

AN ORDINANCE AMENDING ORDINANCES NOS. 1958 AND 2294 WHICH PROVIDED FOR THE ORIGINAL ISSUANCE AND SALE OF AN INDUSTRIAL DEVELOPMENT REVENUE BOND (LOS LUNEROS PROJECT), SERIES 1981 IN THE PRINCIPAL AMOUNT OF \$3,500,000 IN 1981 AND THE REISSUANCE OF SUCH BOND IN THE PRINCIPAL AMOUNT OF \$3,395,490.01 IN 1986; AUTHORIZING THE FURTHER REISSUANCE OF SUCH BOND; AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A SECOND AMENDMENT TO LOAN AGREEMENT AND SECOND AMENDMENT TO ASSIGNMENT AND SECURITY AGREEMENT IN CONNECTION THEREWITH.

WHEREAS, the City of Grand Junction, Colorado (the "City") issued and sold at 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 ("Los Luneros"); and

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

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

WHEREAS, Ordinance No. 1958 provides that the Loan Agreement and any instrument supplemental thereto may be modified or altered with the consent of the City, Los Luneros, and the Association by written instrument executed in the same manner as the document to be amended and the Loan Agreement provides that it may be amended, changed, or modified, or altered with the written consent of the Association; and

WHEREAS, to restructure the debt service payments on the Bond, Los Luneros and the City have heretofore entered in a First Amendment to Loan Agreement dated as of April 1, 1986 (the "First Loan Amendment") and the City has heretofore reissued the Bond in the principal amount of \$3,395,490.01 on November 12, 1986 pursuant to Ordinance No. 2294 of the City Council of the City finally adopted and approved on July 2, 1986 (Ordinance No. 1958 and Ordinance No. 2294 collectively the "Ordinance"); and

WHEREAS, The Thorne Corporation, a Colorado corporation ("Thorne"), has agreed to purchase the Project from Los Luneros and has agreed to assume the obligations of Los Luneros under the Loan Agreement, as amended by the First Loan Amendment, and under the Bond and Robert Stechmann ("Stechmann") has agreed to be

WHEREAS, Thorne, Stechmann and the Association have requested that the City amend the Ordinance and the Loan Agreement, as amended by the First Loan Amendment, to change the interest rate on the Bond and to make certain other changes to the Bond and the Loan Agreement, as amended by the First Loan Amendment; and

WHEREAS, there have been presented to the City Council (a) the form of Second Amendment to Loan Agreement dated as of August 1, 1987 (the "Second Loan Amendment") among the City, Stechmann and Thorne and (b) the form of the Second Amendment to Assignment and Security Agreement dated as of August 1, 1987 (the "Second Assignment Amendment") between the City and the Association.

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

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

The Series 1981 Bond shall bear interest at the rate of (i) ten and one-half percent (10.5%) per annum from its date to April 1, 1986, (ii) four percent (4.00%) per annum from April 1, 1986 through March 31, 1989, (iii) five percent (5.00%) per annum from April 1, 1989 through March 31, 1990, (iv) six percent (6.00%) per annum from April 1, 1990 through March 31, 1991, (v) seven percent (7.00%) per annum from April 1, 1991 through March 31, 1992, and (vi) from April 1, 1992 to the maturity date of the Series 1981 Bond at the rate per annum equal to 80% of the average of the rate of interest announced by United Bank of Denver National Association as its prime rate and as in effect from time to time during the preceding 12 months, such interest rate on the Series 1981 Bond to be calculated as of April 1, 1992 and on each April 1 thereafter until the payment of the Series 1981 Bond in full, provided that in no event shall the rate of interest on the Series 1981 Bond calculated pursuant to this clause (vi) be less than seven percent (7.00%) per annum or greater than eleven percent (11.00%) per annum.

(b) The last sentence of the third paragraph of Section 4 of the Ordinance is hereby amended to read as follows:

In lieu of such increased interest rate upon a Determination of Taxability, the Bondholder, at its option, may demand the outstanding principal amount of the Series 1981 Bond be prepaid on or after the 91st day following the Determination of Taxability; provided that the Bondholder agrees to sell the Series 1981 Bond during the 90 day period following the

(c) The seventh paragraph of Section 4 of the Ordinance is hereby amended to read as follows:

The Bond is also subject to mandatory prepayment: (a) in whole, on or after the 91st day following a Determination of Taxability (as defined in the Loan Agreement) if the Bondholder exercises its prepayment option, (b) on any date, in whole, by the application of moneys received by or on behalf of the Bondholder from the proceeds of insurance or the proceeds of sale or condemnation of the Project as provided in the Deed of Trust, (c) on any date, in whole, by the application of moneys received by the Association from the Borrower to prepay the Bond in connection with the destruction or governmental taking of the Project) pursuant to Section 7.1 (a) or (b) of the Loan Agreement, (d) in whole, by the application of moneys received by the Association from the Borrower to prepay the Bond, pursuant to a demand for prepayment exercised by the Bondholder on April 1, 1996, or on April 1 every five (5) years thereafter as long as the Bond remains outstanding, provided that the Bondholder gives the Borrower at least one hundred eighty (180) days prior written notice of its intention to exercise its option for prepayment hereby authorized and (e) on April 1 of each of the years 1988 through 1992, in whole or in part, from "excess cash flow" of the Project for the fiscal year ended as of the preceding December 31, and on

