

RESOLUTION NO. 10-03

OF THE

CITY OF WATHENA, KANSAS

RELATING TO:

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

AND

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

RESOLUTION NO. 10-03

A RESOLUTION OF THE CITY OF WATHENA, KANSAS, APPROVING THE SALE OF A CERTAIN PROJECT FINANCED WITH THE PROCEEDS OF REVENUE BONDS OF THE CITY; RECOGNIZING THE SATISFACTION OF SAID REVENUE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF (1) A SPECIAL WARRANTY DEED, (2) A BILL OF SALE, (3) A TERMINATION AND RELEASE OF LEASE, AND (4) A SATISFACTION, DISCHARGE AND RELEASE OF INDENTURE.

WHEREAS, the City of Wathena, Kansas is a municipal corporation organized under the laws of the State of Kansas (the "Issuer"); and

WHEREAS, the Issuer is authorized pursuant to K.S.A. 12-1740 *et seq.* to issue its revenue bonds for the purpose of paying all or any portion of the cost of purchasing, acquiring, constructing and equipping facilities for commercial purposes and to enter into leases with any person, firm or corporation for such facilities; and

WHEREAS, the Issuer has previously issued its (i) Industrial Revenue Refunding Bonds, Series A, 2004 (MK Minerals, Inc.) (the "Series A, 2004 Bonds") in the aggregate amount of \$2,585,000 of which \$1,960,000 remains Outstanding and (ii) Taxable Industrial Revenue Bonds, Series B, 2004 (MK Minerals, Inc.) (the "Series B, 2004 Bonds") in the aggregate principal amount of \$230,000 of which \$140,000 remains Outstanding; and

WHEREAS, the Series A, 2004 Bonds and the Series B, 2004 Bonds (collectively, the "Bonds") were issued for the purpose of (i) refunding certain City of Wathena, Kansas, Industrial Revenue Bonds, Series 1998 (MK Minerals, Inc. Project) the proceeds of which were used to purchase, acquire, construct, and equip a certain manufacturing facility (the "1998 Project") and (ii) purchasing, acquiring and installing certain additions to the 1998 Project (the "2004 Additions"); and

WHEREAS, the 1998 Project and the 2004 Additions (collectively, the "Project") are leased by the Issuer to MK Minerals, Inc., a Kansas corporation (the "Tenant"), pursuant to a certain Lease Agreement, dated as of November 15, 2004 (the "Lease"); and

WHEREAS, the Bonds are payable from the Trust Estate created pursuant to a certain Trust Indenture, dated as of November 15, 2004 (the "Indenture"), by and between the Issuer and Security Bank of Kansas City, as Trustee (the "Trustee"), which Trust Estate includes a pledge of the Project and revenue received from the fees charged and Basic Rent received pursuant to the Lease; and

WHEREAS, the payment of the principal of and interest on the Bonds is guaranteed by the Tenant pursuant to the terms of a certain Guaranty Agreement dated as of November 15, 2004; and

WHEREAS, the payment of the principal of and interest on the Bonds is guaranteed by certain Individual Guarantors pursuant to the terms of an Individual Guaranty Agreement dated as of November 15, 2004; and

WHEREAS, Section 15.1 of the Lease provides for the purchase of the Project by the Tenant upon the proper exercise of the Tenant's option to purchase and the payment (pursuant to Section 15.2) to the Trustee of the full amount necessary and incidental to the retirement and defeasance of the Bonds, plus the payment to the City of \$100; and

WHEREAS, the Tenant has acquired the Bonds pursuant to a Bond Sale Agreement by and between the Tenant and FH Partners, LLC, and surrendered such Bonds to the Trustee in full satisfaction of the duties and liabilities under the Bonds and the Indenture, extinguishing all indebtedness represented thereby; and

WHEREAS, the Tenant has provided notice of its election to purchase the Project on or about March 1, 2010 (the "Closing Date"); and

WHEREAS, the Issuer finds it necessary to recognize the surrender and satisfaction of the Bonds and authorize the execution and delivery of (1) a Special Warranty Deed, (2) Bill of Sale, (3) Termination and Release of Lease, and (4) Satisfaction, Release and Discharge of Indenture in connection with the exercise by the Tenant of its option to purchase the Project.

NOW, THEREFORE, BE IT RESOLVED 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 Lease and Indenture.

Section 2. Sale of the Project; Waiver of Notice. The Issuer is hereby authorized to convey the Project to the Tenant upon receipt by the Issuer of the \$100 to which it is entitled pursuant to Section 15.2 of the Lease. The Issuer hereby waives any additional notice of Tenant's exercise of its option to purchase the Project otherwise required by the Lease, as well as any default thereunder.

Section 3. Recognition of Satisfaction. The governing body of the Issuer hereby recognizes that the Bonds have been surrendered to the Trustee in full satisfaction of the duties and liabilities under the Bonds and the Indenture, extinguishing all indebtedness represented thereby.

Section 4. Authorization of Special Warranty Deed. The Issuer is hereby authorized to execute and deliver its Special Warranty Deed for the real property portions of the Project to the Tenant, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the deed before the governing body on this date.

Section 5. Authorization of Bill of Sale. The Issuer is hereby authorized to execute and deliver its Bill of Sale for the personal property portions of the Project to the Tenant, upon

satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Bill of Sale before the governing body on this date.

Section 6. Authorization of Termination and Release of Lease. The Issuer is hereby authorized to execute and deliver a Termination and Release of Lease (the "Lease Termination") by and between the Tenant, the Issuer and the Trustee, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Lease Termination before the governing body on this date.

Section 7. Authorization of Satisfaction, Release and Discharge of Indenture. The Issuer is hereby authorized to execute and deliver a Satisfaction, Release and Discharge of Indenture (the "Indenture Release") by and between the Issuer and the Trustee, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as Indenture Release before the governing body on this date.

Section 8. Execution of Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release 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 of the governing body of the Issuer shall approve, which approval shall be evidenced by his 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 Resolution, including specifically any applicable UCC-2 Termination Statements. The City Clerk or any Deputy City Clerk of the Issuer are hereby authorized and directed to attest the execution of the Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release, on behalf of the Issuer and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 9. Delivery of Documents. The Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release shall be delivered by the Mayor, City Clerk or other appropriate staff member of the Issuer concurrently upon the satisfaction of the requirements set forth in the Lease and in Section 2 of this Resolution.


Section 10. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Resolution and to carry out, comply with and perform the duties of the Issuer with respect to the Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release and the early redemption, satisfaction and discharge of the Bonds, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 11. Effective Date. This Resolution 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 16th day of February, 2010.

CITY OF WATHENA, KANSAS

[seal]


James McAnerney, Mayor

ATTEST:


James Richardson, City Clerk