

ORDINANCE NO. 2294

AN ORDINANCE AMENDING ORDINANCE NO. 1958 WHICH PROVIDED FOR THE ISSUANCE AND SALE OF AN INDUSTRIAL DEVELOPMENT REVENUE BOND (LOS LUNEROS PROJECT), SERIES 1981, IN THE PRINCIPAL AMOUNT OF \$3,500,000; AUTHORIZING THE AMENDMENT OF A LOAN AGREEMENT ENTERED INTO BETWEEN THE CITY AND LOS LUNEROS, A COLORADO PARTNERSHIP, IN CONNECTION WITH THE ISSUANCE OF SUCH BOND AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FIRST AMENDMENT TO LOAN AGREEMENT.

WHEREAS, the City of Grand Junction, Colorado (the "City"), issued and sold its Industrial Development Revenue Bond (Los Luneros Project), Series 1981, in the original principal amount of \$3,500,000 (the "Bond") on June 10, 1981, pursuant to the Colorado County and Municipality Development Revenue Bond Act, constituting Sections 29-3-101 through 29-3-123, inclusive, Colorado Revised Statutes, as amended, to finance a project consisting of land, a building and certain equipment (the "Project") to be owned by Los Luneros, a Colorado general partnership (the "Borrower"); and

WHEREAS, the Bonds were issued pursuant to a Loan Agreement, dated as of June 10, 1981 (the "Loan Agreement"), between the Borrower and the City, and Ordinance No. 1958 of the City Council of the City, finally adopted and approved on April 1, 1981 (the "Ordinance"); and

WHEREAS, the Bond was sold to Midland Federal Savings & Loan Association, now known as Bank Western Federal Savings Bank (the "Association");

WHEREAS, the Ordinance provides that the Loan Agreement and any instrument supplemental thereto, may be modified or altered with the consent of the City, the Borrower, and the Association, by written instrument executed in the same manner as the document to be amended and the Loan Agreement provides that the Loan Agreement may be amended, changed, modified, or altered with the written consent of the Association; and

WHEREAS, the Borrower has requested the consent of the Association to amend the documents connected with the financing of the Project so that interest payable on the Bond for the next three years is reduced from ten and one half percent (10.5%) per annum to four percent (4%) per annum and principal payable on the Bond is deferred for such period and the Association has consented to such changes; and

WHEREAS, the Borrower and the Association have requested that the City amend the Ordinance and the Loan Agreement to provide for such reduced interest rate and deferral of principal; and

WHEREAS, there has been presented to the City Council (a) the form of the First Amendment to Loan Agreement (the "Loan Amendment"), between the City and the Borrower and (b) the form of the First

Amendment to Assignment and Security Agreement, between the City and the Association (the "Amended Assignment").

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

Section 1. (a) The second paragraph of Section 4 of the Ordinance is hereby amended to read in its entirety as follows:

The Series 1981 Bond shall bear interest at the rate of ten and one-half percent (10.50%) per annum from its date to April 1, 1986, four percent (4.00%) per annum from April 1, 1986 to April 1, 1989, ten and one-half percent (10.50%) per annum from April 1, 1989 until the maturity date thereof, and on June 1, 1991, and on June 1 in the years 1996, 2001 and 2006, so long as the Bond remains outstanding, the rate of interest paid on the Bond may be readjusted, with a maximum rate which shall be the lesser of (a) fifteen and one half percent (15.50%) per annum, or (b) 105% of the "Bond Buyer's" Revenue Index as published one week prior to such June 1 in The Daily Bond Buyer, or its successor, rounded to the nearest one-eighth of one percent (1/8 of 1.00%). Principal and interest on the Series 1981 Bond shall be payable in equal monthly installments (except from April 1, 1986, to April 1, 1989, where interest only is payable in equal monthly installments), commencing on June 1, 1981, and on the first day of each month thereafter, applied first to interest and then to principal with a final payment on June 1, 2011, of the then outstanding principal and interest, if the Bond has not been prepaid in full as hereinafter provided.

(b) The fourth paragraph of Section 4 of the Ordinance is hereby amended to read in its entirety as follows:

In the event any monthly payment of principal and interest or of interest only is not paid on or before the sixteenth day of each and every calendar month, such payment shall become delinquent, and upon demand of the Bondholder, additional interest will become due in the amount of one-sixth of one percent (1/6 of 1.00%) per month on the unpaid principal balance of this Bond for the period of time that the payment remains unpaid after it was due.

