

ORDINANCE NO. 2000-09 SERIES 2000

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOMERSET, KENTUCKY, AUTHORIZING THE ISSUANCE OF UP TO \$7,920,000 PRINCIPAL AMOUNT OF CITY OF SOMERSET, KENTUCKY ADJUSTABLE RATE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2000 (WONDERFUEL, LLC PROJECT) (THE "BONDS"), ISSUED AT THE REQUEST OF WONDERFUEL, LLC, A KENTUCKY LIMITED LIABILITY COMPANY (THE "COMPANY"), FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF AN INDUSTRIAL BUILDING FACILITY LOCATED IN THE LAKE CUMBERLAND COMMERCE COMPLEX, 344 ARTHUR DRIVE IN THE CITY OF SOMERSET, KENTUCKY; AND APPROVING, AUTHORIZING AND ACKNOWLEDGING THE EXECUTION AND DELIVERY OF (1) A LOAN AGREEMENT BETWEEN CITY OF SOMERSET, KENTUCKY AND THE COMPANY; (2) A TRUST INDENTURE BETWEEN BNY WESTERN TRUST COMPANY AND THE CITY OF SOMERSET, KENTUCKY; (3) AN UNDERWRITING AGREEMENT AMONG THE CITY OF SOMERSET, KENTUCKY, THE COMPANY AND BANC OF AMERICA SECURITIES LLC (THE "UNDERWRITER"); AND (4) ANY AND ALL OTHER RELATED DOCUMENTS NECESSARY THERETO.

WHEREAS, the City of Somerset, Kentucky (the "Issuer"), a political subdivision of the Commonwealth of Kentucky, is authorized and empowered by the Industrial Building Revenue Bond Act (Section 103.200 et seq.) of the Kentucky Revised Statutes, (hereinafter referred to as the "Act"), to issue bonds to defray the costs of an industrial building as defined in the Act; and

WHEREAS, Wonderfuel, LLC, a Kentucky limited liability company, organized and existing under the laws of the Commonwealth of Kentucky (the "Company"), will construct an "industrial building" project on a site described in the Loan Agreement (hereinafter identified), if the Issuer will agree to issue industrial building revenue bonds in the aggregate amount of up to \$7,920,000 (the "Bonds") pursuant to the Act, for the purpose of the manufacture of fireplace logs made of petroleum wax and wood waste (the "Project"), which will result in the employment of a number of workers and promote the economic development of the area; and

WHEREAS, under the terms of the proposed Loan Agreement (the "Loan Agreement") dated as of May 1, 2000, between the Issuer and the Company, the Issuer will receive payments from the

Company sufficient to pay the principal and interest requirements of the Bonds, and which payments shall be pledged, together with the Loan Agreement itself, as security for the payment of the principal of and interest on the Bonds; and

WHEREAS, the Issuer has found and determined that the operation of the proposed Project will tend to relieve existing conditions of unemployment in the area and will otherwise promote the general welfare and economic development of the City of Somerset and all of its citizens;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SOMERSET AS FOLLOWS:

1. **AUTHORIZATION OF BONDS.**

For the purpose of paying the costs, not otherwise provided, of the Project, the Issuer hereby authorizes and approves the issuance of the City of Somerset, Kentucky Adjustable Rate Industrial Building Revenue Bonds, Series 2000 (Wonderfuel, LLC Project) in the forms attached to the Indenture (the "Bonds") dated as of the date of delivery of the Bonds, in the principal amount of up to Seven Million Nine Hundred Twenty Thousand and no/100 Dollars (\$7,920,000) as more fully provided for in the Trust Indenture hereinafter approved. The Bonds shall mature on a date not to exceed beyond May 1, 2025 and shall bear interest from the date of delivery to the purchaser(s) thereof as provided in the Trust Indenture with a maximum rate of interest of 12%. The principal and interest requirements of the Bonds are specified in the Trust Indenture.

2. **APPROVAL AND AUTHORIZATION OF EXECUTION OF VARIOUS DOCUMENTS; LOAN AGREEMENT; TRUST INDENTURE; AND UNDERWRITING AGREEMENT.**

The following documents in the respective forms attached to this Ordinance are hereby approved, subject to such minor changes, insertions or omissions as may be approved by the Mayor, such approval to be conclusively evidenced by his execution of said documents, in order to effectuate the purposes of this Ordinance; and the Mayor is hereby authorized to execute and acknowledge the same for and on behalf of the Issuer; and the Clerk of the City Council is authorized to attest same and to affix thereto the corporate seal of the Issuer. Said documents are hereby ordered to be filed in the office of the Clerk of

the City Council, labeled respectively, Exhibits A, B and C, as identified below, and each of said documents is ordered to be recorded with this Ordinance in the official records of the Issuer:

(a) The Loan Agreement (the "Loan Agreement"), dated as of May 1, 2000, between the Issuer and the Company (Exhibit A).

