

No 62

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE
ISSUANCE OF A \$1,000,000 TOWN OF
DAUPHIN ISLAND GENERAL OBLIGATION WARRANT, SERIES 1999

BE IT ORDAINED by the Town Council (the "Council") of the Town of Dauphin Island, Alabama (the "Town"), as follows:

Section 1. Findings. Having made due and proper investigation of the matters hereinafter referred to, the Town Council has ascertained and does hereby find and determine:

- (a) In order to provide financing for the purchase of a van, acquisition of real property, construction of road and bridge improvements, additions to the Town Hall building, a west end drainage project and a lighting and parking project (the "Improvements") for use by the Town, it is necessary that the Town borrow the sum of \$1,000,000.
- (b) The Council has determined to borrow such funds from Regions Bank and to issue the Warrant hereinafter authorized as evidence of its obligation to such Bank.
- (c) In order to secure the payment of the principal and interest on such Warrant the Town has determined to pledge to the payment thereof so much as shall be necessary of the ad valorem tax levied by the Town pursuant to Section 216 of the Constitution of the State of Alabama (the "Pledged Tax") and by Ordinance No. 25, adopted on April 17, 1990.
- (d) Neither the Town nor any "subordinate entity," as such term is used in Section 265(b) of the Internal Revenue Code of 1986, as amended, has issued in 1999, or expects to issue within the remainder of 1999, tax-exempt obligations in an amount in excess of \$10,000,000.

Section 2. Authorization of Warrant. Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, including particularly Section 11-47-2 of the Code of Alabama 1975, as amended, and for the purpose of providing the funds necessary for the financing of the Improvements, to pay the costs of issuance thereof, and for no other purpose, there is hereby authorized to be issued by the Town its \$1,000,000 General Obligation Warrant, Series 1999 (the "Warrant"). The Warrant shall be dated the date of its delivery and shall mature, bear interest and contain and be subject to the terms and conditions as set forth in the form of Warrant attached hereto as Exhibit "A" and made a part hereof.

Section 3. Source of Payment. The indebtedness evidenced and ordered paid by the Warrant is and shall be a general obligation of the Town for payment of the principal of and the interest on which the full faith and credit of the Town are hereby irrevocably pledged. In addition, the Town does hereby appropriate and agree to pay into the Warrant Fund hereinafter authorized, and does hereby specially and irrevocably pledge, for payment of the principal and interest on the Warrant as the same becomes due, so much of the Pledged Tax as may be necessary for the said purpose, including the surplus proceeds on hand collected under the levies of the Pledged Tax made for prior years of the Town. The said special pledge of the Pledged Tax shall be prior to all other pledges of the Pledged Tax hereafter made for the benefit of other obligations of the Town. The Town further agrees that, so long as the Warrant remains outstanding and any portion thereof remains unpaid, and to the full extent of the Town's power to do so under the constitution and laws of the State of Alabama, the Town will continue to levy and collect so much of the Pledged Tax as may be necessary to provide for the principal and interest on the Warrant, as it shall mature and come due.

Section 4. Creation of Warrant Fund. There is hereby created a special trust fund of the Town, the full name of which shall be "Town of Dauphin Island Warrant Fund, 1999." Regions Bank shall be and remain the Depository for the Warrant Fund. The monies in the Warrant Fund shall be used to pay the principal of and interest on the Warrant as the same shall become due and payable. The Town shall pay or cause to be paid into the Warrant Fund: on or before the 25th day of November, 1999 and of each calendar month thereafter until payment of the Warrant, an amount which, when added to the amounts already on deposits therein, will equal the principal of (if any) and interest on the Warrant coming due on the first day of the next succeeding month.

All monies on deposit in the Warrant Fund shall be used for payment of the principal of and interest coming due on the Warrant.

The Warrant Fund shall be and at all times remain public funds impressed with a trust for the purpose for which the Warrant Fund is herein created. The Depository for the Warrant Fund shall at all times keep the monies on deposit with it in the Warrant Fund continuously secured for the benefit of the Town and the Holder of the Warrant.

Section 5. Designation of Warrant; Covenant as to Tax-Exempt Obligation. The Town hereby designates the Warrant as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In addition, the Town acknowledges and agrees that the Warrant is to be issued in compliance with the conditions necessary for the interest income thereon to be exempt from federal income taxation pursuant to the relevant provisions of the Code and covenants and agrees that it will not in any way cause or permit the proceeds of the Warrant to be used in a manner which would cause the interest on the Warrant to lose the exemption from federal income taxation as provided under the Code and the applicable regulations thereunder and will comply with all applicable provisions of the Code (including, without limitation, the provisions relating to post-issuance actions affecting tax

exemption) to the extent necessary for interest on the Warrant to be excludable from gross income of the holders thereof.

