

ORDINANCE NO. 2009-24

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, AMENDING AND SUPPLEMENTING ORDINANCE NO. 2009-05 OF THE CITY BY ENABLING ALL OR A PORTION OF THE CITY'S SALES AND USE TAX REVENUE BONDS TO BE ISSUED AS "FEDERALLY TAXABLE—ISSUER SUBSIDY—BUILD AMERICA BONDS"; ENHANCING THE SECURITY FOR THE BONDS; AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE BONDS.

WHEREAS, the City of Fruita, Colorado, is a municipal corporation duly organized and operating as a home-rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Ordinance No. 2009-05, as amended by this Ordinance); and

WHEREAS, the Fruita City Council passed and adopted Ordinance No. 2009-05 of the City on second reading on or about July 7, 2009, which ordinance authorizes the issuance of sales and use tax revenue bonds of the City for the purpose of constructing and equipping a community recreation center; and

WHEREAS, following the adoption of the Bond Ordinance, the City Manager, the Underwriter (George K. Baum & Company), and City officials, employees and advisors have undertaken discussions between themselves and with officials from the rating agency, potential Bond Insurers and others regarding the form of and security for the Bonds; and

WHEREAS, Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (enacted February 17, 2009) added Section 54AA to the Federal Tax Code, which section authorizes local governments to elect to issue "Build America Bonds", one of two types of which, also known as "issuer subsidy" or "direct payment" Build America Bonds, provides for a refundable tax credit, in the form of cash, paid to the issuer of the bonds by the United States Treasury Department in an amount equal to 35% of the taxable interest payable on the bonds; and

WHEREAS, in recent weeks the issuance of "Build America Bonds", which requires an irrevocable election by the issuer to have Federal Tax Code Section 54AA(g) apply to such bonds, have been sold in the market at prices reflecting interest costs which, net of the refundable tax credit, are at lower borrowing costs to the issuer than tax-exempt bonds would otherwise be for comparable maturities; and

WHEREAS, following the discussions reference above, the City may also be able to realize interest cost savings, enabling a greater principal amount to be issued by the City within the voted authorization, in the event that the security for the Bonds is enhanced as otherwise provide in this Ordinance; and

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

WHEREAS, the City Council desires to provided for the amendment of Ordinance No. 2009-05 of the City to enable the sale and issuance of the Bonds; therefore

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1. Definitions. Section 1 of the Bond Ordinance shall be amended by the amendment and restatement, or addition, of the following defined terms:

“*Bond Ordinance*” means Ordinance No. 2009-05 of the City adopted on second reading on July 7, 2009, prior to the amendment and supplement of said ordinance by the provisions of this Ordinance of the City.

“*Bonds*” means one or more series of Sales and Use Tax Revenue Bonds issued in accordance with the Community Center Ballot Issue and authorized hereby.

“*Build America Bonds*” means the interest subsidy bonds issuable under Sections 54AA and 6431 of the Federal Tax Code and a “qualified bond” under Section 54AA(g) of the Federal Tax Code or such other tax credit bonds of substantially similar nature which may be hereafter authorized.

“*Combined Maximum Principal and Interest Requirements*” means the maximum annual amount required to be paid in any calendar year as the principal of (including any mandatory sinking fund requirements) and interest on the Bonds, any outstanding Parity Lien Bonds and proposed Parity Lien Bonds, excluding any such bonds which have been defeased pursuant to the terms of the authorizing documents. For purposes of calculating the Combined Maximum Principal and Interest Requirements in any calendar year in which any issue of Bonds and Parity Lien Bonds finally mature, there shall be subtracted from the final payment for said bonds any cash or the present value of any investments deposited in a reserve fund or account established pursuant to the authorizing documents which are properly allocable to said bonds. Further, in calculating Combined Maximum Principal and Interest Requirements due or to become due on the Bonds, any outstanding Parity Lien Bonds, and the proposed Parity Lien Bonds in any calendar year, that portion of the interest obligation which is expected to be paid from Federal Direct Payments shall be excluded from the calculation of the amounts required to be paid, the intent being that such amounts be net of the Federal Direct Payments.

“*Federal Direct Payments*” means the interest subsidy payments received or to be received by the City from the United States Treasury Department pursuant to Section 6431 of the Federal Tax Code or other similar programs with respect to Bonds issued under this Ordinance.