(b) The Trust Indenture (the "Indenture"), dated as of May 1, 2000, between the Issuer and BNY Western Trust Company, Los Angeles, California, as Trustee (Exhibit B).

(c) The Underwriting Agreement between the Issuer, the Company and Banc of America Securities LLC, as the Underwriter, providing for the sale of the Bonds at the aggregate price of 100% of par and upon the respective terms and conditions set forth in the Underwriting Agreement. The approval of said Agreement by the Company and a separate attached letter from the Company to the Issuer evidences the request of the Company that the Bonds be sold at private sale upon a negotiated basis as authorized by KRS 103.230 (Exhibit C).

### 3. DISBURSEMENT OF PROCEEDS OF BONDS.

The Company and the Trustee are authorized to carry out the procedure specified in the Indenture for the supervision of the acquisition and installation of the Project and for the payment from time to time of the costs of such acquisition and installation and related expenses as same progresses.

### 4. REVENUES OF THE PROJECT.

The revenues and other payments to be received by the Issuer under the terms of the Loan Agreement are determined to be sufficient to pay the principal of and interest on the Bonds as the same become due and payable and all said payments and other payments received under the Loan Agreement and all other revenues arising out of or in connection with the Loan Agreement are hereby pledged to secure such payments and revenues, and in addition, for such other purposes as are more fully specified in the Indenture.

### 5. DESIGNATION OF TRUSTEE.

BNY Western Trust Company, Los Angeles, California, is hereby designated as a corporate trustee under the Indenture and also as the paying agent and bond registrar for the Bonds.

6. EXECUTION OF BONDS.

The Bonds shall be executed in the manner provided in the Indenture and shall be delivered to the Trustee for proper authentication and delivery by the Trustee to the purchasers thereof with instructions to that effect, as provided in the Indenture.

7. MAYOR AND OTHER OFFICIALS OF ISSUER TO TAKE ANY OTHER NECESSARY ACTION.

Pursuant to the Constitution and laws of the Commonwealth of Kentucky, the Mayor, the Clerk of the City Council and all other appropriate officials of the Issuer are hereby authorized and directed to take any and all further action and to execute and deliver all other documents as may be necessary to effect the issuance and delivery of the Bonds.

8. BONDS LIMITED OBLIGATION OF ISSUER.

THE BOND SHALL NOT BE A GENERAL OBLIGATION OF THE ISSUER BUT A LIMITED OBLIGATION PAYABLE SOLELY FROM THE AMOUNTS PAYABLE UNDER THE LOAN AGREEMENT AND OTHER REVENUES OF THE PROJECT. NEITHER THE ISSUER, THE COMMONWEALTH OF KENTUCKY NOR ANY OTHER POLITICAL SUBDIVISION OF THE COMMONWEALTH SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON SUCH BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES OF THE PROJECT PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, OR PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO.

9. COMPLIANCE WITH FEDERAL ARBITRAGE REQUIREMENTS.

The Issuer covenants that sums derived from the proceeds of the Bonds shall not be invested in investments in a manner which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 103 of the Internal Revenue Code of 1986 as amended and the applicable regulations thereunder.

Prior to or at the time of delivery of the Bonds the Mayor, the Chief Financial Officers and/or the Clerk of the City Council who are jointly and severally charged with responsibility for the issuance of the Bonds are authorized to execute the appropriate certification with reference to the matters required and contemplated by such statute and regulations, setting out all known and contemplated facts concerning the anticipated expansion, improvement, construction and equipping, expenditures and investments, including the execution of necessary and/or desirable certifications contemplated by the aforesaid regulations in order to assure that interest on the Bonds will be exempt from all federal income taxes and that the Bonds will not be treated as "arbitrage bonds." Such officer(s) is (are) entitled to rely upon information furnished by the Company in making such certifications and representations unless they, or either of them, shall be aware of any fact or circumstances which would cause such certifications or representations to be questioned.

10. ELECTION.

The City of Somerset hereby elects to have the provisions of Section 144(a)(4) of the Internal Revenue Code of 1986 (the "Code") and Treasury Regulation Section 1.103-19(b) (2) apply to the Bonds in determining their treatment as "qualified small issue bonds," as defined in Section 144(a) of the Code.

