(c) The Trustee shall be entitled upon or at any time after the commencement of any proceedings instituted with respect to an Event of Default, as a matter of strict right, upon the order of any court of competent jurisdiction, to the appointment of a receiver to administer and operate the System, with power to fix and charge rates and collect revenues sufficient to provide for the payment of the Parity Securities and any other obligations outstanding against the System or the revenues thereof and for the payment of expenses of operating and maintaining the System and with power to apply the income and revenues of the System in conformity with the Act and the Indenture.

The provisions of the preceding subparagraph (a), however, are subject to the condition that if, after the principal of the Parity Securities shall have been so declared to be due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the County shall cause to be deposited with the Trustee a sum sufficient to pay all matured installments of interest upon all Parity Securities and the principal of any and all Parity Securities which shall have become due otherwise than by reason of such declaration (with interest upon such principal and on overdue installments of interest, at the rates per annum determined as provided in the Parity Securities) and such amount as shall be sufficient to cover reasonable compensation and reimbursement of expenses payable to the Trustee, and all Events of Default hereunder other than nonpayment of the principal of the Parity Securities which shall have become due by said declaration shall have been remedied, then, in every such case, such Event of Default shall be deemed waived and such declaration and its consequences rescinded and annulled, and the Trustee shall promptly give written notice of such waiver, rescission or annulment to the County; but no such waiver, rescission and annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

Section 13.3 Application of Moneys Collected. All moneys collected by the Trustee pursuant to this article or pursuant to any right given to it or action taken by it under the provisions of this article, together with all other funds of the County from the System then held by it or the Trustee hereunder, shall, after payment of all amounts for which the Trustee has a lien under Section 14.7 hereof, be applied in the following order, on the date or dates fixed by the Trustee, and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Parity Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(a) Unless the principal of all Parity Securities shall have become or shall have been declared due and payable, all such moneys shall be applied:

First. To the payment to the persons entitled thereto of interest then due on the Parity Securities, with interest on overdue installments of such interest, and if the amount available shall not be sufficient to pay in full all such installments plus the said interest thereon, then to the proportionate payment of all such installments and the interest thereon, according to the amounts thereof, without preference or priority of any installment of interest over any other installment or any discrimination or privilege among the persons entitled thereto.

Second. To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on the Parity Securities which shall have matured, with interest on overdue installments of principal and premium, if any, from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full all such principal and premium, if any, together with the aforesaid interest thereon, then to the proportionate payment of such principal, premium, if any, and interest, according to the amounts thereof, without preference or priority of any installment of principal over any other installment or any discrimination or privilege among the persons entitled thereto; and

Third. The surplus, if any, to the Revenue Account.

(b) If the principal of all the Parity Securities shall have become or been declared due and payable, all such moneys shall be applied as follows:

First. To the payment of the principal and interest then due and unpaid upon the Parity Securities, with interest on overdue principal and on overdue interest, 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 Parity Security over any other Parity Security, in proportion to the amounts for both principal and interest due respectively to the persons entitled thereto, without any discrimination or privilege among such persons; and

Second. The surplus, if any, to the County or to whomsoever may be entitled thereto.

Section 13.4 Parity Securityholders Need Not be Joined in Actions. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Parity Securities may be prosecuted and enforced by the Trustee without the possession of any of the Parity Securities or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as trustee of

an express trust without the necessity of joining as plaintiffs or defendants any Parity Securityholders and any recovery shall (after provisions for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) be for the ratable benefit of the Parity Securityholders in respect of which such judgment has been recorded.

Section 13.5 Rights of the Parity Securityholders to Direct Proceedings. The Holders of a majority in aggregate principal amount of the Parity Securities then outstanding shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture.

Section 13.6 Limitation on Suits by Parity Securityholders. No Parity Securityholder shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default; (b) the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Parity Securities then outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder; (c) such Holder or Holders have offered to the Trustee indemnity in the manner provided in Section 14.3(e) hereof; (d) the Trustee for thirty days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (e) no direction inconsistent with such written request has been given to the Trustee during such thirty-day period by the Holders of a majority in aggregate principal amount of the outstanding Parity Securities, it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provisions of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

Notwithstanding any other provision hereof, the right of the Parity Securityholders, which is absolute and unconditional, to receive payment of the principal of and the interest and premium (if any) on the Parity Securities on or after the due date of the same, but solely from the sources of payment provided herein, as therein and herein expressed, or to institute suit for the enforcement of such payment on or after such due date, or the obligation of the County, which is also absolute and unconditional, to pay, but solely from the said sources of payment, the principal of and the interest on the Parity Securities to the respective Holders thereof at the time and place in the Parity Securities expressed, shall not be impaired or affected without the consent of such Holder; provided, however, that no Parity Securityholder shall be entitled to take any action or institute any such suit to enforce the payment of his Parity Securities, whether for principal or interest, if and to the extent that the taking of such action or the institution or prosecution of any such suit or the entry of judgment therein would under applicable law result

in a surrender, impairment, waiver or loss of the lien hereof upon the revenues from the System, or any part thereof, as security for the Parity Securities held by any other Parity Securityholder.

Section 13.7 Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Parity Securityholders is intended to be exclusive of any other available remedy or remedies, but 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.

