

ORDINANCE NO. 2174

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$750,000 AGGREGATE PRINCIPAL AMOUNT OF CITY OF GRAND JUNCTION, COLORADO, INDUSTRIAL DEVELOPMENT REVENUE BONDS (POMA OF AMERICA, INC., PROJECT) SERIES 1984, TO FINANCE PROPERTY SUITABLE FOR COMMERCIAL, BUSINESS OR MANUFACTURING ENTERPRISES; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A LOAN AGREEMENT, INDENTURE OF TRUST, OFFER TO PURCHASE, SAID BONDS AND AMENDMENTS TO THE SERIES 1983 BONDS AND CLOSING DOCUMENTS IN CONNECTION THEREWITH; AND REPEALING ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH.

WHEREAS, the City of Grand Junction, Colorado (the "Issuer"), is a legally and regularly created, established municipal corporation organized and existing under the provisions of the Constitution and laws of the State of Colorado (the "State"); and

WHEREAS, the legislature of the State of Colorado, in the County and Municipality Development Revenue Bond Act, Title 29, Article 3, Colorado Revised Statutes (the "Act"), has found and declared it to be a public purpose for municipalities to promote industry and develop trade or other economic activity by, among other things, inducing profit or nonprofit corporations and manufacturing, commercial or business enterprises to locate, expand or remain in the State, mitigate the serious threat of extensive unemployment in parts of the State, and secure and maintain a balanced and stable economy in all parts of the State; and

WHEREAS, in furtherance of the foregoing purposes, the legislature of the State has authorized municipalities such as the Issuer to issue revenue bonds under the Act for the purposes of defraying the costs of financing, acquiring, improving and equipping any "project," including any land, building or other improvement in all real or personal properties, whether or not in existence, suitable or used for or in connection with manufacturing enterprises and other purposes set forth in the Act; and

WHEREAS, Poma of America Incorporated, a corporation duly organized and existing under the laws of the State (the "Company"), proposes to acquire, construct, equip, operate and maintain a manufacturing facility (the "Project") which will consist of acquiring, constructing, improving and equipping a "project" within the meaning of and as defined in the Act; and

WHEREAS, the Company desires to locate its manufacturing facility and the Project, which is to be acquired and constructed, within the boundaries of the Issuer; and

WHEREAS, the Company has presented to the Issuer a proposal whereby the Issuer will, pursuant to the Act, issue the revenue bonds hereinafter described and loan the proceeds therefrom to the Company, in order to allow the Company to finance the acquisition,

construction and improving of the Project; and

WHEREAS, the City Council of the Issuer has heretofore acted to declare its intention, on June 17, 1981, and September 7, 1984, to cause such revenue bonds to be issued for such purpose in an amount not in excess of \$2,225,000; and

WHEREAS, the Issuer has previously issued its Industrial Development Revenue Bonds (Poma of America, Inc. Project) Series 1983 dated as of October 15, 1983, in the aggregate principal amount of \$1,425,000 (the "Series 1983 Bonds"); and

WHEREAS, the "City of Grand Junction, Colorado, Industrial Development Revenue Bonds (Poma of America Project), Series 1984," in the aggregate principal amount of \$750,000 (the "Bonds"), will be issued, sold and delivered by the Issuer to Herbert Tribolet and Gayle Tribolet, through their agent, First America Title Insurance, pursuant to an escrow agreement dated as of January 31, 1984 (the "Original Purchaser") pursuant to the Offer to Purchase herein authorized and approved, to provide funds to make a loan to the Company in the amount of \$750,000 in accordance with the terms of the Loan Agreement dated as of April 1, 1984, between the Issuer and the Company (the "Loan Agreement"), which loan is required to be used by the Company for the purposes of financing the Project; and

WHEREAS, there have been presented to the City Council of the Issuer: (a) a proposed form of Loan Agreement to be dated as of April 1, 1984 (the "Loan Agreement") between the Issuer and the Company, (b) a proposed form of Indenture of Trust to be dated as of April 1, 1984 (the "Indenture"), between the Issuer and Central Bank of Denver, a banking corporation, Denver, Colorado, as trustee (the "Trustee"), and (c) a proposed form of Offer to Purchase, dated as of March 7, 1984 (the "Offer to Purchase"), between the Issuer and the Original Purchaser; and

