

HINKLE ELKOURI LAW FIRM L.L.C.

ORDINANCE NO. 1048

OF

THE CITY OF HORTON, KANSAS

AUTHORIZING THE ISSUANCE OF

\$2,200,000
CITY OF HORTON, KANSAS
INDUSTRIAL REFUNDING AND IMPROVEMENT REVENUE BONDS
SERIES 2003
(HAMMERSMITH MFG. & SALES, INC.)

(Published in *The Horton Headlight* on October 9, 2003)

ORDINANCE NO. 1048

AN ORDINANCE OF THE CITY OF HORTON, KANSAS, AUTHORIZING THE ISSUANCE OF \$2,200,000 AGGREGATE PRINCIPAL AMOUNT OF INDUSTRIAL REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2003 (HAMMERSMITH MFG. & SALES, INC.) FOR THE PURPOSE OF PROVIDING FUNDS TO (1) REFUND ON A CURRENT BASIS CERTAIN INDUSTRIAL REVENUE BONDS, SERIES 1996 (HAMMERSMITH MFG. & SALES, INC.) OF THE CITY AND (2) ACQUIRE, CONSTRUCT AND EQUIP CERTAIN ADDITIONS TO AN EXISTING MANUFACTURING FACILITY; PRESCRIBING THE FORM AND AUTHORIZING EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND THE MORRILL & JANES BANK & TRUST CO., HIAWATHA, KANSAS, AS TRUSTEE; PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A LEASE OF THE PROJECT BY AND BETWEEN THE CITY AND HAMMERSMITH MFG. & SALES, INC.; APPROVING THE FORM OF A GUARANTY AGREEMENT BY AND BETWEEN HAMMERSMITH MFG. & SALES, INC., AS GUARANTOR, AND THE MORRILL & JANES BANK & TRUST CO., HIAWATHA, KANSAS, AS TRUSTEE; APPROVING THE FORM OF AN INDIVIDUAL GUARANTY AGREEMENT BY AND AMONG THE INDIVIDUAL GUARANTORS AND THE MORRILL & JANES BANK & TRUST CO., HIAWATHA, KANSAS, AS TRUSTEE; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT AMONG THE CITY, HAMMERSMITH MFG. & SALES, INC. AND RIEDL FIRST SECURITIES COMPANY OF KANSAS, INC., AS PURCHASER OF THE SERIES 2003 BONDS.

WHEREAS, the City of Horton, Kansas (the "Issuer") is authorized by K.S.A. 12-1740, *et seq.*, and K.S.A. 10-116a, all as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into lease and lease-purchase agreements with any person, firm or corporation for said facilities, to issue revenue bonds for the purpose of paying the cost of any such facilities and to refund any such revenue bonds previously issued; and

WHEREAS, the Issuer has heretofore issued its Industrial Revenue Bonds, Series 1996 (Hammersmith Mfg. & Sales, Inc.) in the original aggregate principal amount of \$2,000,000 (the "1996 Bonds"), for the purpose of providing funds to finance the cost of constructing and equipping certain improvements (the "1996 Project") to an existing manufacturing facility; and

WHEREAS, the Issuer has heretofore and does hereby find and determine that it is desirable that the Issuer issue its industrial refunding and improvement revenue bonds designated "City of Horton, Kansas, Industrial Refunding and Improvement Revenue Bonds, Series 2003 (Hammersmith Mfg. & Sales, Inc.)" in the aggregate principal amount of \$2,200,000 (the "2003 Bonds"), for the purposes of (i) refunding and redeeming on a current basis the 1996 Bonds and (ii) acquiring, constructing and equipping certain additions to an existing manufacturing facility (the "2003 Additions") (the existing manufacturing facilities, 1996 Project and the 2003 Additions being collectively referred to herein as the "Project"); and

WHEREAS, the 2003 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 of the Issuer, nor shall any Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer, but shall be payable solely 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 2003 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 2003 Bonds (1) to execute and deliver a Trust Indenture dated as of October 15, 2003 (the "Indenture"), with the Morrill & Janes Bank & Trust Co., Hiawatha, Kansas, as Trustee (the "Trustee"), for the purpose of issuing and securing the 2003 Bonds as provided therein; (2) to enter into a Lease dated as of October 15, 2003 (the "Lease"), with Hammersmith Mfg. & Sales, Inc., a Kansas corporation (the "Tenant"), pursuant to which the Issuer shall cause the Project to be acquired, constructed and equipped and the entire Project leased to the Tenant in consideration of payments of Basic Rent, Additional Rent and other charges provided for therein; and (3) to execute and deliver a Bond Purchase Agreement (the "Bond Purchase Agreement") by and among the Issuer, the Tenant and Riedl First Securities Company of Kansas, Inc., as purchaser of the Series 2003 Bonds; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HORTON, 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 Refund the 1996 Bonds. The governing body of the Issuer hereby authorizes the current refunding of the 1996 Bonds in accordance with the provisions of the Indenture, 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 1996 Bonds prior to the effective date hereof.