Section 13.8 Delay or Omission Not a Waiver. No delay or omission of the Trustee or any Parity Securityholder to exercise any right or power accruing upon any default occurring and continuing as aforesaid 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 Indenture to the Trustee or the Parity Securityholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Parity Securityholders.

Section 13.9 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Indenture may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Indenture are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render the Indenture invalid or unenforceable.

Section 13.10 Waivers of Past Defaults Under the Indenture. The Holders of not less than a majority in aggregate principal amount of the outstanding Parity Securities may, on behalf of the Holders of all outstanding Parity Securities, waive any past default under this Indenture and its consequence, except for the following types of defaults:

(a) any default in the payment of the principal of or interest or premium (if any) on any Parity Security, or

(b) any default or failure in respect of any covenant or provision of this Indenture which under Article XIV hereof cannot be modified or amended without the consent of the Holder of each outstanding Parity Security affected.

Upon any such waiver, such default shall cease to exist, and an Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE XIV

THE TRUSTEE

Section 14.1 **Certain Duties and Responsibilities.** (a) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from its own gross negligence or its own willful misconduct, except that

(i) this subsection shall not be construed to limit the effect of subsection (a) of this section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer or officers of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in aggregate principal amount of the outstanding Parity Securities of each series relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance

of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this section.

Section 14.2 Notice of Defaults. Within ninety (90) days after the occurrence of any Event of Default the Trustee shall give notice by registered or certified mail to the Parity Securityholders of such Event of Default known to the Trustee; provided, however, that except in the case of a default in the payment of the principal of or interest or premium (if any) on any Parity Securities, the Trustee shall be protected in withholding such notice if and so long as a responsible officer of the Trustee in good faith determines that the withholding of such notice is in the interests of the Parity Securityholders.

Section 14.3 Certain Rights of the Trustee. Except as otherwise provided in Section 14.1 hereof:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, warrant or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, election, order or demand of the County shall be sufficiently evidenced by an instrument signed in the name of the County by the President or other presiding officer of the Governing Body (unless otherwise in this Indenture specifically prescribed), and any resolution of the County may be evidenced to the Trustee by a copy thereof certified by the Minute Book Clerk of the County;

(c) the Trustee may consult with Independent Counsel and the written advice or opinion of such Independent Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) whenever, in the administration of the trust of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be

conclusively proved and established by a certificate of the County, and such certificate of the County shall, in the absence of negligence or bad faith on the part of the Trustee, be full warranty to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof;

(e) the Trustee shall be under no obligation to exercise any of the rights, powers or remedies vested in it by this Indenture at the request or direction of any of the Parity Securityholders pursuant to this Indenture, unless such Parity Securityholders shall have furnished to the Trustee satisfactory indemnity for the reimbursement of all expenses to which it may be put and to protect it against all liability which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

Section 14.4 Trustee not Responsible for Certain Matters Respecting Parity Securities or Security Therefor. The recitals contained herein and in the Parity Securities, except the Trustee's certificate of authentication and its recital of its authority to accept the trusts hereof, shall be taken as the statements of the County, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Parity Securities. The Trustee is not responsible for the recording of this Indenture or for the payment of taxes, charges, assessments and liens upon the System, or for insuring the System or the maintenance thereof, or for the sufficiency of the security for the Parity Securities.

Section 14.5 Trustee May Hold Parity Securities. The Trustee, in its individual or any other capacity, may become the Holder or pledgee of Parity Securities and may otherwise deal with the County with the same rights it would have if it were not Trustee hereunder.

Section 14.6 Right of the Trustee to Perform Certain Acts on Failure of the County. In case the County shall fail seasonably to pay or to cause to be paid any tax, assessment, or governmental or other charge upon any part of the System or the premiums on insurance on the

System or the expenses of maintaining or preserving the System, the Trustee may pay such tax, assessment, governmental charge, premiums or expenses without prejudice, however, to any rights of the Trustee or the Parity Securityholders arising in consequence of such failure; and any amount at any time so paid under this section, with interest thereon from the date of payment at the Trustee's prime lending rate plus two percent (2%) per annum or the maximum rate of interest allowed by law, whichever is less, shall be repaid by the County upon demand, and shall become additional indebtedness secured by this Indenture, but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Holders of not less than twenty-five percent (25%) of the aggregate principal amount of the outstanding Parity Securities and shall have been provided with adequate funds for the purpose of such payment.

Section 14.7 Compensation of the Trustee; Lien Therefor. The Trustee shall have a lien on the revenues of the System and all funds held or collected by the Trustee as such (except funds held in trust for the benefit of the Holders of particular Parity Securities) with right of payment prior to payment on account of interest, principal or premium (if any) of any Parity Security, for reasonable compensation for all services rendered by it hereunder and for all reasonable expenses, advances, disbursements and counsel fees incurred or made in and about the execution of the trusts hereby created and exercise and performance of the powers and duties of the Trustee hereunder and the cost and expense incurred in defending against any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful default of the Trustee).

Section 14.8 Resignation and Removal of the Trustee; Appointment of Successor. No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this article shall become effective until the acceptance of appointment by the successor Trustee under Section 14.9 hereof.

The Trustee may resign at any time by giving written notice thereof to the County. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

The Trustee may be removed at any time (a) by the Holders of a majority in aggregate principal amount of the outstanding Parity Securities by an instrument or instruments in writing delivered to the Trustee and to the County or (b) by the County, if no Event of Default exists, by written notice delivered to the Trustee.