WHEREAS, there have been presented to the City Council of the Issuer with respect to the Series 1983 Bonds: (a) a proposed form of Amendment No. 1 to Loan Agreement, between Issuer and Company, dated as of April 1, 1984 (the "Amended Agreement") to amend the Loan Agreement dated as of October 15, 1983, between Issuer and Company, (b) a proposed form of Supplemental No. 1 to Indenture of Trust between Issuer and Trustee, dated as of April 1, 1984 (the "Supplemental Indenture") to amend and supplement the Indenture of Trust dated as of October 15, 1983, between the Issuer and Trustee, (c) a proposed form of Amendment No. 1 to Bond Purchase Agreement dated as of April 1, 1984 (the "Amended Bond Purchase Agreement") to amend the Bond Purchase Agreement dated December 22, 1983, among Issuer, Company and Merrill Lynch, Pierce, Fenner & Smith, Incorporated and (d) a proposed form of Agreement on Use of Proceeds dated as of April 1, 1984, among the Issuer, the Company, the Trustee, Credit Lyonnais Los Angeles Branch (Overseas) and Tuttle & Company.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

Section 1. All action (not inconsistent with the provisions of this Ordinance) heretofore taken by the City Council and the efforts of the Issuer directed toward financing the Project through the loan to the Company and the issuance and sale of the Bonds therefor hereby are ratified, approved and confirmed.

Section 2. The Issuer shall finance the Project by making the loan of the proceeds of the Bonds to the Company in accordance with the terms of the Loan Agreement in the aggregate principal amount of \$750,000. The Loan Agreement (with certain exceptions set forth in the Indenture) shall be pledged by the Issuer to the Trustee under the Indenture for the purpose of securing payment of the principal of, premium, if any, and interest on the Bonds.

Section 3. To defray the cost of financing the Project through the making of the loan to the Company, there is hereby authorized and created an issue of revenue bonds designated as the "City of Grand Junction, Colorado Industrial Development Revenue Bonds (Poma of America Incorporated Project) Series 1984," in the aggregate principal amount of \$750,000, to be dated as of their date of issue. The Bonds shall bear interest from their date of issuance, payable monthly on June 1, 1984, and on the first day of each month thereafter until maturity or prior redemption, at the rates per annum and the principal amounts of Bonds maturing as set forth in Exhibit A hereto.

The Bonds shall be subject to redemption as set forth in the Indenture, and shall be issuable solely as fully registered bonds, all in accordance with the provisions of the Indenture.

The Bonds shall be in substantially the form provided for in the Indenture. The Bonds shall be sold to the Original Purchaser at a private sale for a purchase price equal to 100% of the principal amount of the Bonds, plus accrued interest, if any, all in accordance with the Offer to Purchase. The costs and expenses incurred in connection with the issuance of the Bonds shall be paid by the Company.

Section 4. The following determinations and findings are hereby made in accordance with the Act:

(a) The Issuer is authorized by the Act to enter into the Loan Agreement for the public purposes expressed in the Act, to assign its interest therein and to the Trustee pursuant to the Indenture and to make the loan to the Company;

(b) The Issuer has made the necessary arrangements with the Company for the establishment within the Issuer's boundaries of the Project, consisting of certain property more fully described in the Loan Agreement, which will be of a character described in, and will accomplish certain public purposes contemplated by, the

Act;

(c) The Bonds and the interest accruing thereon shall never constitute the debt or indebtedness of the Issuer within the meaning of any provision or limitation of the Constitution or statutes of the State, and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers; and

(d) The amount necessary in each year to pay the principal of and interest on the Bonds at maturity or by sinking fund redemption is as set forth in Exhibit A attached hereto and incorporated herein by reference, and the Loan Agreement requires such payments to be made by the Company; and since the Loan Agreement provides that the Company shall maintain the Project and carry certain insurance with respect thereto, no determination of the estimated cost of maintaining the Project need be made.

Section 5. The forms, terms and provisions of the Loan Agreement, the Indenture and the Offer to Purchase be, and they hereby are, approved and the Issuer shall enter into the Loan Agreement, the Indenture and the Offer to Purchase substantially in the forms of each of such documents presented at this meeting but with such minor changes therein as are consistent herewith and as the officers of the Issuer executing such documents shall approve, their execution thereof being deemed conclusive of their approval of any such changes; and the Council President of the Issuer is hereby authorized and directed to execute and deliver such documents and the City Clerk is hereby authorized and directed to affix the seal of the Issuer to, and to attest, such documents in substantially the forms of each of such documents presented at this meeting.

Section 6. The form, terms and provisions of the Bonds, in substantially the form contained in the Indenture, be and they hereby are, approved; and the Council President is hereby authorized and directed to cause his facsimile or manual signature to be affixed to the Bonds; the City Clerk is hereby authorized and directed to attest the Bonds with her manual signature or to cause her facsimile signature to be affixed to the Bonds, and each is authorized to deliver the Bonds in the form contained in the Indenture but with such minor changes therein as are consistent with the Indenture and this Ordinance and as the officers of the Issuer executing the Bonds shall approve, their execution thereof being deemed conclusive of their approval of any such changes. The seal of the Issuer is hereby authorized and directed to be affixed to or imprinted on the Bonds.