“*Pledged Revenues*” means all of the City’s Sales and Use Tax revenues required to be deposited in the Community Center Fund, the Federal Direct Payments, if any, and all moneys on deposit from time-to-time in the Community Center Fund.

“*Reserve Account Requirement*” means, as of any date on which it is calculated, and when combined with moneys on deposit in the Supplemental Reserve Account, equals the maximum annual debt service in any calendar year on the Outstanding Bonds.

“*Supplemental Reserve Account*” means a special account of the City designated as the “2009 Supplemental Reserve Account” created in the section hereof entitled “Supplemental Reserve Account” for the purpose of paying, if necessary, the principal of and interest on the Bonds.

“*Supplemental Reserve Account Requirement*” means, as of any date on which it is calculated, \$500,000 or such other amount established pursuant to the Sale Certificate.

Section 2. Authorization of the Bonds. Section 2 of the Bond Ordinance shall be amended and restated to read as follows:

“Section 2. Authorization of the Bonds. Pursuant to and in accordance with the Community Center Ballot Issue, the City hereby authorizes, approves and orders that there shall be issued the “City of Fruita, Colorado, Sales and Use Tax Revenue Bonds, Series 2009”, in one or more series, in the aggregate principal amount not to exceed \$15,000,000 for the purpose of paying Project Costs. In the event of the issuance of more than one series, each series of Bonds shall be identified by a sequential letter designation beginning with “A” (i.e., Series 2009A and Series 2009B). Additionally, in the event that one of the series of Bonds is issued as Build America Bonds, such Bonds shall also be identified as “(Federally Taxable – Issuer Subsidy – Build America Bonds).”

Section 3. Delegation and Parameters. Section 4 of the Bond Ordinance shall be amended by the addition of the following paragraphs (d) and (e):

(d) ***Build America Bonds.*** In the event that the Sale Delegate determines, based in part upon information provided by the Underwriter, that the issuance of all or any maturities of the Bonds as Build America Bonds is (i) reasonably expected to result in a net interest cost savings to the City when compared to the interest cost of issuing tax-exempt Bonds and (ii) in the best interests of the City, the Sale Delegate and appropriate City officials are hereby authorized and directed to take all actions necessary and appropriate to issuing all or any maturities of the Bonds as Build America Bonds. The City Council hereby delegates to the Sale Delegate the authority to make an irrevocable election in the Sale Certificate it issue all or any maturities of the Bonds as Build America Bonds.

(e) ***Supplemental Reserve Account Requirement.*** The Sale Delegate the authority to determine the amount of the Supplemental Reserve Account Requirement in the Sale Certificate if such amount is to be different from the amount set forth in this Ordinance.

Section 4. Redemption of Bonds Prior to Maturity. Section 5 of the Bond Ordinance shall be amended by the addition of the following paragraph (d):

(d) ***Extraordinary Event Redemption.*** The Sale Delegate may provide in the Sale Certificate that Build America Bonds are subject to redemption prior to their stated maturities, at the option of the City, in whole but

not in part, upon the occurrence of an Extraordinary Event (as defined in the following sentence), from any source of available funds, on the dates and at the price, including premium not to exceed three percent of the principal amount so redeemed, determined by the Sale Delegate. An "Extraordinary Event" will have occurred if a material adverse change has occurred to Section 54AA or 6431 of the Federal Tax Code pursuant to which the City's 35% cash subsidy payment from the United States Treasury, defined herein as the Federal Direct Payments, is reduced or eliminated.

Section 5. Deposit of Pledged Revenues. Section 12 of the Bond Ordinance shall be amended and restated to read as follows:

Section 12. Deposit of Pledged Revenues. All revenues from the Sales and Use Tax shall continue to be deposited in the Community Center Fund in accordance with section 3.16.020 of the Municipal Code. Additionally, all Federal Direct Payments, if any, shall be deposited in the Community Center Fund. The City shall make credits to the Community Center Fund in the following order of priority:

FIRST, to the credit of the Interest Sub-Account, the amounts required by the section hereof entitled "Bond Account", and to the credit of any other bond account hereafter established for the payment of the interest on Parity Lien Bonds issued in accordance with the Section hereof entitled "Conditions to Issuance of Parity Lien Bonds", provided that separate bond accounts shall have claims to the Pledged Revenues equal to and on a parity with those of the other such accounts;

