

ORDINANCE NO. 560

OF

THE CITY OF WATHENA, KANSAS

AUTHORIZING THE ISSUANCE OF

\$2,585,000
CITY OF WATHENA, KANSAS
INDUSTRIAL REVENUE REFUNDING BONDS
SERIES A, 2004
(MK MINERALS, INC.)

\$230,000
CITY OF WATHENA, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES B, 2004
(MK MINERALS, INC.)

(Published in *The Kansas Chief*, November 25, 2004)

ORDINANCE NO. 560

AN ORDINANCE AUTHORIZING THE CITY OF WATHENA, KANSAS TO ISSUE ITS INDUSTRIAL REVENUE REFUNDING BONDS, SERIES A, 2004 (MK MINERALS, INC.), IN THE AGGREGATE PRINCIPAL AMOUNT OF \$2,585,000 AND ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES B, 2004 (MK MINERALS, INC.), IN THE AGGREGATE PRINCIPAL AMOUNT OF \$230,000 FOR THE PURPOSES OF (1) REFUNDING, REDEEMING AND RETIRING ITS OUTSTANDING INDUSTRIAL REVENUE BONDS, (2) PURCHASING, ACQUIRING AND INSTALLING CERTAIN ADDITIONS TO AN EXISTING MANUFACTURING FACILITY AND (3) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE 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 THE PROJECT TO MK MINERALS, INC.; AUTHORIZING EXECUTION OF A LEASE BETWEEN THE CITY AND MK MINERALS, INC.; APPROVING THE FORM OF A GUARANTY AGREEMENT BETWEEN MK MINERALS, INC. AND SECURITY BANK OF KANSAS CITY, AS TRUSTEE; APPROVING THE FORM OF AN INDIVIDUAL GUARANTY AGREEMENT BETWEEN CERTAIN INDIVIDUAL GUARANTORS AND SECURITY BANK OF KANSAS CITY, AS TRUSTEE; AUTHORIZING EXECUTION OF A TAX REGULATORY AGREEMENT BETWEEN THE CITY, SECURITY BANK OF KANSAS CITY AND MK MINERALS, INC.; AND AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY, MK MINERALS, INC. AND FROGGATTE & COMPANY, AS PLACEMENT AGENT OF THE SERIES A, 2004 BONDS AND THE SERIES B, 2004 BONDS.

WHEREAS, the City of Wathena, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, and K.S.A. 10-116a, all as amended (the "Act"), to issue revenue bonds to pay the cost of certain facilities, as such term is defined in the Act, for the purposes set forth in the Act, and to lease and otherwise dispose of such facilities to any person, firm or corporation, as well as to refund any such revenue bonds theretofore issued; and

WHEREAS, pursuant to the Act, the Issuer has previously issued its Industrial Revenue Bonds, Series 1998 (MK Minerals, Inc. Project), dated June 1, 1998, in the original principal amount of \$3,600,000, of which \$2,475,000 currently remains outstanding (the "1998 Bonds") in part to purchase, acquire, construct and equip a certain manufacturing facility (the "1998 Project"), which is currently leased to MK Minerals, Inc. (the "Tenant"), a Kansas corporation; 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 Refunding Bonds, Series A, 2004 (MK Minerals, Inc.), to be dated November 15, 2004, in the aggregate principal amount of \$2,585,000 (the "Series A, 2004 Bonds") and its Taxable Industrial Revenue Bonds, Series B, 2004 (MK Minerals, Inc.), to be dated November 15, 2004, in the aggregate principal amount of \$230,000 (the "Series B, 2004 Bonds"), for the purpose of (i) refunding the outstanding 1998 Bonds, (2) purchasing, acquiring and installing certain additions to the 1998 Project (the "2004 Additions") and (iii) paying the costs of issuance to be incurred in connection with the issuance of the Series A, 2004 Bonds and the Series B, 2004 Bonds; and

WHEREAS, the Series A, 2004 Bonds and the Series B, 2004 Bonds (collectively the "2004 Bonds") and the interest thereon shall not constitute an indebtedness of the Issuer, within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability by the Issuer, nor shall any 2004 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer. The 2004 Bonds are not general obligations of the Issuer and are payable solely and only from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease (hereinafter defined) and, under certain circumstances, from the proceeds of the 2004 Bonds and insurance and condemnation awards; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of said 2004 Bonds (i) to execute and deliver a Trust Indenture dated as of November 15, 2004, (the "Indenture"), by and between Security Bank of Kansas City, Kansas City, Kansas, as (the "Trustee"), for the purpose of issuing and securing the 2004 Bonds as provided therein; and (ii) execute and deliver a Lease, dated as of November 15, 2004 (the "Lease"), by and between the Issuer, as landlord, and Tenant, as tenant, for the purpose of leasing the Project to the Tenant in consideration for payments of Basic Rent, Additional Rent and other charges provided for therein; and to execute such other documents and agreements in connection with the issuance of the 2004 Bonds as hereinafter provided.

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 hereinafter authorized and defined.

