

ORDINANCE NO. 1, 1993

OF THE COUNCIL OF THE CITY OF FORT COLLINS RELATING TO THE AMENDMENT OF A LOAN AGREEMENT, AND PROMISSORY NOTE, BOTH DATED SEPTEMBER 10, 1982, BETWEEN THE CITY OF FORT COLLINS, COLORADO (THE "ISSUER") AND TULAKES ASSOCIATES, A COLORADO GENERAL PARTNERSHIP (THE "COMPANY"), AUTHORIZED BY THE ISSUER'S ORDINANCE 86, 1982, RELATING TO THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE PROVISIONS OF THE COLORADO COUNTY AND MUNICIPALITY DEVELOPMENT REVENUE BOND ACT; WHICH ORDINANCE 86, 1982 PROVIDED FOR THE ISSUANCE AND SALE OF CITY OF FORT COLLINS, COLORADO, INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 1982 (THE TULAKES ASSOCIATES PROJECT) IN THE ORIGINAL PRINCIPAL AMOUNT OF \$800,000 FOR THE PURPOSE OF LOANING FUNDS TO TULAKES ASSOCIATES TO FINANCE IMPROVEMENTS RELATING TO ACQUIRING, IMPROVING, INSTALLING AND EQUIPPING OF AN OFFICE AND MANUFACTURING FACILITY IN FORT COLLINS, COLORADO; APPROVING AND AUTHORIZING THE EXECUTION AND ASSIGNMENT OF A LOAN AGREEMENT AS AMENDED AND NEW PROMISSORY NOTE BETWEEN TULAKES ASSOCIATES AND THE ISSUER, AND FURTHER AUTHORIZING THE PREPARATION AND EXECUTION OF CERTAIN RELATED DOCUMENTS AND INSTRUMENTS.

WHEREAS, pursuant to Ordinance 86, 1982, the City of Fort Collins, Colorado, issued its Industrial Development Revenue Bonds, Series 1982 (The Tulakes Associates Project) in the original principal amount of \$800,000 (the "Bonds") for the purpose of loaning funds to the Company to finance improvements relating to acquiring, improving, installing and equipping of an office and manufacturing facility in Fort Collins, Colorado; and

WHEREAS, the final maturity date of the Bonds was September 10, 1992; and

WHEREAS, the Company and Bank One, Denver, N.A. (formerly Affiliated National Bank-Denver, formerly Denver National Bank) (the "Lender") have entered into a Modification Agreement, dated as of September 10, 1992, extending the maturity date of the Bonds, subject to the Issuer's consent, and now desire, with the consent of the Issuer, to extend the maturity date of the Loan Agreement, the original Company Note, and the Bonds up to September 10, 2002; and

WHEREAS, the Company and the Lender have represented that interest payable on the Bonds will not be exempt from income taxation after the modifications contemplated by this Ordinance are effective;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Ordinance 86, 1982 is hereby amended as follows:

Section 1. Unless otherwise precluded by the context, all references in Ordinance 86, 1982 (the "Ordinance") to the Loan Agreement shall be deemed to include the Loan Agreement as amended by the First Amendment to Loan Agreement between the Issuer and the Company, dated as of September 10, 1992 (the "First Amendment to Loan Agreement"). Unless expressly deleted, modified or amended by the provisions set forth herein, the Ordinance shall remain unchanged and in full force and effect.

Section 2. Except for those sections noted below as remaining unchanged, Article II of the Ordinance is hereby amended to read, in its entirety, as follows:

ARTICLE II
BONDS

2.1. Authorized Amount and Form of Bond

The Bonds issued pursuant to this Ordinance shall be in substantially the form set forth herein, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance, and in accordance with the further provisions hereof; and the total original principal amount of the Bonds that may be outstanding hereunder is expressly limited to \$800,000. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF COLORADO
CITY OF FORT COLLINS

INDUSTRIAL DEVELOPMENT REVENUE BOND
(THE TULAKES ASSOCIATES PROJECT)
SERIES 1982

R-__

\$ _____

FOR VALUE RECEIVED, THE CITY OF FORT COLLINS, COLORADO (the "City") hereby promises to pay to the order of Bank One, Denver, N.A., Denver, Colorado (the "Lender"), its successors or registered assigns, from the source and in the manner hereinafter provided, the principal sum of SIX HUNDRED TWO THOUSAND DOLLARS (\$602,000.00) (the "Principal Balance"), and to pay interest thereon from the date hereof in consecutive monthly installments, beginning January 10, 1993, at a per annum rate equal to ten percent (10%).

