

ORDINANCE NO. 856

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A CITY OF GOLDEN, COLORADO, INDUSTRIAL DEVELOPMENT REVENUE NOTE (6 & 40 PROPERTIES PROJECT) SERIES 1981, IN THE PRINCIPAL AMOUNT OF \$1,100,000; APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS RELATING THERETO; REPEALING ORDINANCE NO. 848 OF THE CITY ADOPTED ON SEPTEMBER 25, 1980; AND DECLARING AN EMERGENCY

WHEREAS, the City of Golden, in the County of Jefferson and State of Colorado (the "City"), is authorized by the County and Municipality Development Revenue Bond Act constituting Title 29, Article 3, Part 1, Colorado Revised Statutes 1973, as amended (the "Act"), to issue revenue bonds for the purpose of financing one or more projects, including any land, building or other improvements and all real or personal properties suitable or used for or in connection with a manufacturing, industrial, commercial, agriculture or business enterprise, and to enter into a financing agreement with respect to the project with a user providing for payment to the City of revenues sufficient for the payment of the principal of and interest on the bonds; and

WHEREAS, by a resolution duly adopted on July 10, 1980 (the "Inducement Resolution"), the City agreed to issue such bonds in an aggregate principal amount not to exceed \$1,500,000 in accordance with the provisions of the Act and subject to the terms set forth in the Memorandum of Agreement attached to the Inducement Resolution, for the purpose of financing the cost of acquiring and improving land and acquiring, constructing, improving and equipping a building or buildings, other improvements and all necessary and appurtenant real and personal properties, whether or not now in existence, constituting a warehouse/office complex located within the City, (the "Project"); and

WHEREAS, on September 25, 1980, the City of Golden finally passed and adopted on second reading Ordinance No. 848, which ordinance authorized the issuance and sale of City of Golden, Colorado Industrial Development Revenue Bonds (6 & 40 Properties Project) Series 1980, dated as of October 1, 1980, in the principal amount of \$1,425,000 (the "Bonds"); and

WHEREAS, due to fluctuations in the municipal bond market, it was impossible to market the Bonds; and

WHEREAS, the City now desires to authorize and issue a City of Golden, Colorado, Industrial Development Revenue Note (6 & 40 Properties Project) Series 1981, in the principal amount of \$1,100,000 (the "Note"), which Note will be of a shorter maturity than the Bonds in order to facilitate its sale; and

(a) a Loan Agreement, dated as of January 1, 1981 (the "Loan Agreement"), proposed to be made and entered into between the City, the Borrower, and University National Bank, in Denver, Colorado (the "Bank");

(b) a Combination Deed of Trust, Security Agreement and Financing Statement, (the "Deed of Trust") dated as of January 1, 1981, proposed to be made and entered into between 6 & 40 Properties, as Grantor, and the Public Trustee of Jefferson County, Colorado, as Grantee, for the use of University National Bank;

(c) an Assignment of Rents and Leases, dated as of January 1, 1981, (the "Assignment") proposed to be made and entered into between the Borrower and the Bank; and

(d) a Continuing Guaranty, dated as of January 1, 1981 "the "Guaranty") proposed to be made and entered into between Paul Barron, R. Vernon Edgar, and Robert E. Hinchey and the Bank; and

WHEREAS, the issuance of the Note in the principal amount of \$1,100,000 to finance the Project will necessitate the selection by the City of the \$10,000,000 small issue exemption under the Internal Revenue Code; and

WHEREAS, it is necessary to authorize the issuance of the Note by Ordinance and to approve the form and authorize the execution of documents in connection with the issuance thereof:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. Repeal of Ordinance No. 848. Ordinance No. 848 of the City of Golden, Colorado, adopted on September 25, 1980, is hereby repealed.

Section 2. Approvals and Authorizations. The forms of the Loan Agreement, deed of Trust, Assignment and Guaranty are hereby approved. The Mayor and the Clerk are hereby authorized and directed to execute the Loan Agreement and affix the seal of the City thereto, and further 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 Note. 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 Note Ordinance. Copies of all of the documents shall be delivered, filed and recorded as provided therein.

