

(Published in the *Wathena Times*, June 18, 1998)

ORDINANCE NO. 506

AN ORDINANCE AUTHORIZING THE CITY OF WATHENA, KANSAS TO ISSUE ITS INDUSTRIAL REVENUE BONDS, SERIES 1998 (MK MINERALS, INC. PROJECT) IN THE AGGREGATE PRINCIPAL AMOUNT OF \$3,600,000 FOR THE PURPOSES OF ACQUIRING, CONSTRUCTING AND EQUIPPING A MANUFACTURING FACILITY; AUTHORIZING EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND SECURITY BANK OF KANSAS CITY, KANSAS CITY, KANSAS, AS TRUSTEE; AUTHORIZING THE CITY TO LEASE SUCH FACILITY TO MK MINERALS, INC. AND AUTHORIZING EXECUTION OF A LEASE BETWEEN SAID CITY AND MK MINERALS, INC.; APPROVING THE FORM OF A GUARANTY AGREEMENT BY AND BETWEEN THE TENANT AND SECURITY BANK OF KANSAS CITY, AS TRUSTEE; AND AUTHORIZING THE EXECUTION OF THE BOND PURCHASE AGREEMENT FOR THE BONDS BY AND AMONG THE CITY, MK MINERALS, INC. AND CHAPMAN SECURITIES, INC., AS PURCHASER OF THE BONDS.

**WHEREAS**, the City of Wathena, Kansas (the "Issuer") is authorized by the Kansas Economic Development Revenue Bond Act, as codified in K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities; and

**WHEREAS**, the Issuer has heretofore and does hereby find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Industrial Revenue Bonds, Series 1998 (MK Minerals, Inc. Project) dated June 1, 1998 in the aggregate principal amount of \$3,600,000 (the "Series 1998 Bonds"), for the purpose of paying the costs of acquiring, constructing and equipping a certain manufacturing facility (the "Project"), as more fully described in the Indenture and in the Lease hereinafter authorized for lease by the Issuer to MK Minerals, Inc. (the "Tenant"); and

**WHEREAS**, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Series 1998 Bonds to execute and deliver (i) a Trust Indenture dated as of June 1, 1998 (the "Indenture"), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series 1998 Bonds; (ii) a Lease dated as of June 1, 1998 (the "Lease"), with the Tenant under which the Issuer shall cause the Project to be acquired, constructed, equipped and leased to the Tenant in consideration of payments of Basic Rent and other payments provided for therein, and (iii) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 1998 Bonds by the Issuer to Chapman Securities, Inc. (collectively, the "Bond Documents");

**WHEREAS**, after conducting the public hearing and reviewing the analysis of costs and benefits of such exemption required by K.S.A. Supp. 12-1749d, the governing body of the Issuer has found and determined that under the provisions of K.S.A. 79-201a *Second*, the Project purchased or constructed with the proceeds of the Bonds is eligible for exemption from ad valorem property taxes for 10 years, commencing in the calendar year following the calendar year in which the Bonds are issued, if proper application is made, and that such exemption should be granted with respect to the Project subject to a payment in lieu of taxes, as more particularly described herein;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WATHENA, KANSAS AS FOLLOWS:**

**Section 1. Definition of Terms.** All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and Lease herein authorized.

**Section 2. Authority to Cause the Project to be Purchased and Constructed.** The Issuer is hereby authorized to cause the Project to be acquired, constructed and equipped all in the manner and as more particularly described in the Indenture and the Lease hereinafter authorized.

**Section 3. Authorization of and Security for the Bonds.** The Issuer is hereby authorized and directed to issue the Series 1998 Bonds, to be designated "City of Wathena, Kansas Industrial Revenue Bonds, Series 1998 (MK Minerals, Inc. Project)" in the aggregate principal amount of \$3,600,000 (the "Series 1998 Bonds") for the purpose of providing funds to pay the costs of acquiring, constructing and equipping the Project. The Series 1998 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Series 1998 Bonds shall be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues from the Lease of the Project. The Series 1998 Bonds shall not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer and shall not be payable in any manner by taxation.

**Section 4. Authorization of Indenture.** The Issuer is hereby authorized to enter into the Indenture with the Trustee in the form approved herein, under which the Issuer shall pledge to the Trustee, for the benefit of the owners of the Series 1998 Bonds, the Trust Estate as described in the Indenture, on the terms and conditions set forth in the Indenture.