Section 7. The forms, terms and provisions of the Amended Agreement, the Supplemental Indenture, the Amended Bond Purchase Agreement and the Agreement on Use of Proceeds be and they hereby are, approved and the Issuer shall enter into the Amended Agreement, the Supplemental Indenture, the Amended Bond Purchase Agreement and the Agreement on Use of Proceeds substantially in

the forms of each of such documents presented at this meeting, but with such minor changes therein as are consistent herewith and as the officers of the Issuer executing such documents shall approve, their execution thereof being deemed conclusive of their approval of any such changes; and the Council President of the Issuer is hereby authorized and directed to execute and deliver such documents and the City Clerk is hereby authorized and directed to affix the seal of the Issuer to, and to attest to, such documents in substantially the forms of each of such documents presented at this meeting, and such officers are hereby authorized and directed to execute and deliver such other documents as are necessary to effectuate the amendments with respect to the Series 1983 Bonds.

Section 8. The Council President of the Issuer is hereby authorized to approve the appointment of Central Bank of Denver, a banking corporation, with its principal office located at Denver, Colorado, as Trustee and paying agent, the execution of the Indenture by the Issuer being conclusive evidence of the approval of the Trustee.

Section 9. The officers of the Issuer shall take all action which they deem necessary or reasonably required in conformity with the Act to make the loan to the Company in order to finance the acquisition, construction and improvement of the Project which is hereby authorized, and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance, the Loan Agreement, the Indenture and the Offer to Purchase, including without limitation the execution and delivery of any closing documents or other documents, including any mortgage, security agreement or other security device, in such forms as the Issuer, the Trustee, the Company and the Original Purchaser may agree, to be delivered in connection with the sale and delivery of the Bonds and loan of the proceeds therefrom.

Section 10. A portion of the cost of financing the Project, including the paying of incidental issuance expenses, will be paid out of the proceeds of the Bonds, loaned to the Company. The Bonds together with interest payable thereon are special, limited obligations of the Issuer payable solely as provided in the Indenture. The Bonds and interest payable thereon shall never constitute the debt or indebtedness of the Issuer, the State of any political subdivision thereof within the meaning of any provision or limitation of the Constitution or statutes of the State, nor shall anything contained in this Ordinance or in the Bonds, the Loan Agreement, the Indenture, the Offer to Purchase or any other instrument constitute or give rise to a pecuniary liability of, or a charge against the general credit or taxing power of, the Issuer, nor shall the breach of any agreement contained in this Ordinance, or any of the above-mentioned documents or instruments, impose any pecuniary liability upon the Issuer, the Issuer having no power to pay out of its general fund or otherwise contribute any part of the costs of making the loan or of financing the Project, nor shall the Issuer condemn any land or other property for the Project nor contribute any land or other

property to the Project.

Section 11. After any of the Bonds are issued, this Ordinance shall be and remain irrevocable until the Bonds and interest thereon shall have been fully paid, canceled and discharged.

Section 12. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 13. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith and with the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

Section 14. A public hearing on this Ordinance shall be held at the City Hall in Grand Junction, Colorado, on March 7, 1984, at which time all interested parties may express their views on this Ordinance. Copies of all of the documents and instruments referred to herein shall be kept on file in the offices of the City Clerk and shall be available for inspection by the general public.

Section 15. This Ordinance shall be effective 30 days after the final publication hereof as required by law.

The above and foregoing Ordinance, having been approved on first reading on February 15, 1984, published in full was, on motion duly made and seconded, finally adopted on the 7th day of March, 1984, and ordered published in full a second time.

President of the Council

Attest:

Neva B. Lockhart, CMC

City Clerk

EXHIBIT A

MATURITY SCHEDULE

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>

June 1, 1989\$150,0008.00%		
June 1, 2000600,00010.25%		

DEBT SERVICE SCHEDULE

<u>Date</u> <u>Principal</u> <u>Interest</u>		
6-1-84\$12,250.00		
7-1-846,125.00		
8-1-846,125.00		
9-1-846,125.00		
10-1-846,125.00		
11-1-846,125.00		
12-1-84\$15,0006,125.00		
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* Assumes an issuance date of April 1, 1984; this figure will be \$204.16 less for each day after April 1, 1984, until the date the Bonds are issued, e.g., if the Bonds are issued on April 13, 1984, the first interest payment will be \$9,800.12.

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2174, was introduced, read and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular meeting of said body held on the 15th day of February, 1984, and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 8th day of March, 1984.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk

Published: February 17, 1984

Published: March 9, 1984

Effective: April 8, 1984