The proper officers of the City are hereby authorized and directed to prepare and furnish to bond counsel certified copies of all proceedings and records of the City relating to the Note and such other affidavits and certificates as may be required to show the fact

rates and any numbers derived therefrom, 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 City herein authorized shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof.

Section 3. Issuance and Sale of Note. The City shall issue its Industrial Development Revenue Note (6 & 40 Properties Project) Series 1981, dated, as of the date of issuance and delivery, consisting of one note in the denomination of \$1,100,000, for the purpose in the form and upon the terms set forth in this Note Ordinance and the Loan Agreement.

The Note shall mature on the date and in the amount set forth in Exhibit B attached hereto. The Note shall bear interest at the rate of one half the rate of interest then charged by University National Bank, in Denver, Colorado, on 90 day unsecured commercial loans to its prime commercial borrowers, plus two percentage points. The interest rate shall be a fixed rate during the term of the note which shall be set as of the date of issuance and delivery of the note in accordance with the above formula. However, said interest rate shall not be fixed at a rate which would exceed the rate of twelve and one half percent (12 1/2%) per annum.

The maximum net effective interest rate authorized for the Note is twelve and one half percent (12 1/2%).

The note shall be payable at University National Bank, in Denver, Colorado, or at such other place as the Bank may designate in writing.

Section 4. Form and Execution of Note. The Note shall be signed by the manual signature of the Mayor of the City, sealed with an impression of the corporate seal of the City and countersigned and attested by the manual signature of the City Clerk. Should any officer whose manual signature appears on said Note cease to be such officer before delivery of the Note to the purchaser, such manual signature shall nevertheless be valid and sufficient for all purposes.

The Note shall be issued as a fully registered Note. The Note may be transferred to a subsequent registered owner in accordance with the provisions of the Note and the Loan Agreement. The Note is subject to redemption prior to maturity on the terms set out in the Loan Agreement. The form of the Note is contained in Exhibit A to this Ordinance.

Section 5. Determinations. It is hereby found, determined and declared that:

(a) the amount necessary in each year to pay the principal of and the interest on the Note, assuming the maximum interest rate of 12 1/2% per annum is in effect, is as set forth in Exhibit B attached hereto;

sufficient to pay the principal of, interest on, and any premium due in connection with the Note when due and to pay all other costs required in the Loan Agreement to be made.

(f) the Project, as more fully described in the Loan Agreement, constitutes a project authorized by and described in Section 29-3-103(10) of the Act, and will serve a valid public purpose;

(g) the issuance and sale of the Note, the execution and delivery of the Loan Agreement, the performance of all covenants and agreements of the City contained in the Loan Agreement, and all actions required under the laws of the State of Colorado to make the Loan Agreement and Note valid and binding obligations of the City in accordance with their terms, are authorized by the Act.

(h) there is no litigation pending or, to the best of its knowledge, threatened against the City relating to the Project or to the Note, Loan Agreement, Deed of Trust, Assignment, or Guaranty or questioning the organization, powers or authority of the City.

(i) the execution, delivery and performance of the City's obligations under the Note and the Loan Agreement have been fully authorized by all requisite action and do not and will not violate any law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which the City is a party or by which it or any of its property is bound, or be in conflict with, result in breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(j) no member of the City Council of the City having acted upon this Ordinance in his official capacity: (i) has a direct or indirect interest in the Project, Loan Agreement, Deed of Trust, Assignment, Guaranty or Note, (ii) owns any interest in the Project or the Borrower, (iii) is a partner or employee of the Borrower, (iv) will be involved in supervising the completion of the Project on behalf of the Borrower, or (v) will receive any commission, bonus or other remuneration for or in respect to the Project, the Loan Agreement, the Note, the Deed of Trust, the Guaranty or the Assignment.

(k) The City, pursuant to the Loan Agreement, hereby preserves the option to issue, at its discretion, upon request of the Borrower, and only upon the terms set forth therein, such Additional Bonds as are necessary to complete the Project, provide funds for improvements to the Project, and to refund or advance refund any Bonds or Note then outstanding.