**Section 5. Lease of the Project.** The Issuer shall cause the Project to be acquired, constructed and equipped and leased to the Tenant pursuant to and in accordance with the provisions of the Lease in the form approved herein.

**Section 6. Approval of the Guaranty Agreement.** The form of the Guaranty Agreement, dated as of June 1, 1998, pursuant to which the Tenant guarantees to the Trustee, for the benefit of the owners of the Series 1998 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Series 1998 Bonds, is hereby approved.

**Section 7. Authorization of Bond Purchase Agreement.** The Series 1998 Bonds shall be sold and delivered to Chapman Securities, Inc., Wichita, Kansas, upon the terms and subject to the provisions of the Bond Purchase Agreement in the form approved herein among the Issuer, Tenant and Chapman Securities, Inc., as Purchaser.

**Section 8. Execution of Bonds and Bond Documents.** The Mayor of the Issuer is hereby authorized and directed to execute the Series 1998 Bonds and deliver them to the Trustee for authentication on behalf of, and as the act and deed of the Issuer in the manner provided by the Act and in the Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the Issuer in substantially the forms presented for review prior to passage of this ordinance, with such corrections or amendments thereto as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 1998 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this ordinance under the Issuer's corporate seal.

**Section 9. Tax Exemption; Payment in Lieu of Taxes.** The Project shall be exempt from ad valorem property taxes for 10 years, commencing in the calendar year 1999. The Tenant will prepare the application for exemption and submit it to the Issuer for its review. After its review, the Issuer will submit the application for exemption to the State Board of Tax Appeals. The Issuer is authorized to enter into an Agreement for Payment in Lieu of Taxes with the Tenant in substantially the form presented for review prior to passage of this ordinance. The Issuer is authorized to enter into an Agreement for Payment in Lieu of Taxes with the Tenant in substantially the form presented for review prior to final passage of this ordinance.

**Section 10. Pledge of the Project and Net Earnings.** The Issuer hereby pledges the Project and the net earnings therefrom to the payment of the Series 1998 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Series 1998 Bonds shall be deemed to have been paid within the meaning of the Indenture.

**Section 11. Election Under Section 144(a)(4) of the Internal Revenue Code.** The Issuer hereby elects that Section 144(a)(4) of the Internal Revenue Code of 1986, as amended, shall apply to the Series 1998 Bonds, and the Mayor or City Clerk is hereby authorized and directed to file evidence of said election with any appropriate officer of the United States, including the Secretary of the Treasury or his or her delegate, and to take such other action as may be necessary to make effective such election made herein.

**Section 12. Approval of Preliminary Official Statement and Official Statement.** The Preliminary Official Statement, a copy of which has been submitted for review, and the Official Statement, in substantially the form of the Preliminary Official Statement, and the public distribution of the same by the Original Purchaser is hereby approved. The Issuer has not

participated in the preparation of the Preliminary Official Statement or the Official Statement and has not verified the accuracy of the information therein (except as respects the Issuer). Accordingly, such approval does not constitute a representation by the Issuer as to the completeness or accuracy of the information contained therein.

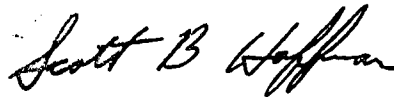
Section 13. **Further Authority.** The officials, officers, agents and employees of the Issuer are hereby authorized and directed to take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out the provisions of this ordinance and to carry out and perform the duties of the Issuer with respect to the Series 1998 Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this ordinance and in the Bond Documents.

Section 14. **Effective Date.** This ordinance shall take effect from and after its passage by the governing body of the Issuer, signature by the Mayor and publication once in the official newspaper of the Issuer.

**PASSED** by the governing body of the City of Wathena, Kansas this 16 day of June, 1998.

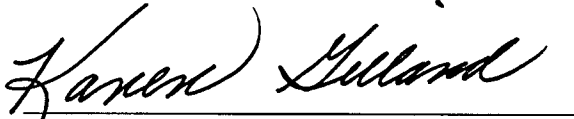
**SIGNED** by the Mayor of the City of Wathena, Kansas this 16 day of June, 1998.

[SEAL]



\_\_\_\_\_  
Mayor

Attest:

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

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CERTIFICATE OF COPY

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 506 of the City of Wathena, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated therein, and that the signed original of such ordinance is on file in my office.

[SEAL]

  
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City Clerk