

ORDINANCE NO. 2242

AN ORDINANCE AUTHORIZING THE ISSUANCE OF AN INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BOND (INDEPENDENCE PLAZA LTD. PROJECT), SERIES 1985, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$2,000,000 TO FINANCE THE REFUNDING OF \$2,000,000 CITY OF GRAND JUNCTION, COLORADO INDUSTRIAL DEVELOPMENT REVENUE BOND (INDEPENDENCE PLAZA LTD, PROJECT), SERIES 1981; AND APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF THE REFUNDING BOND AND THE LOAN AGREEMENT RELATING THERETO; APPROVING THE ISSUANCE AND SALE OF THE REFUNDING BOND; MAKING CERTAIN DETERMINATIONS WITH RESPECT THERETO; PROVIDING FOR THE MAXIMUM PRINCIPAL AMOUNT, MAXIMUM MATURITY OF, AND MAXIMUM NET EFFECTIVE INTEREST RATE ON THE REFUNDING BOND AND AUTHORIZING CERTAIN TERMS OF THE REFUNDING BOND TO BE DETERMINED BY SUBSEQUENT RESOLUTION: REPLACING INCONSISTENT ACTIONS; AND ORDERING A PUBLIC HEARING.

WHEREAS, the City of Grand Junction, Colorado the ("Issuer"), is authorized by part 1 of article 3 of title 29, Colorado Revised Statutes, as amended (the "Act"), to issue revenue bonds for the purpose of financing or refinancing projects to the end that industrial, commercial and business enterprises will locate in the City of Grand Junction, to enter into financing agreements with others for the purpose of providing revenues to pay such bonds, and further to secure the payment of such bonds; and

WHEREAS, the Issuer is authorized pursuant to the Act to issue refunding bonds in such amount as the governing body may determine to refund the principal of the bonds to be refunded, all accrued and unaccrued interest thereon and any premiums and incidental expenses necessary to be paid in connection therewith; and

WHEREAS, pursuant to the terms of the Act, Ordinance No. 1990, finally passed and adopted by the City Council of the Issuer (the "Council") on August 19, 1981, and a Loan Agreement dated October 14, 1981 (the "1981 Loan Agreement"), between and among Independence Plaza Ltd., a Colorado limited partnership ("Independence Ltd."), the Issuer and The Empire Savings, Building and Loan Association, a Colorado savings and loan association ("Empire"), the Issuer issued its Industrial Development Revenue Bond (Independence Plaza Ltd. Project), Series 1981, in the principal amount of \$2,000,000 (the "Series 1981 Bond") which was purchased and held in its entirety by Empire and the Issuer loaned the proceeds of the Bond to Independent Ltd. to finance the construction of the Independence Plaza Building in the City of Grand Junction, Colorado (the "Project"); and

WHEREAS, Independence Plaza Venture, a Colorado joint venture ("Independence Venture"), has purchased the Project from Independence Ltd. and has assumed the obligations of Independence Ltd. under the 1981 Loan Agreement and other documents related to the loan made thereunder, including a deed of trust, an assignment of leases and rents and a security agreement securing the Project; and

WHEREAS, Independence Venture and Empire have presented to the Issuer a proposal whereby the Issuer has been requested to issue an industrial development revenue refunding bond in a principal amount not to exceed \$2,000,000 in accordance with the provisions of the Act for the purpose of lending the proceeds therefrom to Independence Venture to finance the refunding of the Series 1981 Bond; and

WHEREAS, a Loan Agreement, to be dated its date of delivery (the "1985 Loan Agreement"), between the Issuer Empire and Independence Venture, including a form of Refunding Bond as hereinafter defined, has been submitted to the Council and filed in the*City Clerk of the City of Grand Junction (the "Clerk") and is there available for public inspection; and

WHEREAS, the Council desires to issue at this time the City of Grand Junction, Colorado, Industrial Development Revenue Refunding Bond (Independence Plaza Ltd. Project), Series 1985, in a principal amount not to exceed \$2,000,000 (the "Refunding Bond") to be dated its date of delivery; and

WHEREAS, Empire proposes to purchase the Refunding Bond pursuant to the terms of the Loan Agreement and Independence Venture and Empire propose that the proceeds of the Refunding Bond, at its delivery, be used to immediately retire in full the Series 1981 Bond; and

WHEREAS, it is necessary to issue the Refunding Bond by ordinance and to approve the form and authorize the execution of the 1985 Loan Agreement thereby.

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

Section 1. Approvals and Authorizations. The form of Loan Agreement, including the form of Refunding Bond, is hereby approved. The President of the Council (the "President") and the Clerk are hereby authorized and directed to execute the 1985 Loan Agreement and the Refunding Bond and affix the seal of the Issuer thereto and the President and the Clerk are further authorized and directed to execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable by bond counsel in order to issue and secure the Refunding Bond. Such documents are to be executed in substantially the form hereinabove approved provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. Copies of all of the documents shall be delivered, recorded, and filed as provided therein. When executed, the right, title and interest of the Issuer in, to and under the 1985 Loan Agreement shall, by the terms of the 1985 Loan Agreement, have been assigned to Empire.

The proper officers of the Issuer are hereby authorized and directed to prepare and furnish to bond counsel certified copies of all proceedings and records of the Issuer relating to the Refunding Bond and such other affidavits and certificates as may be required to show the facts relating to the authorization and issuance thereof as such facts appear from the books and records in such officers' custody and control.

The approval hereby given to the various documents referred to above includes the approval of such additional details therein as may be necessary and appropriate for their completion and as are necessary to conform to the final terms of the Refunding Bond and such modifications thereof, deletions therefrom, and additions thereto as may be approved by bond counsel prior to the execution of the documents. The execution of any instrument by the appropriate officers of the Issuer herein authorized shall be conclusive evidence of the approval by the Issuer of such instrument in accordance with the terms hereof.