Section 2. Authority to Refund the 1998 Bonds. The governing body of the Issuer hereby authorizes the current refunding of the 1998 Bonds in accordance with the provisions of a Trust Indenture, dated as of June 1, 1998, authorizing and securing the 1998 Bonds, all as provided herein and in the Indenture and the Lease hereinafter authorized, and hereby ratifies any necessary instructions to the Trustee concerning the issuance of a conditional call notice for the 1998 Bonds prior to the effective date hereof.

Section 3. Authority to Cause the 2004 Additions to be Acquired, Constructed and Installed. The governing body of the Issuer hereby declares that the 2004 Project, if in being, would promote the welfare of the City of Wathena, Kansas, and the Issuer is hereby authorized to cause the 2004 Project to be acquired, purchased, constructed and installed all in the manner and as more particularly described in the Lease herein authorized.

Section 4. Authorization of and Security for the 2004 Bonds. There is hereby authorized and directed to be issued two series of revenue bonds to be designated (i) the "City of Wathena, Kansas, Industrial Revenue Refunding Bonds, Series A, 2004 (MK Minerals, Inc.)," in the aggregate principal amount of \$2,585,000 (the "Series A, 2004 Bonds") and (ii) the "City of Wathena, Kansas, Taxable Industrial Revenue Refunding Bonds, Series B, 2004 (MK Minerals, Inc.)," in the aggregate principal amount of \$230,000 (the "Series B, 2004 Bonds") for the collective purpose of (i) refinancing the costs of the 1998 Project, (ii) acquiring and installing the 2004 Additions and (iii) paying certain costs of issuance.

The Series A, 2004 Bonds and the Series B, 2004 Bonds (collectively the "2004 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 2004 Bonds shall be on a parity with, and equal in priority to, one another and with any Additional Bonds which may be issued within the meaning and pursuant to the terms and provision of the Indenture herein defined. The 2004 Bonds and any Additional Bonds (herein the "Bonds") shall be special limited obligations of the Issuer payable solely from the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Project. The 2004 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 5. Authorization of Indenture. The Issuer is hereby authorized to enter into a Trust Indenture, dated as of November 15, 2004, (the "Indenture") by and between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the 2004 Bonds, the Trust Estate created thereby, all upon the terms and conditions set forth in the Indenture.

Section 6. Lease of Project. The Issuer shall lease the 1998 Project and the 2004 Additions (collectively the "Project") to the Tenant, pursuant to and in accordance with the terms and provisions of the Lease, dated as of November 15, 2004 (the "Lease"), by and between the Issuer and the Tenant.

Section 7. Approval of the Form of Guaranty Agreement. The form of Guaranty Agreement, dated as of November 15, 2004, pursuant to which the Tenant, guarantees to the Trustee, for the benefit of the owners of the 2004 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2004 Bonds, is hereby approved.

Section 8. Approval of the Form of Individual Guaranty Agreement. The form of Individual Guaranty Agreement dated as of November 15, 2004, pursuant to which certain Individual Guarantors (as named therein), guarantee to the Trustee, for the benefit of the owners of the 2004 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2004 Bonds, is hereby approved.

Section 9. Authorization of Bond Purchase Agreement. The 2004 Bonds shall be sold and delivered pursuant to and in accordance with the terms and provisions of the Bond Purchase Agreement, dated as of November 15, 2004 (the "Bond Purchase Agreement"), by and between the Issuer, the Tenant and Froggatte & Company, as Placement Agent for the 2004 Bonds.

Section 10. Authorization of Tax Regulatory Agreement. The Issuer is hereby authorized to enter into and deliver the Tax Regulatory Agreement dated as of November 15, 2004 (the "Tax Regulatory Agreement") by and between the Issuer, the Tenant and the Trustee which provides certain representations, covenants and agreements of the parties necessary to establishing and maintaining the exclusion of the interest on the Series A, 2004 Bonds from gross income for federal income tax purposes.

Section 11. Execution of 2004 Bonds and Related Agreements and Documents. The Mayor of the governing body of the Issuer is hereby authorized and directed to execute the 2004 Bonds and deliver same to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor is authorized and directed to execute and deliver the Indenture, the Lease, the Bond Purchase Agreement and the Tax Regulatory Agreement for and on behalf of and as the act and deed of the Issuer in substantially the forms as they are presented today with such minor corrections or amendments thereto as the Mayor shall approve (after consultation with the Bond Counsel), 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. The City Clerk of the Issuer is hereby authorized and directed to attest the execution of the 2004 Bonds, the Indenture, the Lease, the Bond Purchase Agreement, the Tax Regulatory Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 12. Pledge of the Project. The Issuer hereby pledges the Project to the payment of the 2004 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 13. Further Authority. The Issuer shall, and the 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 and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the 2004 Bonds, the Indenture, the Lease, the Bond Purchase Agreement and the Tax Regulatory Agreement, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 14. Small Issuer Election. The Issuer hereby elects to continue to have the \$10,000,000 provisions of Section 144(a)(4) of the Internal Revenue Code of 1986, as amended, apply to the Series A, 2004 Bonds.

Section 15. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

PASSED, ADOPTED AND APPROVED by the governing body of the City of Wathena,
Kansas this 15th day of November, 2004.

CITY OF WATHENA, KANSAS

[seal]

By *James P McAnerney*
James McAnerney, Mayor

ATTEST:

By *Jim Richardson*
Jim Richardson, City Clerk