If at any time the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then (i) the County may remove the

Trustee, or (ii) any Parity Securityholder who has been a Parity Securityholder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the County shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by the Holders of a majority in aggregate principal amount of the outstanding Parity Securities of each series by an instrument or instruments in writing delivered to the County and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the County. If no successor Trustee shall have been so appointed by the County or the Parity Securityholders and accepted appointment in the manner hereinafter provided, any Parity Securityholder who has been a Parity Securityholder for at least six months may, on behalf of himself and all other similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

The County shall give notice by registered or certified mail to the Holders of all outstanding Parity Securities and to each Rating Agency of each resignation and each removal of the Trustee and each appointment of a successor Trustee. Each notice shall include the name and address of the principal corporate trust office of the successor Trustee.

Section 14.9 Acceptance of Appointment by Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the County and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the estate and title of the retiring Trustee to the Trust Estate and all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the County or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the estate and title of the retiring Trustee to the Trust Estate and all the rights, powers, and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 14.7 hereof. Upon request of any such successor Trustee, the County shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such estate, title, rights, powers and trusts.

Section 14.10 Merger or Consolidation of the Trustee. Any corporation or association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or association succeeding to all or substantially

all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Parity Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Parity Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Parity Securities.

Section 14.11 Paying Agents. (a) Any Paying Agent other than the Trustee shall signify its acceptance of such appointment and its assumption of the duties and obligations imposed upon it by this Indenture by execution and delivery of an agreement satisfactory to the Trustee and the County.

(b) Any Paying Agent may resign at any time by giving 30 days' notice to the County and the Trustee; provided, however, that no such resignation shall become effective until a successor Paying Agent has been appointed and has accepted its duties and obligations hereunder.

(c) The County may, with the consent of the Trustee (if such Paying Agent is other than the Trustee), remove any Paying Agent by giving 30 days' notice to such Paying Agent; provided, however, that no such removal shall be effective until a successor Paying Agent has been appointed and has accepted its duties and obligations hereunder.

(d) If any Paying Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Paying Agent for any cause, the County shall appoint a successor Paying Agent.

(e) Any Paying Agent shall (i) be a commercial bank with trust powers or a trust company, (ii) have a combined capital and surplus of at least \$50,000,000, and (iii) be subject to supervision and examination by federal or state authority.

(f) Compensation of any Paying Agent shall be paid directly by the County.

(g) The provisions of the Indenture shall be applicable to any Paying Agent.

ARTICLE XV

AMENDMENTS AND SUPPLEMENTS TO THE INDENTURE

Section 15.1 **Supplemental Indentures Without Consent of Parity Securityholders.** Without the consent of or any notice to any Parity Securityholders, the County and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to add to the covenants of the County for the benefit of the Parity Securityholders, or to surrender any right or power herein conferred upon the County; or

(b) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions which shall not be inconsistent with the provisions of this Indenture, provided such action shall not adversely affect the interests of the Parity Securityholders; or

(c) to subject to this Indenture additional revenues, properties or collateral; or

(d) to authorize the issuance of Additional Parity Securities; or

(e) to grant to or confer or impose upon the Trustee for the benefit of the Parity Securityholders any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with the Indenture as theretofore in effect, provided that no such additional liabilities or duties shall be imposed upon the Trustee without its consent; or

(f) to authorize a different denomination or denominations of the Series 1997 Warrants or Series 1997-C Warrants and to make correlative amendments and modifications to the Indenture regarding exchangeability of Series 1997 Warrants or Series 1997-C Warrants of different denominations, redemptions of portions of Series 1997 Warrants or Series 1997-C Warrants of particular denominations and similar amendments and modifications of a technical nature; or

(g) to modify, alter, amend or supplement the Indenture in any other respect which is not materially adverse to the Parity Securityholders and which does not involve a change described in Section 15.2 hereof.

Before the County and the Trustee shall enter into any Supplemental Indenture pursuant to this section, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the County in accordance with its terms and will not adversely affect the exemption from federal income taxation of interest on the Series 1997-A Warrants.

Section 15.2 Supplemental Indentures With Consent of Parity Securityholders. With the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Parity Securities, the County and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights of the Parity Securityholders under the Indenture; provided, however, that no such Supplemental Indenture shall, without the consent of the Holder of each outstanding Parity Security adversely affected thereby,

- (1) change the security for, the stated maturity or mandatory redemption date of the principal of, or any installment of interest on, any Parity Security, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, change the coin or currency in which any Parity Security or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date), or
- (2) reduce the percentage in principal amount of the outstanding Parity Securities, the consent of whose Holders is required for any such Supplemental Indenture, or
- (3) eliminate or modify any provision of the Indenture, the elimination or modification of which by its terms requires the consent of the Holder of each Parity Security affected thereby, or
- (4) create a lien or charge on the revenues from the System ranking prior to or on a parity of lien with the lien and pledge thereon contained herein (other than for Additional Parity Securities), or
- (5) establish preference or priority as between the Parity Securities.