Section 6. Nature of Obligation. Under the provisions of the Act, and as provided in the Loan Agreement, the Note shall be a special, limited obligation of the City payable solely from, and secured by a pledge of, the revenues as stated in the Loan Agreement and shall be further secured by the lien of the Combination Deed of Trust

proceeds therefor. The City will not pay out of its general fund or otherwise contribute any part of the Cost of the Project (as said term is defined in the Loan Agreement).

Section 7. Election Under Internal Revenue Code. The City shall do all acts necessary to complete the selection for the application of the \$10,000,000 small issue exemption pursuant to Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and all regulations thereunder.

Section 8. Note Ordinance Irrepealable. After the Note is issued, this Note Ordinance shall constitute an irrevocable contract between the City and the holder or holders of the Note and shall be and remain irrepealable until the Note, both principal and interest, shall be fully paid, cancelled and discharged.

Section 9. Ratification. All action heretofore taken by the City and by the officers thereof not inconsistent herewith directed toward the financing of the Project and the issuance and sale of the Note is hereby ratified, approved and confirmed.

Section 10. Repealer. All acts, orders, resolutions, ordinances, or parts thereof, taken by the City and in conflict with this Note Ordinance are hereby repealed, except that this repealer shall not be construed so as to revive any act, order, resolution, ordinance, or part thereof, heretofore repealed.

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

Section 12. Limitation of Actions. Pursuant to Section 29-3-122 of the Act, no action shall be brought questioning the legality of the Loan Agreement, Deed of Trust, Assignment, Guaranty, Note, or any other contract or proceeding executed in connection with the Project on and after thirty days from the effective date of this Note Ordinance.

Section 13. Hearing. In accordance with Section 5.10d. of the City Charter, the City Council shall hold a public hearing on this Ordinance, before final passage thereof, at the City Hall on January 22, 1981 at 7:30 P.M.

Section 14. Recording, Authentication and Effective Date. This Ordinance, as adopted by the City Council, shall be numbered and recorded, and the adoption and publication shall be authenticated by the signatures of the Mayor and the City Clerk, and by the certificate of publication. This Ordinance shall take effect upon final passage pursuant to Section 15 hereof and shall be published for a second time by the City Clerk within ten (10) days after final passage, or as soon thereafter as possible.

health, peace, and safety, and that this Ordinance shall take effect upon passage at two meetings of City Council as provided in Section 5.11 of the Charter for the City of Golden, Colorado.

INTRODUCED, READ AND ORDERED PUBLISHED this 8th day of January, 1981.

ADOPTED, APPROVED AND ORDERED PUBLISHED this 22nd day of January, 1981.

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Frank I. Leek  
Mayor

ATTEST:

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Sharon L. Bennetts  
City Clerk

Approved as to form:

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Russell J. Sindt  
City Attorney

I, Sharon L. Bennetts, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was introduced and read at a regular meeting of the City Council of said City, held on the 8th day of January, 1981, and was published as a proposed ordinance in the Colorado Transcript, legal newspaper, as the law directs seven days or more prior to its passage; and, that on the 22nd day of January, 1981, the said proposed ordinance was read and passed by the City Council at a regular meeting and ordered published in the aforesaid newspaper as the law directs.

Witness my hand and official seal of the City of Golden,

EXHIBIT A  
(FORM OF NOTE)