11. SEVERABILITY CLAUSE.

If any section, paragraph, clause or provision of this Ordinance shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.

12. CAPTIONS OF CLAUSE.

The captions of this Ordinance are for convenience only and are not to be construed as part of this Ordinance nor as defining or limiting in any way the scope or intent of the provisions hereof.

To the extent any resolution, ordinance or part thereof is in conflict, the provisions of this Ordinance shall prevail.

13. EFFECTIVE DATE OF ORDINANCE.

This Ordinance shall take effect from and after its adoption, approval and publication of Notice of Passage hereof, including the title of this Ordinance, which publication is hereby approved by the Clerk of the City Council pursuant to KRS 67.077 and KRS 103.210.

INTRODUCED AND GIVEN FIRST READING ON MARCH 27, 2000.

GIVEN SECOND READING, PASSED AND ENACTED ON APRIL 10, 2000.

CITY OF SOMERSET, KENTUCKY

By J.P. Wiles  
J.P. Wiles, Mayor

Attest:

David Godsey  
David Godsey, Clerk of the City Council

(Seal of Issuer)

I, David Godsey, hereby certify that I am the duly appointed and qualified Clerk of the City Council of the City of Somerset, Kentucky, that the foregoing is a true copy of an Ordinance duly enacted by the City Council of said Issuer, signed by the Mayor of said Issuer, and attested under seal by me as Clerk of the City Council, at a properly convened term and session of said City Council, held on April 10, 2000, as shown by official records in my custody and under my control, that Notice of Passage of said Ordinance has been ordered to be published as required by law (KRS 67.077 and KRS 103.210), that said Ordinance appears as a matter of public record in Ordinance Book No 37, that attached hereto are true copies of the documents approved therein, and that copies of such documents have also been duly filed and recorded in the official records of the City Council of the City of Somerset.

IN WITNESS WHEREOF, I have hereto set my hand as Clerk of the City Council and the Seal of the Issuer this 10 day of April, 2000.

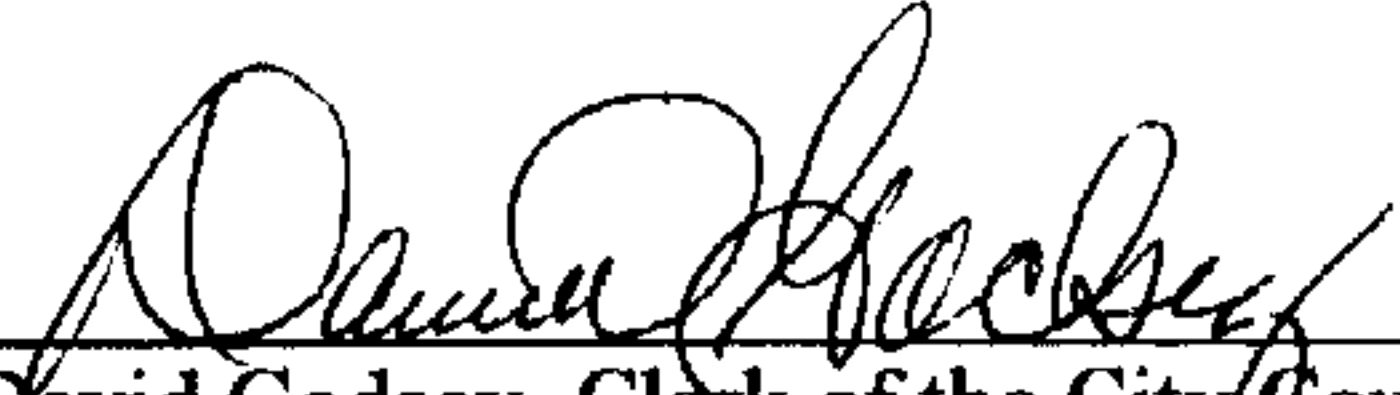
David Godsey  
David Godsey, Clerk of the City Council

(Seal of Issuer)

CERTIFICATION

I, the Clerk of the City Council of the City of Somerset, Kentucky, do hereby certify that the foregoing is a true, correct copy of Ordinance No. ~~200-03~~ Series 2000, relating to the issuance of the City of Somerset, Kentucky, Adjustable Rate Industrial Building Revenue Bonds, Series 2000 (Wonderfuel, LLC Project), enacted by the City Council of the City of Somerset at its meeting held on April 10, 2000, and is in full force and effect.

Witness my hand this 10 day of April, 2000.

  
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David Godsey, Clerk of the City Council

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March 21, 2000