It shall not be necessary for any written consent of any Parity Securityholder under this section to approve the particular form of any proposed Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

If at any time the County shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Parity Securityholder. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all Parity Securityholders. Except in the case of a Supplemental Indenture requiring the consent of the Holder of each outstanding Parity Security adversely affected thereby, if the Holders of not less than a majority in aggregate principal amount of the Parity Securities of each series outstanding at the time of the execution of any Supplemental Indenture shall consent to and approve the execution thereof as herein no provided, no Parity Securityholder shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the County from executing the same or from taking any action pursuant to the provisions thereof.

Before the County and the Trustee shall enter into any Supplemental Indenture pursuant to this section, there shall have been delivered to the County and the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and the Act, complies with their respective terms, will be valid and binding upon the County in accordance with its terms and will not adversely affect the exemption from federal income taxation of interest on the Series 1997-A Warrants.

Section 15.3 Discretion of the Trustee. In the case of any amendments or supplements authorized under the provisions of this article, the Trustee shall be entitled to exercise its discretion in determining whether or not any proposed amendment or supplement, or any term or provision therein contained, is proper or desirable, having in view the purposes of such instrument, the needs of the County and the System and the rights and interests of the Parity Securityholders, and the Trustee shall not be under any responsibility or liability to the County or to any Parity Securityholder or to anyone whomsoever for any act or thing which it may in good faith do or decline to do under the provisions of Sections 15.1 and 15.2 hereof. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Independent Counsel acceptable to it as conclusive evidence that any such amendment or supplement complies with the provisions hereof and that the Trustee is authorized hereunder to join in the execution of or consent to such amendment or supplement. The Trustee may, but shall not be obligated to, enter into any Supplemental Indenture which affects the Trustee's own rights, duties or immunities under the Indenture.

Section 15.4 Effect of Supplemental Indentures. Upon the execution of any Supplemental Indenture under this article, this Indenture shall be modified in accordance therewith and such Supplemental Indenture or supplement or amendment shall form a part of the Indenture for all purposes; and every Holder of any Parity Security theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE XVI

PAYMENT AND CANCELLATION OF THE PARITY SECURITIES AND SATISFACTION OF THE INDENTURE

Section 16.1 **Satisfaction of Indenture.** Whenever the principal of and the interest and premium (if any) on the Parity Securities and the fees, charges and disbursements of the Trustee for services performed hereunder shall have been fully paid and the County shall have performed and observed all the covenants and promises expressed in the Parity Securities and in the Indenture to be performed and observed by it or on its part, the Trustee shall, at the expense of the County, cancel, satisfy and discharge the lien of the Indenture and shall execute and deliver to the County such instruments as shall be requisite to satisfy of record the lien hereof. For purposes of the Indenture (except as may herein be expressly provided otherwise), any of the Parity Securities shall be deemed to have been fully paid when there shall have been irrevocably deposited with the Trustee for payment thereof the entire amount (principal, interest and premium, if any) due or to become due thereon until and at maturity, and, further, any Parity Securities subject to redemption shall also be deemed to have been fully paid when the County shall have deposited with the Trustee the following:

(a) the applicable redemption price in cash of such Parity Securities, including the interest that will mature thereon to the earliest date on which they may, under the terms of the Indenture, be redeemed, and

(b) a certified copy of a Resolution calling such Parity Securities for redemption (if, under the terms of Section 6.1 hereof, the adoption of such a Resolution is required).

In addition, any of the Parity Securities shall, for all purposes of the Indenture (except as may herein be expressly provided otherwise), be considered as fully paid if the Trustee shall be provided with each of the following:

(1) a trust agreement between the County and the Trustee making provision for the retirement of such Parity Securities by creating for that purpose an irrevocable trust fund sufficient to provide for payment and retirement of such Parity Securities (including payment of the interest that will mature thereon until and on the dates they are retired, as such interest becomes due and payable), either by redemption prior to their respective maturities, by payment at their respective maturities or by payment of part thereof at their respective maturities and redemption of the remainder prior to their respective maturities, which said trust fund shall consist of (i) Permitted Defeasance Obligations which are not subject to redemption prior to their respective maturities at the option of the

issuer and which, if the principal thereof and the interest thereon are paid at their respective maturities, will produce funds sufficient so to provide for payment and retirement of all such Parity Securities, or (ii) both cash and such Permitted Defeasance Obligations which together will produce funds sufficient for such purpose, or (iii) cash sufficient for such purpose; provided, however, that said trust agreement shall require the Trustee to keep all cash held on deposit in such trust fund continuously secured by holding on deposit, as collateral security, Permitted Defeasance Obligations having a market value not less than the amount of cash on deposit in such trust fund;

(2) a certified copy of a Resolution calling for redemption those of such Parity Securities that, according to said trust agreement, are to be redeemed prior to their respective maturities (if, under the terms of Section 6.1 hereof, the adoption of such a Resolution is required);

(3) a certificate of a firm of certified public accountants stating that, if the principal of and the interest on the Permitted Defeasance Obligations (if any) forming part of the trust fund provided for in the preceding subparagraph (1) are paid on the respective due dates of such principal and interest, said trust fund will produce funds sufficient to provide for the full payment and retirement of such Parity Securities; and

(4) an opinion of Bond Counsel to the effect that the execution and effectuation of the trust agreement referred to in the preceding subparagraph (1) will not result in subjecting the interest income on such Parity Securities to federal income taxation.

