

ORDINANCE NO. 2332

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BONDS (MESA BEVERAGE COMPANY PROJECT), SERIES 1987, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$4,510,000 TO FINANCE THE REFUNDING OF THE CITY OF GRAND JUNCTION, COLORADO, INDUSTRIAL DEVELOPMENT REVENUE BOND (MESA BEVERAGE COMPANY PROJECT), SERIES 1982 CURRENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF \$4,510,00; APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF THE BONDS AND VARIOUS DOCUMENTS RELATING THERETO; APPROVING THE ISSUANCE AND SALE OF THE BONDS; MAKING CERTAIN DETERMINATIONS WITH RESPECT THERETO; PROVIDING FOR THE MAXIMUM PRINCIPAL AMOUNT, MATURITY OF, INTEREST RATE, AND MAXIMUM NET EFFECTIVE INTEREST RATE ON THE BONDS; AUTHORIZING CERTAIN TERMS TO BE DETERMINED BY SUBSEQUENT RESOLUTION; AUTHORIZING INVESTMENTS; REPEALING 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,* revenue bonds for the purpose of financing or refinancing projects to the end that manufacturing and business enterprises will locate, expand or remain 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, pursuant to the terms of the Act, Ordinance No. 2034, finally passed and adopted by the City Council of the Issuer (the "Council") on March 3, 1982, and a Loan Agreement dated April 9, 1982 (the "1982 Loan Agreement"), between and among Mesa Beverage Company, a Colorado Corporation (the "Company"), the Issuer and The Colorado National Bank of Denver, a national banking corporation ("CNB"), the Issuer issued its Industrial Development Revenue Bond (Mesa Beverage Company Project), Series 1982, in the principal amount of not more than \$5,460,000 (the "Series 1982 Bond"), which was purchased and held in its entirety by CNB and the Issuer loaned the proceeds of the Bond to the Company to finance the construction of a beverage bottling and distribution facility for the Company which is located in the City of Grand Junction, Colorado (the "Project"); and

WHEREAS, the Company has requested the Issuer to issue industrial development revenue refunding bonds in the maximum aggregate principal amount of \$4,510,000 in accordance with the provisions of the Act for the purpose of refinancing the costs of the Project incurred to construct, acquire and install manufacturing facilities and refunding, in whole or in part, the Series 1982 Bond; and

WHEREAS, the following documents have been submitted to the Council and filed in the office of the City Clerk of the Issuer (the "Clerk") and are there available for public inspection:

(a) a Loan Agreement, to be dated as of May 1, 1987 (the "Loan

Agreement") between the Issuer and the Company;

(b) an Industrial Development Revenue Refunding Note, to be dated as of May 1, 1987 (the "Note") from the Company to the Trustee;

(c) a Trust Indenture, to be dated as of May 1, 1987 (the "Indenture") between the Issuer and Citizens and Southern Trust Company (Georgia), National Association, as trustee (the "Trustee");

(d) a Bond Purchase Agreement, to be dated April 1, 1987 (the "Bond Purchase Agreement") between and among the Issuer, Salomon Brothers Inc (the "Underwriter"), the Company of PepsiCo, Inc. (the "Guarantor");

(e) a Guaranty Agreement, to be dated as of May 1, 1987 (the "Guaranty") delivered by the Guarantor to the Trustee; and

(f) a Preliminary Official Statement dated March 23, 1987 (the "Preliminary Official Statement") pertaining to the Bonds hereinafter defined; and

WHEREAS, the Council desires to issue at this time its City of Grand Junction, Colorado, Industrial Development Revenue Refunding Bonds (Mesa Beverage Company Project), Series 1987, in the maximum aggregate principal amount of \$4,510,000 (the "Bonds").

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

Section 1. Approvals and Authorizations. The forms of the Loan Agreement, the NOTE, the Indenture (including the form of Bonds), the Bond Purchase Agreement and the Guaranty are hereby approved. The President of the Council (the "President") and the Clerk are hereby authorized and directed to execute the Loan Agreement, the Indenture and the Bond Purchase Agreement 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 Bonds. 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 Loan Agreement shall have been assigned to the Trustee pursuant to the Indenture.