Section 2. The form of the Bond in Section 6 of the Ordinance is hereby amended to read in its entirety as follows:

UNITED STATES OF AMERICA
STATE OF COLORADO
CITY OF GRAND JUNCTION, COUNTY OF MESA

INDUSTRIAL DEVELOPMENT REVENUE BOND (LOS LUNEROS PROJECT), SERIES 1981

No. R-2

\$3,395,490.01

The City of Grand Junction, Colorado, a political subdivision of the State of Colorado and a body corporate and politic (the "City"), for value received, hereby promises to pay to Bank Western Federal Savings Bank, formerly known as Midland Federal Savings and Loan Association, in Denver, Colorado (the "Bank"), or its registered assigns, solely and only from the source and in the manner hereinafter provided, the principal sum of

THREE MILLION THREE HUNDRED NINETY FIVE THOUSAND FOUR HUNDRED NINETY DOLLARS AND ONE CENT (\$3,395,490.01)

with interest thereon at the rate of four percent (4%) from April 1, 1986 to April 1, 1989, ten and one-half percent (10.50%) from April 1, 1989, until the maturity date hereof and on June 1, 1991, and June 1 in the years 1996, 2001 and 2006, so long as this Bond remains outstanding, said interest rate may be readjusted, with a maximum rate which shall be the lessor of: (a) fifteen and one-half percent (15.50%) per annum, or (b) 105% of the "Bond Buyer's" Revenue Index as published one week prior to such June 1 in The Daily Bond Buyer, or its successor, rounded to the nearest one-eighth of one percent ($1/8$ of 1.00%). Principal and interest shall be payable in equal monthly installments (except from April 1, 1986, to April 1, 1989, where interest only is payable in equal monthly installments), payable on the first day of each month, applied first to interest and then to principal with a final payment on June 1, 2011, of the then outstanding principal and interest (unless this Bond shall have been previously paid pursuant to the terms hereof); both the principal of and interest on this Bond are payable in lawful money of the United States of America at the principal office of Bank Western Federal Savings Bank, in Denver, Colorado, or at such other place as the Bank may designate in writing.

In the event any monthly payment of principal and interest or of interest only is not paid on or before the sixteenth day of each and every calendar month, such payment shall become delinquent, and upon demand of the Bondholder, additional interest will become due in the amount of one-sixth of one percent ($1/6$ of 1.00%) per month on the unpaid principal balance of this Bond for the period of time that the payment remains unpaid after it was due.

This Bond is issued by virtue of and in full conformity with the Constitution of the State of Colorado, and pursuant to the County and Municipality Development Revenue Bond Act, Title 29, Article 3, Part 1, Colorado Revised Statutes 1973, as amended, ("Act") and all other laws of the State of Colorado thereunto enabling, for the purpose of financing the cost of developing as a site, land within the City, and constructing and equipping a building or buildings thereon, other improvements, and all necessary and appurtenant real and personal properties (such property being subject to depreciation under Section 167 of the Internal Revenue Code of 1954, as amended) whether or not now in existence, constituting a commercial office facility (the "Project"). This

Bond is further issued in accordance with the City's Charter and pursuant to an Ordinance of the City Council of the City, finally adopted and approved on April 1, 1981, and amended on July 2, 1986 (as amended, the "Ordinance"), and is a special, limited obligation of the City, payable solely from and secured by a pledge of payments to be made to the City pursuant to a Loan Agreement, dated as of June 10, 1981, and a First Amendment to Loan Agreement, dated as of April 1, 1986 (together, the "Loan Agreement"), and entered into between Los Luneros, a general partnership duly formed under the laws of the State of Colorado (the "Borrower"), and the City. The proceeds of the Bond will be loaned by the City to the Borrower for payment of the Costs of the Project, and, pursuant to the Loan Agreement, the Borrower has covenanted to repay the funds, together with interest thereon, in installments which will be sufficient to pay, when due, the principal of and interest on this Bond. This Bond is secured by a pledge and assignment of revenues and receipts derived by the City pursuant to the Loan Agreement and the Note of the Borrower identified therein, as more fully described in the Ordinance. The payment of principal and interest is further secured by a Deed of Trust, Assignment of Rents and Security Agreement, dated as of December 31, 1981, as amended by a First Supplemental Deed of Trust, Assignment of Rents and Security Agreement, dated as of April 1, 1986, and each entered into by and between the Borrower and the Public Trustee of the County of Mesa, State of Colorado, for the benefit of the Bank (together, the "Deed of Trust"). Reference is made to the Ordinance for a description of the provisions, among others, with respect to the nature and extent of the security, the rights, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City, the rights of the Bondholder, and the terms on which the Bond is or may be issued and to all the provisions to which the Bondholder assents, by the acceptance of this Bond.