Section 3. Authority to Cause the 2003 Additions to be Acquired, Constructed and Equipped. The governing body of the Issuer hereby declares that the 2003 Additions, if in being,

would promote the welfare of the City of Horton, Kansas, and the Issuer is hereby authorized to cause the 2003 Additions to be acquired, constructed and equipped all in the manner as more particularly described in the Indenture and in the Lease hereinafter authorized.

Section 4. Authorization of and Security for the 2003 Bonds. There are hereby authorized and directed to be issued a single series of bonds to be designated "City of Horton, Kansas, Industrial Refunding and Improvement Revenue Bonds, Series 2003 (Hammersmith Mfg. & Sales, Inc.)" in the aggregate principal amount of \$2,200,000 (the "2003 Bonds"). The 2003 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 2003 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 2003 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of a constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 5. Authorization of the Indenture. The Issuer is hereby authorized to enter into and deliver the Trust Indenture dated as of October 15, 2003, by and between the Issuer and The Morrill & Janes Bank & Trust Co., Hiawatha, Kansas, as Trustee, under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the 2003 Bonds, the Trust Estate created thereby, upon the terms and conditions set forth in said Indenture.

Section 6. Lease of the Project. The Issuer shall cause the Project to be leased by the Issuer to the Tenant pursuant to and in accordance with the provisions of, and is hereby authorized to enter into, the Lease Agreement dated as of October 15, 2003 (the "Lease"), by and between the Issuer and the Tenant.

Section 7. Approval of the Form of Guaranty Agreement. The form of the Guaranty Agreement dated as of October 15, 2003 (the "Guaranty Agreement"), pursuant to which the Tenant, as Guarantor, guarantees to the Trustee, for the benefit of the Issuer and the owners of the 2003 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2003 Bonds, is hereby approved.

Section 8. Approval of the Form of Individual Guaranty Agreement. The form of the Individual Guaranty Agreement dated as of October 15, 2003 (the "Individual Guaranty Agreement"), pursuant to which Dennis L. and Evelyn Hammersmith, Edward A. and Marian Hammersmith, and John D. and Theresa Hammersmith, as Individual Guarantors, guarantee to the Trustee, for the benefit of the Issuer and the owners of the 2003 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2003 Bonds, is hereby approved.

Section 9. Authorization of Bond Purchase Agreement. The Series 2003 Bonds shall be sold and delivered to Riedl First Securities Company of Kansas, Inc., Wichita, Kansas, upon the

terms and subject to the provisions of the Bond Purchase Agreement dated as of October 15, 2003, by and among the Issuer, the Tenant and Riedl First Securities Company of Kansas, Inc., as Purchaser.

Section 10. Authorization of Tax Compliance Agreement. The Issuer is authorized to execute and deliver a Tax Compliance Agreement dated as of October 15, 2003 (the "Tax Compliance Agreement") by and among the Issuer, the Tenant and the Trustee relating to compliance with applicable provisions of the Internal Revenue Code of 1986, as amended, with respect to the 2003 Bonds.

Section 11. Execution of 2003 Bonds and Agreements. The Mayor of the Issuer is hereby authorized and directed to execute the 2003 Bonds and deliver the 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 or Vice Mayor are hereby further authorized and directed to execute and deliver the Indenture, the Lease, the Tax Compliance Agreement and the Bond Purchase Agreement for and on behalf of and as the act and deed of the Issuer, with such minor corrections or amendments thereto as the Mayor or Vice Mayor 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 the Ordinance (including such documents as may be necessary to effect the termination of agreements entered into in connection with the 1996 Bonds). The City Clerk of the Issuer, or any deputy thereof or assistant thereto, is hereby authorized and directed to attest the execution of the 2003 Bonds, the Indenture, the Lease, the Tax Compliance Agreement and the Bond Purchase 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 (including such documents as may be necessary to effect the termination of agreements entered into in connection with the 1996 Bonds).

Section 12. Pledge of the Project. The Issuer hereby pledges the Project to the payment of the 2003 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the 2003 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 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 redemption of the 1996 Bonds, the 2003 Bonds, the Indenture, the Lease, the Tax Compliance Agreement and the Bond Purchase Agreement all as necessary to carry out and give effect to the transactions contemplated hereby and thereby.

Section 14. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the Issuer and publication once in the official newspaper of the Issuer.

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PASSED AND APPROVED by the governing body of the City of Horton, Kansas, as this 6th day of October, 2003.

CITY OF HORTON, KANSAS

By: _____
Dale White, Mayor

ATTEST:

Candy Schmitt, City Clerk

(Seal)