SECOND, to the credit of the Principal Sub-Account, the amounts required by the section hereof entitled "Bond Account", and to the credit of any other bond account hereafter established for the payment of the principal on Parity Lien Bonds issued in accordance with the Section hereof entitled "Conditions to Issuance of Parity Lien Bonds", provided that separate bond accounts shall have claims to the Pledged Revenues equal to and on a parity with those of the other such accounts;

THIRD, to the credit of the Reserve Account, the amounts required by the section hereof entitled "Reserve Account" and to the credit of any other account hereafter established as a reserve account for Parity Lien Bonds issued in accordance with the Section hereof entitled "Conditions to Issuance of Parity Lien Bonds", provided that separate reserve accounts shall have claims to the Pledged Revenues equal to and on a parity with those of the other such accounts";

FOURTH, to the credit of the Supplemental Reserve Account, the amounts required by the section hereof entitled "Supplemental Reserve Account";

FIFTH, to the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on subordinate lien obligations as described in paragraph (c) of the section hereof entitled "Pledge and Lien for Payment of Bonds," including any sinking fund, reserve fund, or

similar fund or account established therefor, the amounts required by the ordinance or other enactment authorizing issuance of said subordinate lien obligations, and for the repayment of any loan made to the Community Center Fund as provided the section hereof entitled “City Replenishment Consideration and Moral Obligation”; and

SIXTH, for any other purposes permitted under the Municipal Code for the Community Center Fund.

Section 6. Bond Account. Section 13 of the Bond Ordinance shall be amended by the addition of the following paragraph (e):

(e) ***Multiple Series Accounts and Sub-Accounts.*** In the event that the Bonds are issued in more than one series, the City Manager shall be authorized to direct that there be established additional Bond Accounts, or additional accounts or sub-accounts within the Bond Account, for the purpose of providing for the payment of the debt service on the Bonds. For purposes of this Ordinance, references to “Bond Account” shall be deemed to refer to and include any additional Bond Accounts established at the direction of the City Manager for the payment of the Bonds.

Section 7. Supplemental Reserve Account. The Bond Ordinance shall be amended by the addition of a new Section 14.5 which shall read as follows:

Section 14.5. Supplemental Reserve Account.

(a) ***Establishment of Supplemental Reserve Account.*** The Supplemental Reserve Account is hereby established within the Community Center Fund. The Supplemental Reserve Account shall be maintained within the Community Center Fund until the earlier of December 1, 2019 or such time as the Sales and Use Tax for two consecutive calendar years has been equal to at least 150% of the sum of the Combined Maximum Principal and Interest Requirements due or to become due on the Bonds and any outstanding Parity Lien Bonds.

(b) ***Use of Moneys in Supplemental Reserve Account.*** Moneys in the Supplemental Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, and interest on the Bonds when due and prior to the use of any moneys in the Reserve Account for such purpose. Moneys on deposit in the Supplemental Reserve Account or proceeds of the liquidation of Permitted Investments on deposit in the Supplemental Reserve Account shall be transferred to the Bond Account on any date on which a payment of principal of, premium, if any, or interest on the Bonds is due to the extent the amount on deposit in the Bond Account is insufficient to make such payment. Upon the issuance of Parity Lien Bonds, if any, moneys in the Supplemental Reserve Account can also be used for the payment of the principal of, premium if any, and interest on the Parity Lien Bonds when due, as

more specifically provided in the ordinance authorizing the issuance of such Parity Lien Bonds.

(c) ***Funding and Maintenance of Supplemental Reserve Account Requirement.*** The Supplemental Reserve Account shall be funded in the amount of the Supplemental Reserve Account Requirement from moneys on deposit in the Community Center Fund on the date of the issuance of and delivery of the Bonds, and the Supplemental Reserve Account shall thereafter be maintained, until terminated as provided in paragraph (a) hereof, by any one of or any combination of cash or Permitted Investments. The investment of moneys deposited in the Supplemental Reserve Account shall be subject to the covenants and provisions of the section of the Bond Ordinance entitled “Covenants Regarding Build America Bonds”.