Upon ten (10) days written notice given to the Bondholder by the Borrower, on behalf of the City, the principal amount of this Bond is subject to optional prepayment on any principal and interest payment date, in whole or in part at a prepayment price of par plus accrued interest to the prepayment date, plus additional interest on prepayments in any calendar year totalling more than 20% of the total principal amount of the Bond plus advances, all as is more particularly described in the Ordinance. The Bond also is subject to mandatory prepayment, in whole, in accordance with Section 4 of the Ordinance and Article VII of the Loan Agreement.

Pursuant to the provisions of the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on this Bond are to be paid by the Borrower to the Bank, for the account of the City and deposited in a special account created by the City and designated as the "Industrial Development Revenue Bond Fund (Los Luneros Project)", and all revenues and receipts payable under the Loan Agreement have been duly pledged and assigned to the Bank to secure payment of such principal and interest.

The City acknowledges that it is intended that interest on this Bond will not be includable in the gross income of the Bondholder (other than by reason that such Bondholder should be or become a substantial user of the Project or Related Person as defined in Section 103(b)(9) of the Code) for Federal income tax purposes, and the stated interest rate of this Bond reflects such exemption. Accordingly, in the event of a Determination of Taxability (as defined in the Loan Agreement), on the first day of the month following such Determination of Taxability (the "Adjustment Date") the interest rate payable on this Bond prior to the maturity date hereof, shall be increased to 2% per annum (365 day-year basis) above the United Bank of Denver, N.A.'s, or its successor's prime rate, the change in such interest rate to be effective on the first day and after the Adjustment Date, each interest installment payable on this Bond shall be increased by the amount of such additional interest. Additional amounts of interest on this Bond will become due upon a Determination of Taxability, pursuant to subsections 8.3(b) and (c) of the Loan Agreement. In lieu of such increased interest rate upon a Determination of Taxability, the Bondholder, at its option, may demand a mandatory prepayment of the outstanding principal amount of this Bond.

All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement, Assignment, and Deed of Trust are hereby made a part of this Bond to the same extent and with the same force and effect as if they were fully set forth herein.

In certain events, on the conditions, in the manner and with the effect set forth in the Ordinance, the principal of this Bond may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon.

This Bond and the interest hereon do not constitute a debt or general obligation of the City, within the meaning of any constitutional or statutory limitation or within the meaning of the City Charter, and do not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers. This Bond and the interest thereon are special obligations payable solely from the revenues derived from the Project pursuant to the Loan Agreement, the payments under which will be sufficient to pay the principal of, interest on, and certain fees and expenses in connection with this Bond as the same become due and payable. The Bondholder shall never have the right to enforce payment hereof against any property of the City except its interest in the Loan Agreement, and this Bond does not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City, and the agreement of the City to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues of the Project or other funds furnished to the City in accordance with the Loan Agreement, sufficient to pay all costs of such performances or the enforcement thereof.

With the consent of the City, the Borrower and the Bondholder, the terms and provisions of the Loan Agreement, Assignment, or the Deed of Trust or of any instrument supplemental thereto, may be modified or altered only to the extent and in the circumstances permitted by the Ordinance.

IN WITNESS WHEREOF, the City of Grand Junction, by its City Council has caused this Bond to be signed in its behalf by the manual signature of the President of the City Council and countersigned and attested by the manual signature of the City Clerk, and sealed with an impression of the corporate seal of the City, all as of the 1st day of April, 1986.

CITY OF GRAND JUNCTION, COLORADO

By

President of the City Council

(SEAL)

COUNTERSIGNED AND ATTESTED:

City Clerk

The security evidenced hereby was issued and delivered without registration under the Securities Act of 1933, as amended, or any other applicable securities laws, in reliance upon the availability of an appropriate exemption from any registration otherwise required and the representation of the Bank that it is a sophisticated investor and that the security was being acquired solely for investment and not with a view to distribution or resale. Said security shall not be sold, pledged, hypothecated, donated, or otherwise transferred, whether or not for consideration, by the Bank except upon the issuance to the City of a favorable opinion of counsel, and/or submission to the City of such other evidence as may be required, in either case, to the effect that any such transfer shall not be in violation of the Securities Act of 1933, as amended, or any other applicable securities laws.