Section 2. Issuance and Sale of Refunding Bond. The Issuer shall issue its Industrial Development Revenue Refunding Bond (Independence Plaza Ltd. Project), Series 1985, to be dated its date of delivery, in a principal amount not to exceed \$2,000,000, and maturing in full not later than December 31, 2011, for the purpose, in the form and upon the terms set forth in this Ordinance and the 1985 Loan Agreement, including the form of Refunding Bond set forth as Exhibit A to the 1985 Loan Agreement, and subject to a supplemental Bond Resolution setting forth additional requirements of the Issuer.

The Refunding Bond shall be sold to Empire pursuant to the terms of the 1985 Loan Agreement. The Refunding Bond shall be payable in the manner and to the person set forth in the 1985 Loan Agreement and the form of Refunding Bond set forth as Exhibit A to the 1985 Loan Agreement.

The maximum net effective interest rate authorized for the Refunding Bond is fifteen percent (15%) per annum and the final terms of the Refunding Bond and the 1985 Loan Agreement shall comply therewith. The final terms of the Refunding Bond, including its principal amount, maturity, interest rate or rates and redemption features shall be established by a Supplemental Bond Resolution of the Issuer adopted pursuant to Section 29-3-106 of the Act.

Section 3. Determinations. In accordance with the Act, it is hereby found, determined and declared that:

(a) the refinancing of the Project will promote the public health, welfare, safety, convenience and prosperity and promote and develop trade or other economic activity by inducing an industrial, commercial and business enterprise to locate, expand or remain in the City of Grand Junction and the State of Colorado in order to mitigate the serious threat of extensive unemployment

and to secure and maintain a balanced and stable economy for the City of Grand Junction and the State of Colorado;

(b) the maximum amount that will be necessary for the payment of maturing principal and interest on the Refunding Bond shall be set forth in a debt service schedule to be approved by a Supplemental Bond Resolution of the Issuer;

(c) no reserve funds are required by the Issuer in connection with the retirement of the Refunding Bond or maintenance of the Project;

(d) the 1985 Loan Agreement provides and shall provide that Independence Venture shall maintain the Project and carry all proper insurance with respect thereto;

(e) the 1985 Loan Agreement requires and shall require that Independence Venture pay the taxes which the taxing entities specified in Section 29-3-120(3) of the Act are entitled to receive from Independence Venture with respect to the Project;

Section 4. Nature of Obligation. Under the provisions of the Act, and as provided in the 1985 Loan Agreement, the Refunding Bond shall be a special, limited obligation of the Issuer payable solely from, and secured by a pledge of, the revenues derived from the 1985 Loan Agreement and shall be further secured by the lien and security interest of an existing deed of trust and a security agreement upon the Project from Independence Ltd. for the benefit of Empire, as Independence Ltd.'s obligations thereunder have been assumed by Independence Venture, or any necessary amending, supplemental or replacement deed of trust and security agreement. The Issuer will not pledge any of its property or secure the payment of the Refunding Bond with its property. The Refunding Bond 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 of Colorado or of the Issuer's home rule charter and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers. The Issuer will not pay out of its general fund or otherwise contribute any part of the cost of the Project or the refinancing thereof.

Section 5. Ordinance Irrepealable. After the Refunding Bond is issued, this Ordinance shall constitute an irrevocable contract between the Issuer and the owner of the Refunding Bond and shall be and remain irrepealable until the Refunding Bond, both principal and interest, shall be fully paid, cancelled and discharged.

Section 6. Ratification. All action heretofore taken by the Issuer and by the officers thereof not inconsistent herewith directed toward the refinancing of the Project, the refunding of the Series 1981 Bond and the issuance and sale of the Refunding Bond is hereby ratified, approved and confirmed.

Section 7. Repealer. All acts, orders, resolutions, ordinances, or parts thereof, taken by the Issuer and in conflict with this Ordinance are hereby repealed, except that this repealer shall not be construed so as to revive any act, order, resolution or part thereof, heretofore repealed.

Section 8. Severability. If any paragraph, clause or provision of this Ordinance except Section 4 hereof, is judicially adjudged invalid or unenforceable, such judgement shall not affect, impair or invalidate the remaining paragraphs, clauses or provisions hereof.

Section 9. Public Hearing. A public hearing on the proposed issuance of the Refunding Bond shall be held at the Council Chambers on September 4, 1985, prior to the final consideration of this Ordinance. The action of the City Clerk heretofore taken to publish notice of such a public hearing at least fourteen (14) days prior to September 4, 1985, is ratified and confirmed.

PASSED FOR PUBLICATION this 21st day of August, 1985.

CITY OF GRAND JUNCTION, COLORADO

By: Raymond G. Phipps

President, City Council

(CITY)

(SEAL)

ATTEST:

Neva B. Lockhart, CMC

City Clerk

The foregoing Ordinance will be presented for final passage at the Council's regular meeting, to be held at Council Chambers, City Hall, 250 North Fifth Street, Grand Junction, Colorado, on Wednesday, the 4th day of September, 1985, at 7:30 p.m.

FINALLY PASSED AND ADOPTED this 18th day of September, 1985.

CITY OF GRAND JUNCTION, COLORADO

By: Raymond G. Phipps

President, City Council

(CITY)

(SEAL)

Attest:

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2242, 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 21st day of August, 1985, 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 19th day of September, 1985.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk

Published: August 23, 1985

Final Publication: September 20, 1985

Effective: October 20, 1985