(d) ***Valuation of Deposits.*** Cash shall satisfy the Supplemental Reserve Account Requirement by the amount of cash on deposit. Permitted Investments shall satisfy the Supplemental Reserve Account Requirement by the value of such investments. The value of each Permitted Investment on deposit in the Supplemental Reserve Account shall be its purchase price from the date of purchase and thereafter its fair market value determined as of each calculation date required pursuant to paragraph (d) of this section.

(e) ***Calculation of Supplemental Reserve Account Requirement and Transfers Resulting from Calculation.*** The Supplemental Reserve Account Requirement shall be calculated not less than annually. If at any time the calculated amount of the Supplemental Reserve Account is less than the Supplemental Reserve Account Requirement or transfers are made from the Supplemental Reserve Account as provided in paragraph (b) hereof, then the City shall deposit to the Supplemental Reserve Account from the Pledged Revenues, amounts sufficient to bring the amount deposited in the Supplemental Reserve Account to the Supplemental Reserve Account Requirement. Such deposits shall be made as soon as possible after such use or calculation, but in accordance with and subject to the limitations of the section of this Ordinance entitled “Deposit of Pledged Revenues.” If at any time the calculated amount of the Supplemental Reserve Account is more than the Supplemental Reserve Account Requirement, then the City shall apply such excess amount to any lawful use of moneys in the Community Center Fund in accordance with section 3.16.020 of the Municipal Code.

Section 8. Pledge and Lien for Payment of Bonds. Paragraph (a) of Section 16 of the Bond Ordinance shall be amended and restated to read as follows:

(a) ***Pledge of Revenues.*** The City hereby pledges for the payment of the principal of, premium, if any, and interest on the Bonds and Parity Lien Bonds at any time Outstanding, and grants a first lien (but not necessarily an exclusive first lien) for such purpose on (i) the Sales and Use Tax, (ii) Federal Direct

Payments, if any, and (iii) all moneys on deposit from time-to-time in the Community Center Fund.

Section 9. Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes. Section 19 of the Bond Ordinance shall be amended and restated to read as follows:

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

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

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

(d) ***Designation of Bonds as Qualified Tax-Exempt Obligations.*** The City hereby designates the Bonds which are not issued as Build America Bonds as qualified tax-exempt obligations within the meaning of Section 265(b)(3) of the Federal Tax Code. The City covenants that the aggregate face amount of all tax-exempt obligations issued by the City, together with governmental entities which

derive their issuing authority from the City or are subject to substantial control by the City, shall be not be more than \$30,000,000 during the calendar year in which the Bonds are issued. The City recognizes that such tax-exempt obligations include notes, leases, loans, and warrants, as well as bonds.

Section 10. Covenants Regarding Build America Bonds. The Bond Ordinance shall be amended by the addition of a new Section 19.5 which shall read as follows:

Section 19.5 Covenants Regarding Build America Bonds. With respect to any series of Bonds for which the Sale Delegate makes an irrevocable election to issue as Build America Bonds, the City hereby covenants that:

(a) ***Direct Payment Authorization.*** In the event that the Sale Delegate makes an irrevocable election in the Sale Certificate it issue all or any maturities of the Bonds as Build America Bonds, the City Manager is hereby directed to take all necessary actions to effectively carry out the duties required to apply for and accept Federal Direct Payments from the Internal Revenue Service on behalf of the City under Sections 54AA and 6431 of the Federal Tax Code or such other tax provisions of substantially similar nature which may be hereafter authorized, including, but not limited to, filing and signing IRS Form 8038-CP, receiving the Federal Direct Payments on the City's behalf, and causing such Federal Direct Payment to be deposited into the Community Center Fund to be applied in accordance with the section hereof entitled "Deposit of Pledged Revenues". The City Manager shall file or cause to be filed the IRS Form 8038-CP at least 45 days (but not more than 90 days) before the relevant Interest Payment Date (unless otherwise directed by a change in regulations). The City hereby covenants that it will deposit the Federal Direct Payments in the Community Center Fund.

(b) ***Prohibited Actions.*** The City will not use or permit the use of any proceeds of the Bonds issued as Build America Bonds or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Federal Tax Code, or would cause any Bond issued as a Build America Bond to fail to continue to qualify for treatment as a Build America Bond.