The Trustee is hereby irrevocably authorized to give notice, in accordance with the applicable requirements of Article VI hereof, of any redemption of Parity Securities to be effected in connection with arrangements made pursuant to the provisions of this Section 16.1.

If a trust fund of the type described in subparagraph (1) of the preceding paragraph is established for payment of less than all of the Parity Securities of a particular series and maturity, the particular Parity Securities (or portions thereof) of such series and maturity to be paid from such trust fund shall be selected by the Trustee within seven days after such trust fund is established and shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Trustee shall notify Holders whose Parity Securities (or portions thereof) have been selected for payment from such trust fund and shall direct such Holders to surrender their Parity Securities to the Trustee in exchange for replacement securities with an appropriate CUSIP number and corresponding series and maturity designation.

Section 16.2 Destruction of Surrendered Parity Securities. Upon the surrender to the Trustee of any mutilated Parity Securities, or Parity Securities transferred or exchanged for other

Parity Securities, or Parity Securities redeemed or paid at maturity by the County, such Parity Securities shall forthwith be cancelled and destroyed by the Trustee, which shall deliver its certificate confirming such destruction to the County.

Section 16.3 **Release of Funds Upon Payment of Parity Securities.** Any amounts remaining in any of the Indenture Funds after payment in full of the Parity Securities, the fees, charges and expenses of the Trustee and all other amounts required to be paid hereunder shall be paid to the County.

ARTICLE XVII

PROVISIONS CONCERNING THE INSURANCE POLICY

Section 17.1 **Payments Under the Insurance Policy.** (a) If, on the third day preceding any Interest Payment Date for the Series 1997 Warrants, there is not on deposit with the Trustee sufficient moneys available to pay all principal of and interest on the Series 1997 Warrants due on such date, the Trustee shall immediately notify the Bond Insurer and State Street Bank and Trust Company, N.A., New York, New York, or its successor as the Bond Insurer's Fiscal Agent (the "Fiscal Agent"), of the amount of such deficiency. If, by said Interest Payment Date, the County has not provided the amount of such deficiency, the Trustee shall simultaneously make available to the Bond Insurer and to the Fiscal Agent the registration books for the Series 1997 Warrants maintained by the Trustee. In addition:

(i) the Trustee shall provide the Bond Insurer with a list of the Holders of the Series 1997 Warrants entitled to receive principal or interest payments from the Bond Insurer under the terms of the Insurance Policy and shall make arrangements for the Bond Insurer and its Fiscal Agent (1) to mail checks or drafts to Warranholders entitled to receive full or partial interest payments from the Bond Insurer and (2) to pay principal of the Warrants surrendered to the Fiscal Agent by the Warranholders entitled to receive full or partial principal payments from the Bond Insurer; and

(ii) the Trustee shall, at the time it makes the registration books available to the Bond Insurer, notify Warranholders entitled to receive payment of principal of or interest on the Series 1997 Warrants from the Bond Insurer (1) as to the fact of such entitlement, (2) that the Bond Insurer will remit to them all or part of the interest payments coming due subject to the terms of the Insurance Policy, (3) that, except as provided in paragraph (b) below, in the event that any Warranholder is entitled to receive full payment of principal from the Bond Insurer, such Warranholder must tender his Series 1997 Warrant to the Fiscal

Agent with the instrument of transfer in the form provided on the Series 1997 Warrant executed in the name of the Bond Insurer, and (4) that, except as provided in paragraph (b) below, in the event that such Warrantholder is entitled to receive partial payment of principal from the Bond Insurer, such Warrantholder must tender his Series 1997 Warrant for payment first to the Trustee, which shall note on such Series 1997 Warrant the portion of principal paid by the Trustee, and then, with an acceptable form of assignment executed in the name of the Bond Insurer, to the Fiscal Agent, which will then pay the unpaid portion of principal to the Warrantholder subject to the terms of the Insurance Policy.

(b) In the event that the Trustee has notice that any payment of principal of or interest on a Series 1997 Warrant has been recovered from a Warrantholder pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee shall, at the time it provides notice to the Bond Insurer, notify all Holders of Series 1997 Warrants that, in the event that any Warrantholder's payment is so recovered, such Warrantholder will be entitled to payment from the Bond Insurer to the extent of such recovery, and the Trustee shall furnish to the Bond Insurer its records evidencing the payments of principal of and interest on the Series 1997 Warrants which have been made by the Trustee and subsequently recovered from Warrantholders, and the dates on which such payments were made.

(c) The Bond Insurer shall, to the extent it makes payment of principal of or interest on the Series 1997 Warrants, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy and, to evidence such subrogation, (1) in the case of subrogation as to claims for past due interest, the Trustee shall note the Bond Insurer's rights as subrogee on the registration books maintained by the Trustee upon receipt from the Bond Insurer of proof of the payment of interest thereon to the Holders of such Series 1997 Warrants and (2) in the case of subrogation as to claims for past due principal, the Trustee shall note the Bond Insurer's rights as subrogee on the registration books for the Series 1997 Warrants maintained by the Trustee upon receipt of proof of the payment of principal thereof to the Holders of such Series 1997 Warrants. Notwithstanding anything in the Indenture or the Series 1997 Warrants to the contrary, the Trustee shall make payment of such past due interest and past due principal directly to the Bond Insurer to the extent that the Bond Insurer is a subrogee with respect thereto.