The use, distribution and circulation of the Preliminary Official Statement by the Underwriter are hereby approved, ratified, confirmed and authorized, subject further to such amendments or additions thereto as may be required by the Bond Purchase Agreement, and the Underwriter is hereby authorized to use,

distribute and circulate a Final Official Statement in connection with the marketing of the Bonds.

In accordance with the requirements of the Act, the issuer hereby determines that the following provisions shall be as set forth in the form of the Indenture hereinabove approved, which form is hereby incorporated by reference as if set forth in full:

- (a) Custody of the proceeds from the sale of the Bonds;
- (b) The creation of funds or accounts into which any Bond proceeds, revenues and income may be deposited or credited;
- (c) Limitation on the purpose to which proceeds of any Bonds or additional bonds may be applied;
- (d) Limitation on the issuance of additional bonds, the refunding of the Bonds and the replacement of the Bonds;
- (e) The procedure by which the terms of any contract with Bond owners may be amended or abrogated;
- (f) Vesting in the Trustee certain properties, rights, powers and duties in trust and limiting the rights, duties and powers of the Trustee; and
- (g) The rights and remedies available in case of a default to the Bond owners or to the Trustee under the Loan Agreement, the Note, the Indenture, the Guaranty or the Bond Purchase Agreement.

In accordance with the requirements of the Act, the Issuer hereby determines that the following provisions shall be as set forth in the form of Loan Agreement hereinbefore approved, which form is hereby incorporated by reference as if set forth in full:

- (a) The fixing and collection of revenues from the Project; and
- (b) The maintenance and insurance of the Project.

Section 2. Issuance of Bonds. The issuance of the Bonds is hereby authorized and the sale thereof to the Underwriter pursuant to the Bond Purchase Agreement is hereby approved. The form of Bonds set forth in the Indenture is hereby approved; the Bonds shall be executed with the manual or facsimile signatures of the President and the Clerk on the face of the Bonds in substantially such form with appropriate insertions and variations, and the seal of the Issuer or a facsimile thereof is hereby adopted and authorized to be affixed or imprinted thereon; and the President or the Clerk is authorized and directed to deliver the Bonds to the Trustee for authentication under the Indenture and, when they have been authenticated, to deliver them or cause them to be delivered to the Underwriter pursuant to the Bond Purchase Agreement against receipt of the purchase price as specified therein, plus any accrued interest due, and to deposit the amount so received with

the Trustee as provided in the Indenture.

Section 3. Terms of Bonds. The Bonds shall be in the maximum aggregate principal amount of \$4,510,000, shall be dated May 1, 1987, or as otherwise provided in the Indenture, and shall be issued as fully registered bonds without coupons in denominations of \$5,000 or any integral multiples thereof, shall mature, subject to prior redemption on May 1, 1992, and shall bear semiannual interest payable on May 1, and November 1, of each year commencing November 1, 1987, at the rate or rates which shall be determined as provided below and in the form of Bonds and Indenture. The actual principal amount of the Bonds shall be established by a Supplemental Bond Resolution of the Issuer adopted pursuant to Section 29-3-106 of the Act. The maximum net effective interest rate authorized for the Bonds is a 20% per annum and the Issuer hereby determines that the actual net effective interest rate on the Bonds does not exceed such authorized maximum net effective interest rate. The numbers and provisions for redemption of the Bonds, the registration and exchangeability privileges, the medium and place of payment, and the priorities in revenues under the Indenture, shall be as set forth (a) in the aforesaid form of such Bonds which form is hereby approved and incorporated by reference and as if set forth in full, and (b) in the form of the Indenture hereinbefore approved and so incorporated.

The Bonds shall bear interest at the rate of _____% per annum from their dated date to and including April 30, 1988. Thereafter, the Bonds shall bear interest at either the Adjusted Interest Rate, the Fixed Interest Rate, as such terms are defined in the form of the Bonds and hereinafter.