(c) ***Affirmative Actions.*** The City will at all times do and perform all acts permitted by law that are necessary in order to assure that any Bonds issued as Build America Bonds shall continue to qualify for treatment as Build America Bonds for federal income tax purposes. In particular, but without limitation, the City represents, warrants and covenants to comply with the following rules with respect to all Bonds issued pursuant to this Resolution unless it receives an opinion of Bond Counsel stating that such compliance is not necessary: (i) gross proceeds of the Bonds will not be used in a manner that will cause the Bonds to be considered "private activity bonds" within the meaning of the Federal Tax Code; (ii) the Bonds are not and will not become directly or indirectly "federally

guaranteed”; and (iii) the City will timely file Internal Revenue Form 8038-G which shall contain the information required to be filed pursuant to Section 149(e) of the Federal Tax Code.

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

Section 11. City Replenishment Consideration and Moral Obligation. The Bond Ordinance shall be amended by the addition of a new Section 20.5 which shall read as follows:

Section 20.5. City Replenishment Consideration and Moral Obligation.

(a) ***Supplemental Reserve Account.*** If, at any time, the Supplemental Reserve Account is not funded at the Supplemental Reserve Account Requirement on a date which is 90 days prior to an Interest Payment Date or a Principal Payment Date, the City Manager shall prepare and submit to the City Council a request for an appropriation of a sufficient amount to replenish the Supplemental Reserve Account to the Supplemental Reserve Account Requirement. It is the present intention and expectation of the City Council to appropriate such funds as requested, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Council may determine in its sole discretion, but shall never be required, to make the appropriations so requested. All sums appropriated by the City Council for such purpose shall be considered a loan of legally available moneys of the City to the Community Center Fund, may draw interest until repaid at rate determined by the City Council at the time the appropriation is made, and shall be deposited in the Supplemental Reserve Account. The repayment obligation for any loan shall be subordinate to the payment of the Bonds, and shall be made in the order of priority established in the section hereof entitled “Deposit of Pledged Revenues”. While the City Council has agreed to consider funding the Supplemental Reserve Account pursuant to the terms of this paragraph to provide additional assurance that the Supplemental Reserve Account will annually be funded at the Supplemental Reserve Account Requirement, the City Council’s decision not to so fund the Supplemental Reserve Account shall not constitute an Event of Default hereunder. Nothing provided in this paragraph shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

(b) **Reserve Account.** Following the date on which the Supplement Reserve is not required to be maintained pursuant to the terms of the Bond Ordinance, if, at any time, the Reserve Account is not funded at the Reserve Account Requirement on a date which is 90 days prior to an Interest Payment Date or a Principal Payment Date, the City Manager shall prepare and submit to the City Council a request for an appropriation of a sufficient amount to replenish the Reserve Account to the Reserve Account Requirement. It is the present intention and expectation of the City Council to appropriate such funds as requested, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Council may determine in its sole discretion, but shall never be required, to make the appropriations so requested. All sums appropriated by the City Council for such purpose shall be considered a loan of legally available moneys of the City to the Community Center Fund, may draw interest until repaid at rate determined by the City Council at the time the appropriation is made, and shall be deposited in the Reserve Account. The repayment obligation for any loan shall be subordinate to the payment of the Bonds, and shall be made in the order of priority established in the section hereof entitled "Deposit of Pledged Revenues". While the City Council has agreed to consider funding the Reserve Account pursuant to the terms of this paragraph to provide additional assurance that the Reserve Account will annually be funded at the Reserve Account Requirement, the City Council's decision not to so fund the Reserve Account shall not constitute an Event of Default hereunder. Nothing provided in this paragraph shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

Section 12. Ratification of Prior Actions; Reaffirmation of Ordinance No 2009-05.

All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed. The terms of Ordinance No. 2009-05, as amended by this Ordinance, is hereby ratified and affirmed in its entirety.

Section 13. Limitation of Actions. Pursuant to Section 8.18 of the Charter and Section 11-57-212, Colorado Revised Statutes, no action or proceeding concerning the issuance of the Bonds shall be maintained against the City unless commenced within 30 days after the date of passage of this Ordinance.

Section 14. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 15. Ordinance Irrepealable. After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the City, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 16. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 17. Repealer. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL

THIS ____ DAY OF _____, 2009.

ATTEST:

CITY OF FRUITA, COLORADO

City Clerk

H. Kenneth Henry, Mayor