Section 6. Authorization. The execution and delivery of a Warrant Purchase Agreement, dated November 3, 1999 (the "Purchase Agreement"), between the Town and Regions Bank, in the form presented at the meeting at which this Ordinance is adopted, is hereby authorized. The Mayor and Clerk are authorized and directed to execute and deliver such Purchase Agreement on behalf of the Town. The Mayor and Clerk of the Town are hereby further authorized and directed to execute and deliver the Warrant to Regions Bank in accordance with the Purchase Agreement.

Section 7. Contractual Provisions. The provisions of this Ordinance shall constitute a contract between the Town and the Holder of the Warrant. Upon payment in full of the principal of and interest on the Warrant the obligations of the Town hereunder shall cease.

Section 8. Severability. The various provisions of this Ordinance are hereby declared to be severable. In the event any provisions hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Ordinance.

The Chairman thereupon announced that the motion for the adoption of said Ordinance had been carried.

* * * * *

There being no further business to come before the meeting the same was, on motion duly made and adopted, adjourned.

MAYOR

TOWN CLERK

EXHIBIT "A"

FORM OF WARRANT

UNITED STATES OF AMERICA
STATE OF ALABAMA
TOWN OF DAUPHIN ISLAND
GENERAL OBLIGATION WARRANT
SERIES 1999

The TOWN OF DAUPHIN ISLAND, ALABAMA, a municipal corporation under the laws of the State of Alabama (the "Town"), for value received, hereby acknowledges that it is indebted in the principal sum of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) and hereby directs its Clerk to pay (but solely out of the Warrant Fund referred to below) such principal sum to REGIONS BANK, or registered assigns (the "Payee"), and to pay (but solely out of the Warrant Fund) interest on the unpaid principal balance of this Warrant at the rate of 5.54% per annum (computed on the basis of a 360-day year made up of twelve consecutive 30-day months). The principal of and interest on this Warrant shall be payable as follows:

- (a) Payments of interest only on the principal amount outstanding, adjusted as of the day of each draw hereunder, shall be payable on the first day of December, 1999 and of each month thereafter to and including May, 2000;
- (b) Payments of principal and interest on the total amount drawn hereunder shall be payable, in equal monthly installments based upon a twelve-year, level debt amortization, on the first day of June, 2000, and of each month thereafter to and including May, 2012; provided, that the final installment on May 1, 2012 shall in any event be equal to the entire principal balance then outstanding and accrued interest thereon.

The Payee shall calculate and notify the Town of the amount of each monthly interest payment not later than five (5) business days prior to its due date. In the event of any adjustments in the principal amount after the date Payee notifies the Town of the amount of interest due, the interest payment for the next succeeding month shall be adjusted to account for such the resulting differential. In addition, on or before May 15, 2000, the Payee shall prepare and deliver to the Town an amortization schedule of the payments of principal of and interest on this Warrant due on the first day of each month, commencing June 1, 2000, calculated as set out in clause (b), above.

If at any time the Town fails to pay, within ten (10) days of the due date, any installment of the principal hereof or the interest hereon, in addition to any other remedies available to the Payee, the interest rate borne hereby shall be increased by 200 basis points (2.0%) so long as such default shall continue.

If after the date of this Warrant the highest marginal rate of federal income tax imposed on corporations (the "Corporate Tax Rate") is adjusted, the rate borne hereby shall likewise be adjusted, effective simultaneously with the effective date of the tax rate adjustment, to an amount, expressed as a percentage equal to the product derived by multiplying (a) the initial interest rate of 5.54% times (b) a fraction the numerator of which is one minus the Corporate Tax Rate and the denominator of which is .65.

This Warrant is issued pursuant to the provisions of Section 11-47-2 of the Code of Alabama 1975, to evidence the indebtedness of the Borrower for money loaned for the purpose of financing capital improvements in the Town, and to the provisions of an ordinance adopted by the Town Council of the Town on November 2, 1999 (the "Authorizing Ordinance").

Payment of principal of or interest on this Warrant due on each payment date shall be made by check or draft mailed by the Town to the person entitled thereto at its address appearing in the Warrant Register maintained with respect to the Warrants. Such payments of principal and interest shall be deemed timely made if so mailed on the payment date or, if such payment date is not a date on which banks are open for business, on the next such day next following such payment date. Payment of the final installment of principal of and interest on this Warrant shall be made only upon surrender of this Warrant to the Town. All such payments shall be made in such coin or currency of the United States of America as at the time of payment as legal tender for the payment of public and private debts.