1. (a) The outstanding principal of this Bond shall mature and be repayable with interest in monthly installments of \$7,955.47, on the 10th day of each month, commencing January 10, 1993, and all remaining principal plus accrued but unpaid interest shall be due and payable without notice or demand on September 10, 1995 (the "Balloon Payment Date"), unless the Balloon Payment Date is otherwise extended, in writing, by the Lender; provided, that such extension of the Balloon Payment Date shall not require the consent of the Guarantors, the City or any other party, including, without limitation, First Interstate Bank of Fort Collins, N.A. In no event shall the Balloon Payment Date be extended beyond September 10, 2002.

In the event this Bond is to be redeemed in whole or in part pursuant to the provisions of the Loan Agreement as amended by the First Amendment to Loan Agreement, dated as of September 10, 1992, the Company shall give notice of the redemption to the City and the Lender by first class mail, postage prepaid, mailed not less than ten (10) days prior to the redemption date. No prior notice

of redemption shall be required in connection with a partial redemption of this Bond from moneys remaining in the Construction Fund (defined in the Loan Agreement) after the Completion Date.

(b) Unless extended as herein provided, on the Balloon Payment Date, the entire remaining Principal Balance, if any, and any interest accrued to the Balloon Payment Date shall be due and payable.

2. Interest shall be computed on the basis of a 360 day year, but charged for the actual number of days principal is unpaid. Anything in this Bond to the contrary notwithstanding, the obligations of the City under this Bond shall be subject to the limitation that payments of interest hereunder shall not be required to the extent that receipt of any such payment by the Lender would be contrary to provisions of law applicable to the Lender which limit the maximum rate of interest which may be charged or collected by the Lender.

3. Principal and interest due hereunder shall be payable at the principal office of the Lender or at such other place as the Lender may designate in writing.

4. This Bond is issued by the City to provide funds for a project, as defined in Section 103 of Article 3, Title 29, as amended (the "Act"), consisting of the acquisition and construction of a building on real estate located in the City, pursuant to a Loan Agreement dated as of September 10, 1982 (the "Loan Agreement"), and a First Amendment to Loan Agreement dated as of September 10, 1992 (the "Amendment"), both between the City and Tulakes Associates (the "Company"), and further, this Bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Colorado, particularly the Act and an ordinance of the City Council of the City duly adopted on August 3, 1982 (the "Ordinance"), as amended by an ordinance of the City Council of the City duly adopted on January 19, 1993.

5. This Bond is secured by (i) an assignment of the Loan Agreement, as amended, and the Company Note, as amended, by the City to the Lender (the "Note"); (ii) a Deed of Trust from the Company as grantor, in favor of the Lender; (iii) a Security Agreement under the Uniform Commercial Code; (iv) a Guaranty Agreement between the Company and ION Tech, Inc., as guarantors, and the Lender; and (v) a Collateral Assignment of Rents. This Bond is subject to all the terms, conditions and provisions of the Loan Agreement, as amended, the Note, the Deed of Trust, the Security Agreement, the Guaranty Agreement and the Collateral Assignment of Rents.

6. The Lender may waive an event of default hereunder caused by the nonpayment of interest and/or principal due on this Bond without notice to or consent of any party liable hereon and without releasing any such party.

7. The City may prepay, with such premiums, if any, as are provided in the Loan Agreement, as amended, all or a portion of the Principal Balance at any time upon ten (10) days' written notice to the Lender, but only from funds available therefor under the Loan Agreement, as amended. No partial payment shall change the amount or extend the time of payment of any installment payable hereunder.

8. This Bond is further subject to prepayment, without a premium, in whole, upon the occurrence of certain events of damage to, or destruction or condemnation of the Project as specified in the Loan Agreement, as amended, the Deed of Trust and the Ordinance, as amended.

9. The monthly payments of principal and interest due hereunder shall continue to be due and payable in full until the entire Principal Balance and accrued interest due on the Bond have been paid, regardless of any partial payment made hereunder.

10. As provided in the Ordinance, as amended, and subject to certain limitations as set forth therein, this Bond is transferable upon limitations set forth therein. This Bond is transferable upon the books of the City at the office of the City Clerk, by the Lender in person or by its agent duly authorized in writing, at the Lender's expense, upon surrender hereof together with a written instrument of transfer satisfactory to the City Clerk, duly executed by the Lender or its duly authorized agent. Upon such transfer, the City Clerk will note the date of registration and the name and address of the new registered Lender in the registration blank appearing below. The City may deem and treat the person in whose name the Bond 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, prepayment price or interest and for all other purposes, and all such payments so made to the Lender or upon its order shall be valid and effective to satisfy and discharge the liability upon the Bond to the extent of the sum or sums to be paid, and the City shall not be affected by any notice to the contrary.