UNITED STATES OF AMERICA  
STATE OF COLORADO  
COUNTY OF JEFFERSON  
CITY OF GOLDEN

INDUSTRIAL DEVELOPMENT REVENUE NOTE  
(6 & 40 PROPERTIES PROJECT)  
SERIES 1981

No. R-1

\$1,100,000

The City of Golden, Colorado, a political subdivision of the State of Colorado (the "Municipality"), for value received, hereby promises to pay the University National Bank in Denver, Colorado (the "Payee"), or registered assigns, from the source and in the manner hereinafter provided, the principal sum of ONE MILLION AND ONE HUNDRED THOUSAND DOLLARS (\$1,100,000), or so much thereof as remains unpaid from time to time (the "Principal Balance"), on or before \_\_\_\_\_, 1983, with interest thereon from the date of issuance and delivery hereof to the purchaser at the rate of \_\_\_\_\_ (\_\_\_\_\_% ) per annum, all interest computed on the basis of the actual number of days elapsed within a month of thirty (30) days and over a year of three hundred sixty (360) days, in any coin or currency which at the time or times of payment is legal tender for the payment of public or private debts in the United States of America. Such interest shall be payable on \_\_\_\_\_, 1981, and on the first day of each month thereafter until the principal balance is paid in full. Principal and interest shall be payable at the principal office of the Payee, or at such other place as the Payee may designate in writing. Payments shall be applied first to interest due on the Principal Balance and thereafter to reduction of the Principal Balance.

This Note is issued by the Municipality to provide funds for a Project, as defined in Section 29-3-103(10) of the County and Municipality Development Revenue Bond Act, Title 29, Article 3, Part 1, Colorado Revised Statutes 1973, as amended, (the "Act") consisting of the construction and equipping of three buildings for use as a warehouse/office complex within the Municipality, the ("Project"), pursuant to a Loan Agreement dated as of January 1, 1981, and actually executed on the date of delivery hereof, between the Municipality, 6 & 40 Properties, a Colorado limited partnership (the "Borrower"), and the Payee and is further issued pursuant to and in full compliance with the Ordinance finally adopted on or about \_\_\_\_\_, 1981 by the Municipality. This Note and the payment of the Principal Balance hereof and the interest hereon and premium, if any, is secured by a Combination Deed of Trust, Security Agreement, and Financing Statement (the "Deed of Trust"), an Assignment of Rents and Leases, (the "Assignment"), and a Continuing Guaranty (the "Guaranty") all dated as of January 1, 1981, and actually executed on the date hereof.

Upon a Determination of Taxability as defined in Section 1.01 of the Loan Agreement, whereby the interest accruing on this Note becomes includible in the gross income of the holder (other than a substantial user of the Project or a related person) for the purpose of federal income taxation, the Bank may call the Note, or at its option the Principal Balance of this Note shall bear interest, at an annual rate of three percent (3.00%) over the prime rate of interest charged by University National Bank, in Denver, Colorado, adjusted monthly, or the interest rate set forth herein, which ever is higher, from and after the date of an Event of Taxability. If the Payee or other holder of this Note receives notice of a Determination of Taxability, the Borrower has agreed, pursuant to the Loan Agreement, to pay within ninety (90) days of receipt of such notice, directly to the Payee on behalf of the Municipality, the aggregate difference between (i) the payments actually made between the date of the Event of Taxability and the date of the Determination of Taxability, and (ii) the payments which would have been made during such period if the aforementioned increased interest rate had been in effect.

All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement, Deed of Trust, Assignment, and Guaranty are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. If a default occurs under this Note, or under the Deed of Trust or Loan Agreement, then the Payee at its option may declare immediately due and payable the Principal Balance of this Note and interest accrued thereon to the date of declaration of such default, together with any reasonable attorneys' fees incurred by the Payee in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder or under the Loan Agreement, or Deed of Trust, anything herein or in the Loan Agreement or Deed of Trust to the contrary notwithstanding, and payment thereof may be enforced and recovered in whole or in part, at any time by one or more of the remedies provided to the Payee in this Note or in the Loan Agreement, Deed of Trust, Assignment, or Guaranty. The Borrower hereby waives presentment, demand, protest or other notice of any kind in connection with any default under this Note.