PROVISIONS AS TO REGISTRATION

This Bond is registered at the Office of the City Clerk of the City of Grand Junction, as Registrar, in the name of the Holder listed below, and the principal amount of the Bond and interest thereon shall be payable only to such Holder. No transfer of this Bond shall be valid unless noted in the registration blanks below.

Date of Registration	Name and Address of Registered Holder	Signature of Registrar
_____	Bank Western Federal Savings Bank 444 Seventeenth Street Denver, Colorado 80202	_____
_____	_____	_____
_____	_____	_____

Section 3. (a) The first three paragraphs of the Promissory Note contained in Exhibit C to the Ordinance are hereby amended to read as follows:

\$3,395,490.01

April 1, 1986

FOR VALUE RECEIVED, the undersigned, LOS LUNEROS, a general partnership organized and existing under the Laws of the State of Colorado (the "Borrower"), promises to pay to the order of the CITY OF GRAND JUNCTION, COLORADO (the "Issuer"), as hereinafter provided, the principal sum of \$3,395,490.01 together with interest thereon at the rate and in the amounts of principal equal to the rate and amounts payable to the holder of the Issuer's Industrial Development Revenue Bond (Los Luneros Project), Series 1981 (the "Bond"), issued pursuant to Ordinance No. 1958, finally adopted and approved by the Issuer on April 1, 1981, and as amended on July 2, 1986, (as amended, the "Bond Ordinance") and a Loan Agreement dated as of April 1, 1986, between the Issuer and the Borrower (together, the "Loan Agreement"). The amount of monthly installments payable in each month is set forth on the schedule of principal hereof by this reference.

All payments shall be applied first to interest due, and any balance shall be applied in reduction of principal.

The principal proceeds from the sale of the Bond are to be loaned to the Borrower to pay a portion of the cost of certain facilities (the "Project") for the Borrower identified in the Loan Agreement. This Note is issued pursuant to the Loan Agreement relating to the financing of the Project (as further defined in the Loan Agreement). The Bond is secured by this Note, and pursuant to an Assignment and Security Agreement dated as of June 10, 1981, as amended by a First Amendment to Assignment and Security Agreement, dated as of April 1, 1986 (together, the "Assignment"), each between the Issuer and Midland Federal Savings & Loan Association

now known as Bank Western Federal Savings Bank (the "Association"), the Association shall use each payment by the Borrower under this Note to make a like payment, pro rata, of principal and of interest on the Bond. This Note is further secured by the Deed of Trust, Assignment of Rents and Security Agreement, dated as of December 31, 1981, as amended by a First Supplemental Deed of Trust, Assignment of Rents and Security Agreement, dated as of April 1, 1986, each executed and delivered by the Borrower to the public trustee of Mesa County, Colorado, covering certain real property described therein. The terms of this Note are identical with the terms of the bond as to payment dates and amounts, interest rate, prepayment provisions and default and acceleration provisions.

(b) The endorsement paragraph of the form of the Promissory Note contained in Exhibit C to the Ordinance is hereby amended to read as follows:

Pay to the order of Bank Western Federal Savings Bank, without recourse or warranty.

Dated: _____, 1986.

CITY OF GRAND JUNCTION, COLORADO

By

President of the City Council

Section 4. The form, terms and provisions of the Loan Amendment and the Amended Assignment be and hereby are approved and the City shall enter into the Loan Amendment and the Amended Assignment in the form of such documents presented to the City Council at this meeting, with such changes therein as are not inconsistent herewith; and the President of the City Council is hereby authorized and directed to execute and deliver the Loan Amendment and the Amended Assignment and the City Clerk is hereby authorized and directed to affix the City seal to and to attest the Loan Amendment and the Amended Assignment.

Section 5. The President of the City Council is hereby authorized and directed to execute the substitute Bond, with such changes therein as are not inconsistent herewith, and the City Clerk is hereby authorized and directed to affix the City seal to and to attest the substitute Bond.

Section 6. If any section, paragraph, clause or provision of this ordinance shall for any reasons 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 portions of this ordinance.

Section 7. This ordinance, immediately on its passage and adoption, shall be numbered and recorded in the official records

of the City kept for the purpose, authenticated by the signatures of the President of the City Council and the City Clerk, and published in full in The Daily Sentinel, a newspaper published and of general circulation in the City.

PASSED and ADOPTED this 2nd day of July, 1986.

President of the Council

Attest:

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2294, 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 4th day of June, 1986, 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 3rd day of July, 1986.

Neva B. Lockhart, CMC

Neva B. Lockhart, CMC
City Clerk

Published: June 6, 1986

Published: July 4, 1986

Effective: August 5, 1986