Pursuant to the Authorizing Ordinance, the Town has established a special fund for the payment of debt service on the Warrant (the "Warrant Fund") that will be held by the Payee, as custodian. The Town has obligated itself to pay or cause to be paid into the Warrant Fund sums sufficient to provide for the payment of debt service on the Warrants as the same becomes due and payable.

The indebtedness evidenced and ordered paid by this Warrant is a general obligation of the Town, for the payment of the principal of and interest on which the full faith and credit of the Town have been irrevocably pledged. In addition the Town has specially and irrevocably pledged and agreed to pay into the Warrant Fund, for payment of the principal of and interest on the Warrant as the same becomes due, so much of the ad valorem tax levied by the Town pursuant to Section 216 of the Constitution of the State of Alabama and Ordinance No. 25, adopted on April 17, 1990 (the "Pledged Tax"), as may be necessary for the said purpose and shall be prior to all other pledges of the Pledged Tax hereafter made for the benefit of certain other obligations of the Town. The Town has covenanted and agreed in the Authorizing Ordinance that so long as this Warrant is outstanding it will levy and collect so much of the Pledged Tax as shall be necessary to pay the principal hereof and interest hereon.

This Warrant is subject to prepayment at any time, upon prior written notice to the Payee, in whole or in part, at a redemption price equal to the principal amount to be prepaid plus all interest accrued hereon to the date of prepayment; provided, that any prepayment out of proceeds of any borrowed funds on or prior to November 1, 2009 shall be subject to the payment by the Town of a redemption premium as follows: (a) as to any prepayment from borrowed funds on or prior to November 1, 2004, a redemption premium of 1.50% of the amount prepaid; (b) as to any prepayment from borrowed funds after November 1, 2004 and on or prior to November 1, 2009, a redemption premium of 1.00% of the amount prepaid.

This Warrant is nonnegotiable and is transferable only by a transfer duly executed by the person in whose name this Warrant is registered on the registry books of the Clerk of the Town. The Payee, by receiving or accepting this Warrant, shall consent and agree and shall be estopped to deny that this Warrant may be transferred only in accordance with the provisions of the Authorizing Ordinance.

It is hereby certified and recited that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description; that this Warrant has been registered in the manner provided by law; that all conditions, actions and things required by the Constitution and laws of the State of Alabama to exist, be performed or happen precedent to the issuance of this Warrant exist, have been performed and have happened; and that the indebtedness evidenced and ordered paid by this Warrant, together with all other indebtedness incurred by the Town, was at the time the same was created and is now within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the Town has caused this Warrant to be executed in its behalf by its Mayor and by the Town Clerk and has caused the seal of the Town to be impressed hereon, and has caused this Warrant to be dated November 3, 1999.

TOWN OF DAUPHIN ISLAND, ALABAMA

(SEAL)

By: _____ [FORM] _____
Mayor

Attest:

_____ [FORM] _____
Town Clerk

FORM OF REGISTRATION AS CLAIM AGAINST WARRANT FUND

I hereby certify that this Warrant has been registered by me as a claim against the Warrant Fund referred to in this Warrant.

[FORM]
Clerk, Town of Dauphin Island, Alabama

FORM OF ASSIGNMENT

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ the within Warrant and hereby irrevocably constitute(s) and appoint(s) _____, attorney, with full power of substitution in the premises, to transfer this Warrant on the books of the within-mentioned Town.

Dated this ___ day of _____, _____.

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Warrant in every particular, without alteration, enlargement or change whatsoever.

Signature Guarantee:

(Bank, Trust Company or Fund)

By: _____
(Authorized Officer)

CLERK'S CERTIFICATE

I, Ginger Simpson, Clerk of the Town of Dauphin Island, Alabama (the "Town") DO HEREBY CERTIFY that the foregoing pages of typewritten Excerpts of Minutes pertaining to \$1,000,000 in principal amount Town of Dauphin Island General Obligation Warrant, Series 1999 constitute a true and correct copy of proceedings related to the Town's Ordinance unanimously adopted on November 2, 1999, by the Town Council in a meeting duly called and assembled, which was open to the public and at which a quorum was present and acting throughout, and that the original of said minutes appears of record in the Minute Book of the Town which is in my custody and control.

Given under my hand and the seal of the Town of Dauphin Island, Alabama this 3rd day of November, 1999.

(SEAL)

Clerk, Town of Dauphin Island