This Note and the interest hereon shall never constitute the debt or indebtedness of the Municipality within the meaning of any provision or limitation of the state constitution, statutes or home rule charter and shall not constitute nor give rise to a pecuniary liability of the Municipality or a charge against its general credit or taxing powers. This Note and the interest hereon are special, limited obligations of the Municipality payable solely from, and secured by a pledge of, the revenues derived from the Project pursuant to the Loan Agreement, and shall be further secured by the lien of the Deed of Trust upon the Project. The Municipality has not pledged any of its property and has not secured the payment of this Note or the interest hereon with its property. The Municipality has not obligated itself, except with respect to the Project and the application of the revenues therefrom and note proceeds therefor. The Municipality shall not pay out of its general fund or otherwise con-



The Payee shall not be deemed, by any act or omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Payee and, then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

This Note is fully negotiable under the terms of Article 8 of Title 4, Colorado Revised Statutes, 1973.

This Note is transferable only upon the books of the City at the office of the City Clerk, by an officer of the Payee or by its agent duly authorized in writing, at the Payee's expense, upon surrender hereof together with a written instrument of transfer satisfactory to the City Clerk, duly executed by the Payee or his duly authorized agent. Upon such transfer the City Clerk will note the date of registration and the name and address of the new registered owner of this Note in the registration blank appearing below. The City may deem and treat the person in whose name the Note is last registered upon the books of the City as the absolute owner hereof, whether or not overdue, for the purpose of receiving payment of or on the account of the Principal Balance, redemption price or interest and for all other purposes, and all such payments so made to the Payee or upon its order shall be valid and effective to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid, and the City shall not be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist, happen and be performed precedent to or in the issuance of this Note do exist, have happened and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Municipality has caused this Note to be duly executed under its seal.

Dated: \_\_\_\_\_, 1981.

CITY OF GOLDEN, COLORADO

By: \_\_\_\_\_  
Mayor

(S E A L)

ATTEST:

\_\_\_\_\_  
City Clerk

and federal securities acts, unless otherwise exempt from such registration.

PROVISIONS AS TO REGISTRATION

This Note is registered in the office of the City Clerk of the City of Golden, Colorado, as registrar, in the name of the owner listed below, and the Principal Balance remaining on the Note and interest thereon shall be payable only to such owner.

<u>Date of Registration</u>	<u>Name and Address of Registered Owner</u>	<u>Signature of City Clerk</u>
_____	University National Bank 4201 East Yale Avenue Denver, Colorado 80222	_____
_____	_____	_____
_____	_____	_____

EXHIBIT B  
(Principal and Interest  
Payment Schedule)

\$1,100,000  
City of Golden, Colorado  
Industrial Development Revenue Note  
(6 & 40 Properties Project)  
SERIES 1981

<u>Date</u> <sup>1</sup>	<u>Principal</u>	<u>Interest</u> <sup>2</sup>	<u>Total</u>
3/23/81	--	\$11,458.33	\$11,458.33
4/23/81	--	11,458.33	11,458.33
5/23/81	--	11,458.33	11,458.33
6/23/81	--	11,458.33	11,458.33
7/23/81	--	11,458.33	11,458.33
8/23/81	--	11,458.33	11,458.33
9/23/81	--	11,458.33	11,458.33
10/23/81	--	11,458.33	11,458.33
11/23/81	--	11,458.33	11,458.33
12/23/81	--	11,458.33	11,458.33
1/23/82	--	11,458.33	11,458.33
2/23/82	--	11,458.33	11,458.33
3/23/82	--	11,458.33	11,458.33
4/23/82	--	11,458.33	11,458.33
5/23/82	--	11,458.33	11,458.33
6/23/82	--	11,458.33	11,458.33
7/23/82	--	11,458.33	11,458.33
8/23/82	--	11,458.33	11,458.33
9/23/82	--	11,458.33	11,458.33
10/23/82	--	11,458.33	11,458.33
11/23/82	--	11,458.33	11,458.33
12/23/82	--	11,458.33	11,458.33
1/23/83	--	11,458.33	11,458.33
2/23/83	\$1,100,000	\$11,458.41	\$1,111,458.41

<sup>1</sup>Assumes a closing date of February 23, 1981.

<sup>2</sup>Assumes that the Note will bear interest at twelve and one half percent (12 1/2%) per annum, the maximum rate authorized by this ordinance.