Section 17.2 Information to be Provided to the Bond Insurer. The Bond Insurer shall be provided with the following information:

(a) within 180 days after the end of each Fiscal Year of the County, a copy of the County's budget for the then current Fiscal Year, a copy of the County's annual audited financial statements for the most recently completed Fiscal Year, a statement of the amount on deposit in the Reserve Fund as of the last valuation and, if not presented in the audited financial statements, a statement

of the net revenues pledged to payment of the Parity Securities for the most recently completed Fiscal Year;

(b) the Official Statement or other disclosure document, if any, prepared in connection with the issuance of additional debt instruments payable from the System Revenues, whether or not such instruments constitute Additional Parity Securities, within 30 days after the sale thereof;

(c) notice of any draw upon, or any deficiency due to market fluctuation in the amount on deposit in, the Reserve Fund;

(d) notice of the redemption, other than mandatory sinking fund redemption, of any of the Parity Securities, including the principal amount, maturities and CUSIP numbers thereof;

(e) simultaneously with the delivery of the County's annual audited financial statements:

(i) the number of System users as of the end of the most recently completed Fiscal Year;

(ii) notification of the withdrawal of any System user responsible for 5% or more of System Revenues since the last reporting date;

(iii) any significant plant retirements or expansions planned or undertaken in the System's service area since the last reporting date;

(iv) maximum and average daily System usage for the most recently completed Fiscal Year;

(v) any updated capital plans for expansion and improvement projects; and

(vi) results of any annual engineering inspections.

(f) such additional information as the Bond Insurer may reasonably request from time to time.

Section 17.3 Miscellaneous Special Provisions Respecting the Bond Insurer and the Bond Insurance Policy. (a) In determining whether a payment default has occurred or whether a payment on the Series 1997-A Warrants or Series 1997-B Warrants has been made under the Indenture, no effect shall be given to payments made under the Insurance Policy.

(b) The Bond Insurer shall receive immediate notice of any default in payment of principal of or interest on the Series 1997 Warrants and notice of any other Event of Default known to the Trustee within 30 days of the Trustee's knowledge thereof.

(c) For all purposes of Article XIII of the Indenture, except the giving of notice of default to Warrantholders, the Bond Insurer shall be deemed to be the sole holder of the Series 1997 Warrants it has insured for so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.

(d) No resignation or removal of the Trustee shall become effective until a successor has been appointed and has accepted the duties of Trustee. The Bond Insurer shall be furnished with written notice of the resignation or removal of the Trustee and the appointment of any successor thereto.

(e) The Bond Insurer shall be treated as a party in interest and as a party entitled to (i) notify the Trustee of the occurrence of an Event of Default and (ii) request the Trustee to intervene in judicial proceedings that affect the Series 1997 Warrants or the security therefor.

(f) Any amendment or supplement to the Indenture shall be subject to the prior written consent of the Bond Insurer. The Bond Insurer shall be deemed to be the holder of all outstanding Series 1997 Warrants for the purpose of consenting to any proposed amendment or supplement to the Indenture (except for any such amendment or supplement that, under the provisions of the Indenture, requires the consent of the Holder of each outstanding Series 1997 Warrant). Any rating agency rating any of the Series 1997-A Warrants or Series 1997-B Warrants must receive notice of each amendment or supplement hereafter executed and a copy thereof at least fifteen days in advance of its execution or adoption.

(g) The Bond Insurer shall be provided with a full transcript of all proceedings relating to the execution of any Supplemental Indenture hereafter executed.

(h) Any notices to the Bond Insurer or the Fiscal Agent pursuant to the Indenture shall be sent to the following addresses (unless and until different addresses are specified in writing to the County and the Trustee):

Financial Guaranty Insurance Company
115 Broadway
New York, New York 10006
Attention: General Counsel

State Street Bank and Trust Company, N.A.
61 Broadway
New York, New York 10006
Attention: Corporate Trust Department

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

Section 18.1 **Disclaimer of General Liability.** It is hereby expressly made a condition of the Indenture that any agreements, covenants or representations herein contained or contained in the Parity Securities do not and shall never constitute or give rise to any personal or general pecuniary liability or charge against the general credit or taxing powers of the County, and in the event of a breach of any such agreement, covenant or representation, no personal or general pecuniary liability or charge payable directly or indirectly from the general revenues of the County shall arise therefrom. Nothing contained in this section, however, shall relieve the County from the observance and performance of the several covenants and agreements on its part herein contained.

Section 18.2 **Counterparts.** The Indenture may be executed in several counterparts, and each executed copy shall constitute an original instrument but such counterparts shall together constitute but one and the same instrument.

Section 18.3 **Notices.** All notices, demands and requests to be given or made hereunder shall be deemed sufficient and properly given or made if in writing and sent by United States first class mail, postage prepaid, or sent by an electronic method capable of producing a written document, addressed as follows:

- (a) If to the County:

Jefferson County
Jefferson County Courthouse
Birmingham, Alabama 35203
Attention: President of County Commission

- (b) If to the Trustee:

AmSouth Bank of Alabama
Post Office Box 11426
Birmingham, Alabama 35202
Attention: Corporate Trust Department

The County and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices shall be sent.