April 1, 1993, in whole or in part, from "excess cash flow" of the Project for the three month period ending March 31, 1992; for the purposes of this clause (3), "excess cash flow" means all cash revenue received by the Borrower from the Project during such fiscal year or the three month period ending March 31, 1992, as the case may be, less all operation and maintenance expenses (determined in accordance with generally accepted accounting principles) of the Project during such fiscal year or three month period and less all payments by the Borrower on the Bond during such fiscal year or three month period. Any partial prepayment shall reduce subsequent payments on the Bond in the manner described in the immediately preceding paragraph. It is agreed that all such prepayments shall be made by payment of the principal amount to be prepaid and accrued interest thereon to the date fixed for the prepayment, without redemption premium. The Bond, or portion thereof being prepaid, will cease to bear interest on the specified prepayment date, provided funds for prepayment are on deposit at the place of payment at that time.

Section 2. The form of the Bond in 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. R03
\$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, formally 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 (i) four percent (4.00%) per annum from April 1, 1986 through March 31, 1989, (ii) five percent (5.00%) per annum from April 1, 1989 through March 31, 1990, (iii) six percent (6.00%) per annum from April 1, 1990 through March 31, 1991, (iv) seven percent (7.00%) per annum from April 1, 1991 through March 31, 1992, and (v) from April 1, 1992 to the maturity date of this Bond at the rate per annum equal to 80% of the average of the rate of interest announced by United Bank of Denver National Association as its prime rate and as in effect from time to time during the preceding 12 months, such interest rate on this Bond to be calculated as of April 1, 1992 and on each April 1 thereafter until the payment of this Bond in full, provided that in no event shall the rate of interest on this Bond calculated pursuant to this clause (v) be less than seven percent (7.00%) per annum or greater than eleven percent (11.00%) per annum. Principal and interest shall be payable in equal monthly installments (except from April 1, 1986 through March 31, 1989 where interest only is payable in equal 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 such 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 be delinquent, and upon demand of the Bondholder, additional interest will become due in the amount of one sixty 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 is 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 Act, Title 29, Article 3, Colorado Revised Statutes, 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"). The 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 and on August 19, 1987 (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, as amended by a First Amendment to Loan Agreement dated as of April 1, 1986, each between Los Luneros, a general partnership duly formed under the laws of the State of Colorado ("Los Luneros") and the City and as further amended by a Second Amendment to Loan Agreement dated as of August 1, 1987 among The Thorne Corporation, a Colorado corporation ("Thorne"), Robert Stechmann ("Stechmann") and the City (together, the "Loan Agreement"). The proceeds of the Bond were loaned by the City to Los Luneros for payment of the Costs of the Project, and, pursuant to the Loan Agreement, Thorne and Stechmann have jointly and severally 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 Thorne and Stechmann, 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 Amendment to Deed of Trust, Assignment of Rents and Security Agreement dated as of April 1, 1986, each between Los Luneros and the Public Trustee of the County of Mesa, State of Colorado, for the benefit of the Bank, and as further amended by a Second Amendment to Deed of Trust, Assignment of Rents and Security Agreement dated as of August 1, 1987 between Thorne and such Public Trustee for the benefit of the Bank (together, the "Deed of Trust"). Reference is made to the Ordinance for a description of the provisions, among other, 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

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 Thorne and Stechmann 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 the 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 147 of the Internal Revenue Code of 1986, as amended, and other than for purposes of the corporate alternative minimum tax and the corporate environmental tax imposed by such 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 days/year basis) above the rate of interest announced by the United Bank of Denver National Association as its prime rate, the change in such interest rate to be effective on the first day of the month following any change in such prime rate, and from 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 the outstanding principal amount of this Bond be prepaid on or after the 91st day following the Determination of Taxability; provided that the Bondholder agrees to sell this Bond during the 90 day period following the Determination of Taxability to any person offering to buy this Bond at a price equal to 100% of the unpaid principal amount hereof plus accrued interest hereon to the date of purchase.

All of the agreements, conditions, covenants, provisions and

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

This Bond and the interest hereon do not constitute a debt or indebtedness 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 hereon 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 at 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 Projector other funds furnished to the City in accordance with the Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

With the consent of the City, Thorne, Stechmann and the Bondholder, the terms and provisions of the Loan Agreement, the 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 August, 1987.

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 this Bond and interest hereon shall be payable only to such Holder. No transfer of this Bond shall be valid unless noted in the registration blanks below.