Beginning on April 1, 1988, and on each April 1 thereafter (of if such April 1 is not a business day, on the next succeeding business day) (the "Preliminary Determination Date") the Company will establish a minimum adjusted interest rate (the "Minimum Adjusted Interest Rate") to be borne by the Bonds for the one-year period commencing on the succeeding May 1. The Minimum Adjusted Interest shall be a rate which, in the judgement and sole discretion of the Company, would have resulted in the sale of the Bonds at par at 9:00 a.m., New York time, on the Preliminary Determination Date.

The actual adjusted interest rate (the "Adjusted Interest Rate") for each one-year period commencing May 1, 1988, and May 1 of each year thereafter, will be a rate established by the Company no later than three business days immediately preceding May 1 (the "Determination Date"), which, in the judgement and sole discretion of the Company, would have resulted in the sale of the Bonds at par at 9:00 a.m., New York time, on the Determination Date. However, the Adjusted Interest Rate shall not be less than the yield shown for One Year Municipal Bonds (New Issue Scales; Prime General Obligations) as published in the most recent issue prior to the Determination Date of the Salomon Brothers Inc. Bond Market Roundup or its successor, if any (the "Salomon Municipal Rate").

If the Salomon Municipal Rate has not been published during the 30-day period preceding the Determination Date, then the Adjusted Interest Rate shall not be less than a rate established by Kenny Information Systems Inc. through its index for the prime one-year municipal obligations (the "Kenny Index") as of a date not more than 30 days prior to the Determination Date. If neither the Salomon Municipal Rate nor the Kenny Index is available, then the Adjusted Interest Rate shall be at least 60% of an evaluation at par of United States Treasury obligations with a maturity approximately equal to one year. The Adjusted Interest Rate shall not be less than the Minimum Adjusted Interest Rate nor more than 20% per annum. Notwithstanding the foregoing, however, in no event shall the Adjusted Interest Rate exceed the maximum rate permitted by law, even if such maximum rate is less than the Minimum Adjusted Interest Rate determined as described above.

In lieu of annually adjusting the interest rate on the Bonds for each one-year period beginning May 1, 1988, and May 1 of each year thereafter, the Company may on any Preliminary Determination Date elect (the "Fixed Rate Election"), in its sole discretion, to establish a fixed rate of interest for the Bonds, beginning on the succeeding May 1, for the remaining term of the Bonds. Such fixed interest rate shall be preliminarily established (the "Minimum Fixed Interest Rate") on the Preliminary Determination Date at a rate which, in the judgement and sole discretion of the Company, would have resulted in the sale of such Bonds at par at 9:00 a.m., New York time on the Preliminary Determination Date.

The actual fixed interest rate to be borne by the Bonds (the "Fixed Interest Rate") shall be finally established by the Company on the Determination Date and shall be a rate which, in the judgement and sole discretion of the Company, would have resulted in the sale of such Bonds at par at 9:00 a.m., New York time on the Determination Date; provided, however, that the Fixed Interest Rate shall not be less than the yield shown for Municipal Bonds (New Issue Scales: Prime General Obligations) having the same number of years to maturity as the Bonds as published in the most recent issue prior to the Determination Date of the Salmon Brothers Inc. Bond Market Roundup or its successor, if any (the "Salomon Fixed Municipal Rate"). The number of years to maturity of such Bond shall be measured from the May 1 next succeeding the applicable Determination Date. If the Salmon Brothers Inc. Bond Market Roundup or its successor, if any, does not publish yields for Municipal Bonds of both a shorter and a longer maturity then the Fixed Interest Rate shall be no less than an assumed rate of interest for Municipal Bonds of the same maturity as the Bonds, determined by allocating, in equal annual amounts, the difference between the yields for Municipal Bonds (New Issue Scales: Prime General Obligations) having the next shorter and the next longer maturities reported on in the Salmon Brothers Inc. Bond Market Roundup or its successor, if any, during the 30-day period preceding the applicable Determination Date, then the Fixed Interest Rate shall be a rate established by the Kenny Index for prime municipal obligations of the same maturity as of a date not

more than 30 days prior to such Determination Date. If neither of such rates can be determined, then the Fixed Interest Rate shall be at least 60% of an evaluation at par of United States Treasury obligations having approximately the same number of years to maturity as the Bonds. The Fixed Interest Rate shall not be less than the Minimum Fixed Interest Rate nor more than 20% per annum. Notwithstanding the foregoing, however, in no event shall the Fixed Interest Rate exceed the maximum rate permitted by law, even if such maximum rate is less than the Minimum Fixed Interest Rate determined as described above.