Section 18.4 Retention of Moneys for Payment of Parity Securities. Should any of the Parity Securities not be presented for payment when due, whether by maturity or otherwise, or should it be impossible for the Trustee to pay the interest on any of the Parity Securities as such interest becomes due, the Trustee shall, subject to the provisions of any applicable escheat or other similar law, retain from any moneys transferred to it for the purpose of paying the principal of and the interest and premium (if any) on such Parity Securities, for the benefit of the Holders thereof, a sum of money sufficient to pay such principal and premium (if any) when the appropriate Parity Securities are presented by the Holders thereof for payment and to pay such interest when it becomes possible to do so (upon which sum the Trustee shall not be required to pay interest). All liability of the County to the Holders of such Parity Securities and all rights of such Holders against the County under such Parity Securities or under the Indenture in respect of such principal, interest and premium (if any) shall thereupon cease and terminate, and the sole right of such Holders in respect of such principal, interest and premium (if any) shall thereafter be against such sum of money retained by the Trustee. If the principal of or any interest or premium on any Parity Security shall not be paid within a period of ten (10) years following the date when such principal, interest or premium first becomes due, whether by maturity or otherwise, the Trustee shall, subject to the provisions of any applicable escheat or other similar law, pay to the County any moneys theretofore retained by it for the payment of such principal, interest or premium. After the payment to the County of any moneys retained by the Trustee for the payment of any principal of or interest or premium on any of the Parity Securities, such principal, interest or premium shall (subject to the defense of any applicable statute of limitation) be an unsecured obligation of the County.

Section 18.5 Payments Not Due on Business Day. In any case where the date of maturity of the principal of or the interest or premium (if any) on the Parity Securities, or the date fixed for redemption of any Parity Securities, shall not be a Business Day, then payment of such principal, interest and premium (if any) need not be made on such date, but may be made on the next succeeding Business Day, with the same force and effect as if made on such date of maturity or such date fixed for redemption, and no interest shall accrue for the period after such date of maturity or date fixed for redemption, as the case may be.

Section 18.6 Form of Requests, etc., by Parity Securityholders. Any request, direction or other instrument required to be signed or executed by Parity Securityholders may be in any number of concurrent instruments of similar tenor, signed, or executed in person or by agent appointed in writing. Such signature or execution may be proved by the certificate of a notary public or other officer at the time authorized to take acknowledgments to deeds to be recorded in the State of Alabama, stating that the signer was known to him and acknowledged to him the execution thereof.

Section 18.7 Notice to Rating Agencies. The Trustee shall give written notice of any Supplemental Indenture or any other modification to documents or agreements respecting the

rights or duties of the County or the Trustee with respect to any of the Parity Securities to each Rating Agency that has outstanding a rating with respect to any of the Parity Securities. Such notice shall be given to each Rating Agency within five Business Days after the date on which the Supplemental Indenture, amendment or modification requiring such notice shall become effective.

Section 18.8 Severability. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 18.9 Article and Section Captions. The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

Section 18.10 Indenture Governed by Alabama Law. The Indenture shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

Section 18.11 Binding Effect. The Indenture shall inure to the benefit of, and shall be binding upon, the County and the Trustee and their respective successors and assigns.

IN WITNESS WHEREOF, the County has caused this Indenture to be signed in its name by the President of the Governing Body and its official seal to be hereunto affixed and the said seal to be attested by the Minute Clerk of the Governing Body, and the Trustee, to evidence its acceptance of the trusts hereby created, has caused this Indenture to be executed in its corporate name and behalf by its duly authorized officer and its corporate seal to be hereunto affixed and the said seal to be attested by its duly authorized officer, all of whom are hereunto duly authorized, and the parties hereto have caused this Indenture to be dated as of February 1, 1997, although actually executed and delivered on February 27, 1997.

JEFFERSON COUNTY, ALABAMA

By Mary M Buckelew
President of the County Commission

ATTEST:

Virginia Dail
Minute Clerk
of the County Commission

[S E A L]

AMSOUTH BANK OF ALABAMA

By Renee Ragland
Its CORPORATE TRUST OFFICER

ATTEST:

Kara Lee Parton
ASSISTANT VICE PRESIDENT
Its AND CORPORATE TRUST OFFICER

[S E A L]

State of Alabama - Jefferson County
I certify this instrument filed on:
1997 MAR 21 A.M. 10:01

Recorded and \$ _____ Mtg. Tax _____
and \$ _____ Deed Tax and Fee Amt. _____
\$ 283.00 Total \$ 283.00
GEORGE R. REYNOLDS, Judge of Probate

STATE OF ALABAMA)
:
JEFFERSON COUNTY)



9703/8419

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that MARY BUCKELEW, whose name as President of the County Commission of JEFFERSON COUNTY, ALABAMA, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said County.

GIVEN under my hand and seal, this 26th day of February, 1997.

[NOTARIAL SEAL]

James K. Reynolds
Notary Public

My Commission Expires: 2/17/99

STATE OF ALABAMA)
:
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Rance R. Adams, whose name as Corporate Trust Officer of AMSOUTH BANK OF ALABAMA, an Alabama banking corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

GIVEN under my hand and seal, this 26th day of February, 1997.