Section 3. The form of the Promissory Note contained in Exhibit C to the Ordinance is hereby amended to read in its entirety as follows:

\$3,395,490.01
August 1, 1987

FOR VALUE RECEIVED, the undersigned, THE THORNE CORPORATION, a Colorado corporation ("Thorne"), and ROBERT STECHMANN ("Stechmann") jointly and severally promise 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

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 were loaned to Los Luneros to pay a portion of the cost of certain facilities (the "Project") for Los Luneros 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 and by a Second Amendment to Assignment and Security Agreement dated as of August 1, 1987 (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 Thorne and Stechmann 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 Amendment to Deed of Trust, Assignment of Rents and Security Agreement dated as of April 1, 1986, each executed and delivered by Los Luneros to the public trustee of Mesa County, Colorado, and as further amended by a Second Amendment to Deed of Trust, Assignment of Rents and Security Agreement dated as of August 1, 1987 executed and delivered by Thorne to such public trustee, 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.

This Note is prepayable only as provided and upon the terms and conditions in Article VII of the Loan Agreement.

Whenever payment or provision therefor has been made in respect of the principal of (whether at maturity or upon redemption or

In certain circumstances (relating to the taxability for Federal income tax purposes of interest on the Bond), subject to the conditions, in the manner and with the effect set forth in Article VIII of the Loan Agreement, the rate of interest on this Note shall be increased to two percent (2%) per annum (365 day/year basis) above the rate of interest announced by United Bank of Denver National Association as its prime rate, with changes in such interest rate to be effective on the first day of the month following any change in such prime rate.

In the event Thorne and Stechmann should fail to make any payment when due hereunder, the installment so in default shall continue as a joint and several obligation of Thorne and Stechmann until the amount in default shall have been fully paid, and Thorne and Stechmann jointly and severally agree to pay the same with additional interest thereon at the rate of one-sixth (1/6) of one percent (1%) per month until paid in full.

All payments of principal and interest shall be made to the Association at its principal office in Denver, Colorado for the account of the Issuer for deposit in the Bond Fund identified in the Loan Agreement in lawful money of the United States of America, and shall be in funds current in Denver, Colorado.

The obligations of Thorne and Stechmann to make the payments required hereunder shall be absolute and unconditional without defense or set-off by reason of any default by the Issuer under the Loan Agreement or under any other agreement between Thorne and Stechmann and the Issuer or the Association or for any other reason including without limitation, failure to complete the Project, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State of Colorado or any political subdivision of either or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Loan Agreement, it being the intention of Thorne, Stechmann and the Issue that the payments hereunder will be paid in full when due without any delay or diminution whatsoever.

IN WITNESS WHEREOF, Thorne and Stechmann have caused this Note to be duly executed and delivered as of the day and year first above

THE THORNE CORPORATION

By

President

(SEAL)

Attest:

Secretary

Robert Stechmann

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

Dated: _____, 1987

CITY OF GRAND JUNCTION, COLORADO

By

President of the City Council

Section 4. The term "Borrower" as used in the Ordinance shall mean Thorne and Stechmann; provided that "Borrower" shall mean (i) Thorne in subsections (c) and (d) of Section 5 of the Ordinance and (ii) Thorne and Stechmann in subsection (j) of section 5 and in subsections (a) and (b) of Section 9 of the Ordinance.

Section 5. The forms, terms and provisions of the Second Loan Amendment and the Second Assignment Amendment be and they hereby are approved and the City shall enter into the Second Loan Amendment and the Second Assignment Amendment in the

forms 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 Second Loan Amendment and the Second Assignment Amendment and the City Clerk is hereby authorized and directed to affix the City seal to and to attest the Second Loan Amendment and the Second Assignment Amendment.

Section 6. The President of the City Council is hereby authorized and directed to execute the substitute Bond, with such changes therein as are not inconsistent therewith, and the City Clerk is hereby authorized and directed to affix the City seal to and to attest the substitute Bond and such persons are also authorized to execute such certificates and other documents as are necessary or desirable in connection with the reissuance of the Bond.

Section 8. 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.

INTRODUCED as a bill at a regular meeting of the City Council of the City Council of the City of Grand Junction, Colorado, on the 5th day of August, 1987; passed on the first reading on the 5th day of August, 1987 by a vote of 6 for and 0 against; and ordered published in The Daily Sentinel on August 7, 1987.

The foregoing Ordinance will be presented for final passage at a regular meeting of the City Council to be held at the City/County Auditorium, 520 Rood Avenue, Grand Junction, Colorado on Wednesday, the 19th day of August, 1987 at 7:30 p.m. or as soon thereafter as it may be heard.

PASSED AND AMENDED on second and final reading, by a vote of _____ FOR and _____ AGAINST, on the 19th day of August, 1987 and ordered published in full as so amended in The Daily Sentinel on the 21st day of August, 1987.

O.F. Ragsdale

President of the Council

(SEAL)

Attest:

Neva B. Lockhart, CMC

City Clerk

I, Neva Lockhart, City Clerk of the City of Grand Junction, Colorado, do hereby certify that the above is a true and correct copy of an ordinance introduced, passed on first reading, and ordered published in full in The Daily Sentinel at a regular meeting of the City Council on the 5th day of August, 1987, and passed and amended after public hearing on second and final reading and ordered published in full as so amended in The Daily Sentinel at a regular meeting of the City Council on the 19th day of August, 1987.

(SEAL)

Attest:

Neva B. Lockhart

City Clerk

Published in The Daily Sentinel. First publication August 7, 1987. Second publication August 21, 1987.

Effective: September 20, 1987