Section 4. Determinations. In accordance with the Act, it is hereby found, determined and declared that:

(a) the refinancing of the costs of the Project incurred to acquire, construct and install manufacturing facilities will promote the public health, welfare, safety, convenience and prosperity and promote and develop trade or other economic activity by inducing a manufacturing 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 amounts that will be necessary on the payment of maturing principal and interest on the Bonds 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 Bonds or the maintenance of the Project;

(d) the Loan Agreement provides and shall provide that the Company shall continue to maintain the Project and carry all proper insurance with respect thereto;

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

Section 5. Authentication of Bonds. The Trustee is hereby requested to authenticate the Bonds and to deliver them to, or upon the order of, the President or the Clerk.

Section 6. Investment of Funds. The Trustee shall be, by virtue of this Ordinance and without further authorization from the Issuer, authorized, directed and requested to invest and reinvest all moneys available therefor held by it pursuant to the Indenture which by the terms of the Indenture may be invested, or to deposit and redeposit such moneys in such amounts as may be permitted by the Indenture, at the direction of the Company and subject to the terms and limitations contained in the Indenture.

Section 7. Incidental Action. The proper officers of th 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 Bonds and to execute and deliver such other documents, and to take such other action as may be necessary or appropriate in order to effectuate the delivery of the Loan Agreement, Indenture and Bond Purchase Agreement, the performance of the Issuer's obligations thereunder, and the issuance and sale of the Bonds.

The approval hereby given to the various documents referred to above includes the approval of such additional details and revisions therein as may be necessary or convenient to carry out the purposes of this Ordinance, and as maybe 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 8. Nature of Obligation. Under the provisions of the Act, and as provided in the Loan Agreement and the Indenture, the Bonds shall be special, limited obligations of the Issuer payable solely from, and secured by a pledge of, the revenues derived from the Loan Agreement and shall be further secured by the Guaranty. The Issuer will not pledge any of its property or secure the payment of the Bonds with its property. The Bonds and the interest 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 of Colorado or of a the Issuer's Home Rule Charter 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 9. Ordinance Irrepealable. After the Bonds are issued, this Ordinance shall constitute an irrevocable contract between the Issuer and the owners of the Bonds and shall be and remain irrepealable until the Bonds, both principal and interest, shall be fully paid, cancelled and discharged.

Section 10. Ratification. All action heretofore taken by the Issuer and by the officers thereof not inconsistent herewith directed toward the refinancing of the costs of the Project incurred to acquire, construct and install manufacturing facilities, the refunding, in whole or in part, of the Series 1982 Bond and the issuance and sale of the Bonds is hereby ratified, approved and confirmed.

Section 11. 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 12. Severability. If any paragraph, clause or provision of this Ordinance except section 8 hereof, is judicially adjudged invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining paragraphs, clauses or provisions hereof.

Section 13. Public Hearing. A public hearing on the proposed issuance of the Bonds shall be held at the Council Chambers on April 1, 1987, at 7:30 p.m. 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 April 1, 1987, is ratified and confirmed.

Section 14. Effective Date. In accordance with the Issuer's Home Rule Charter, this Ordinance shall take effect 30 days after its final passage and publication.

PASSED FOR PUBLICATION this 18th day of March, 1987.

CITY OF GRAND JUNCTION, COLORADO

By:

President of the Council

(CITY)

(SEAL)

ATTEST:

City Clerk

FINALLY PASSED AND ADOPTED this 1st day of April, 1987.

CITY OF GRAND JUNCTION, COLORADO

By:

President of the Council

(CITY)

(SEAL)

Attest:

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2332, 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 18th day of March, 1987, 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 2nd day of April, 1987.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk

Published: March 20, 1987

Final Publication: April 3, 1987

Effective: May 3, 1987