[NOTARIAL SEAL]

James K. Reynolds
Notary Public

My Commission Expires: 2/17/99

STATE OF ALABAMA - JEFFERSON COUNTY
ORDER MADE FOR NO POSTAGE TAX OR FEE
TAXES MUST BE PAID BY THE DEEDOR
James K. Reynolds
Judge of Probate
NO TAX COLLECTED

EXHIBIT B

Financial Guaranty Insurance
Company
125 Park Avenue
New York, NY 10017
(212) 312-3000
(800) 352-0001



Municipal Bond New Issue Insurance Policy

Issuer: Jefferson County, Alabama	Policy Number: 03010824
	Control Number: 0010001
Bonds: \$820,000,000.00 in aggregate principal amount of Sewer Revenue Refunding Warrants, Series 2003-C-1 through 2003-C-8, maturing February 1, 2042	Premium: \$12,624,179.10

Financial Guaranty Insurance Company ("Financial Guaranty"), a New York stock insurance company, in consideration of the payment of the premium and subject to the terms of this Policy, hereby unconditionally and irrevocably agrees to pay U.S. Bank Trust National Association or its successor, as its agent (the "Fiscal Agent"), for the benefit of Bondholders, that portion of the principal and interest on the above-described debt obligations (the "Bonds") which shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

Financial Guaranty will make such payments to the Fiscal Agent on the date such principal or interest becomes Due for Payment or on the Business Day next following the day on which Financial Guaranty shall have received Notice of Nonpayment, whichever is later. The Fiscal Agent will disburse to the Bondholder the face amount of principal and interest which is then Due for Payment but is unpaid by reason of Nonpayment by the Issuer but only upon receipt by the Fiscal Agent, in form reasonably satisfactory to it, of (i) evidence of the Bondholder's right to receive payment of the principal or interest Due for Payment and (ii) evidence, including any appropriate instruments of assignment, that all of the Bondholder's rights to payment of such principal or interest Due for Payment shall thereupon vest in Financial Guaranty. Upon such disbursement, Financial Guaranty shall become the owner of the Bond, appurtenant coupon or right to payment of principal or interest on such Bond and shall be fully subrogated to all of the Bondholder's rights thereunder, including the Bondholder's right to payment thereof.

This Policy is non-cancellable for any reason. The premium on this Policy is not refundable for any reason, including the payment of the Bonds prior to their maturity. This Policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Bond.

As used herein, the term "Bondholder" means, as to a particular Bond, the person other than the Issuer who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof. "Due for Payment" means, when referring to the principal of a Bond, the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity and means, when referring to interest on a Bond, the stated date

Financial Guaranty Insurance
Company
125 Park Avenue
New York, NY 10017
(212) 312-3000
(800) 352-0001



Municipal Bond New Issue Insurance Policy

for payment of interest. "Nonpayment" in respect of a Bond means the failure of the Issuer to have provided sufficient funds to the paying agent for payment in full of all principal and interest Due for Payment on such Bond. "Notice" means telephonic or telegraphic notice, subsequently confirmed in writing, or written notice by registered or certified mail, from a Bondholder or a paying agent for the Bonds to Financial Guaranty. "Business Day" means any day other than a Saturday, Sunday or a day on which the Fiscal Agent is authorized by law to remain closed.

In Witness Whereof, Financial Guaranty has caused this Policy to be affixed with its corporate seal and to be signed by its duly authorized officer in facsimile to become effective and binding upon Financial Guaranty by virtue of the countersignature of its duly authorized representative.

President

Effective Date: August 7, 2003

Authorized Representative

U.S. Bank Trust National Association acknowledges that it has agreed to perform the duties of Fiscal Agent under this Policy.

Authorized Officer

COUNTERSIGNATURE:

Licensed Resident Agent

Financial Guaranty Insurance
Company
125 Park Avenue
New York, NY 10017
(212) 312-3000
(800) 352-0001



Endorsement
To Financial Guaranty Insurance Company
Insurance Policy

Policy Number: 03010824

Control Number: 0010001

It is further understood that the term "Nonpayment" in respect of a Bond includes any payment of principal or interest made to a Bondholder by or on behalf of the issuer of such Bond which has been recovered from such Bondholder pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction.

NOTHING HEREIN SHALL BE CONSTRUED TO WAIVE, ALTER, REDUCE OR AMEND COVERAGE IN ANY OTHER SECTION OF THE POLICY. IF FOUND CONTRARY TO THE POLICY LANGUAGE, THE TERMS OF THIS ENDORSEMENT SUPERSEDE THE POLICY LANGUAGE.

In Witness Whereof, Financial Guaranty has caused this Endorsement to be affixed with its corporate seal and to be signed by its duly authorized officer in facsimile to become effective and binding upon Financial Guaranty by virtue of the countersignature of its duly authorized representative.

President

Authorized Representative

Effective Date: August 7, 2003

Acknowledged as of the Effective Date written above:

COUNTERSIGNATURE:

Licensed Resident Agent

Authorized Officer
U.S. Bank Trust National Association, as Fiscal Agent

Index No. 401265/2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Rehabilitation of
FINANCIAL GUARANTY INSURANCE
COMPANY,

AFFIRMATION OF AMY D. CATON IN SUPPORT
OF OBJECTION TO PLAN OR REHABILITATION

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Attorneys for Certain Jefferson County Warrantholders

1177 Avenue of the Americas New York, New York 10036
(212) 715-9100

All communications should be referred to:

Thomas Moers Mayer
Amy D. Caton
Daniel M. Eggerman