11. THIS BOND AND INTEREST THEREON AND ANY PENALTY OR PREMIUM DUE HEREUNDER ARE PAYABLE SOLELY FROM THE REVENUES AND PROCEEDS DERIVED FROM THE LOAN AGREEMENT, THE NOTE, THE DEED OF TRUST AND THE SECURITY AGREEMENT, AND SHALL NEVER CONSTITUTE THE DEBT OR INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE STATE CONSTITUTION OR STATUTES OR THE CHARTER OF THE CITY OF FORT COLLINS, COLORADO AND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

12. The remedies of the Lender, as provided herein and in the Loan Agreement, as amended, the Note, the Deed of Trust, the Security Agreement, the Guaranty and the Collateral Assignment of Rents are not exclusive and shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any right or remedy shall in no event be construed as a waiver or release thereof.

13. The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender, 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.

14. This Bond has been issued without registration under state or federal or other securities laws, pursuant to an exemption for such issuance; and accordingly, the Bond may not be assigned or transferred in whole or part, nor may a participation interest in the Bond be given pursuant to any participation agreement, except in accordance with applicable registration requirements or an applicable exemption from such registration requirements, and the City Clerk may require an opinion of qualified counsel as to the existence of such an exemption before transferring this Bond on the books of the City.

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 Bond do exist, have happened and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the City has caused this Bond to be duly executed in its name by the manual signature of the Mayor of the City, to be sealed with the Seal of the City, to be signed and attested with the manual signature of the City Clerk and to be countersigned with the manual signature of the Finance Director of the City and has caused this Bond to be dated as of September 10, 1992.

CITY OF FORT COLLINS, COLORADO

(SEAL)

By _____
Mayor

COUNTERSIGNED:

City Clerk

By _____
Finance Director

PROVISIONS AS TO REGISTRATION

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Fort Collins, Colorado, in the name of the holder last noted below.

Date of Registration

Name and Address of Registered Owner
Signature of City Clerk or Deputy

[END OF FORM OF BOND]

2.2 The Bonds

The Bonds shall be payable at the times and in the manner and shall be subject to such other terms and conditions as are set forth in the form thereof included as Section 2.1 of this Ordinance. The net effective interest rate on the Bond shall not exceed twenty percent (20%) per annum. Subject to the foregoing, the Bond shall bear interest at the rate set forth in the form thereof included as Section 2.1 of this Ordinance.

[2.3. Execution]

[This Section shall remain unchanged.]

2.4. Delivery of the Bonds

Before delivery of the Bonds, as amended, there shall be filed in the office of the City Clerk the following items:

1. Executed copies of the Loan Agreement, the First Amendment to Loan Agreement, the Note, the Assignment of the Loan Agreement, the Deed of Trust, the Security Agreement, the Collateral Assignment of Rents and the Guaranty Agreement;

2. An opinion of Counsel for the Company in scope and substance satisfactory to Bond Counsel as to the authority of the Company to enter into the transaction and other related matters; and

3. Such other documents as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (3) above or that the Lender may require for the closing.

[2.5. to 2.11.]

[These Sections shall remain unchanged.]

[ARTICLE III]

[Article III shall remain unchanged.]

[ARTICLE IV]

[Article IV shall remain unchanged.]

THIRD: ARTICLE V of the Ordinance is hereby amended as follows:

ARTICLE V

MISCELLANEOUS

[5.1. Severability]

[This Section shall remain unchanged.]

5.2. Authorization to Execute Agreements

Section 5.2 is hereby amended by adding at the end thereof the following language:

The forms of the First Amendment to Loan Agreement, the Bonds, the Consent to First Amendment to Loan Agreement, and the Note, are hereby approved in substantially the form presented to the City Council; and the Mayor and the City Clerk are authorized to endorse the Note, and execute the First Amendment to Loan Agreement and the Assignment of the First Amendment to Loan Agreement, in the name of and on behalf of the Issuer and such other documents as Bond Counsel considers appropriate in connection with the issuance of the Bonds. In the event of the absence or disability of the Mayor or the City Clerk, such officers of the Issuer as, in the opinion of the City Attorney, may act on their behalf, shall without further act or authorization of the City Council do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

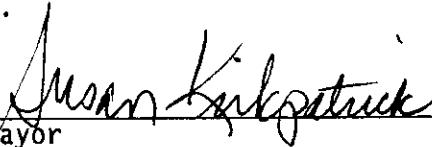
[5.3. to 5.6.]

[These Sections shall remain unchanged.]

5.7. Recording and Authentication

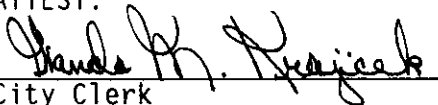
This Ordinance, as adopted by the City Council, shall be numbered and recorded, and the adoption and publication shall be authenticated by the signatures of the Mayor and City Clerk and by the certificate of the publisher, respectively.

This Ordinance further introduced, considered, favorably on first reading and ordered published on this 5th day of January, 1993 and presented for final passage on the 19th day of January, 1993.



Mayor

ATTEST:



City Clerk

Passed and adopted on final reading on this 19th day of January, 1993.

Juan LaPatruide
Mayor

ATTEST:

Molly J. Davis
Deputy City Clerk