

ORDINANCE NO. 290

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY OF WATHENA, KANSAS, TO ACQUIRE A TRACT OF LAND IN DONIPHAN COUNTY, KANSAS, FOR INDUSTRIAL DEVELOPMENT PURPOSES; AUTHORIZING THE PAYMENT OF THE COST OF CONSTRUCTION AND EQUIPPING A SKILLED NURSING HOME FACILITY THEREON; AUTHORIZING AND DIRECTING THE ISSUANCE OF \$650,000.00 PRINCIPAL AMOUNT OF INDUSTRIAL REVENUE BONDS OF SAID CITY FOR THE PURPOSE OF PAYING THE COST OF PURCHASING SUCH LAND AND CONSTRUCTION AND EQUIPPING SUCH FACILITY; PRESCRIBING THE FORM AND DETAILS OF SAID INDUSTRIAL REVENUE BONDS; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUES OF SUCH FACILITY FOR THE PURPOSES AUTHORIZED BY LAW; PLEDGING SAID FACILITY AND THE NET REVENUES FROM SAID FACILITY TO SECURE SUCH BONDS; PROVIDING FOR A TRUSTEE AND PRESCRIBING THE POWERS AND DUTIES OF SUCH TRUSTEE; PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A LEASE AND AGREEMENT BY AND BETWEEN SAID CITY AS LANDLORD AND C M CORPORATION AS TENANT.

WHEREAS, the City of Wathena, Kansas, a city of the third class, hereinafter sometimes referred to as the "City," desires to promote, stimulate and develop the general economic welfare and prosperity of the City of Wathena, Kansas, and its environs and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and,

WHEREAS, pursuant to the provisions of K.S.A. Sections 12-1740 to 12-1749, inclusive, and all acts amendatory thereof or supplemental thereto, the City is authorized to issue industrial revenue bonds of the City, and it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that industrial revenue bonds of the City in the principal amount of \$650,000.00 be authorized and issued, for the purpose of providing funds to pay the cost of acquiring certain real estate in Doniphan County, Kansas, and purchasing, constructing and equipping a skilled nursing home facility thereon to be leased to C M Corporation, an Iowa corporation authorized and qualified to do business in the State of Kansas; such real estate, building and equipment hereinafter sometimes referred to as the "Facility";

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

SECTION 1. The City of Wathena, Kansas, is hereby authorized to acquire the following described real estate situated in Doniphan County, Kansas:

A tract of land in the Northeast Quarter of the Northwest Quarter of Section 28, Township 3, Range 22, Doniphan County, Kansas, containing 2.30 acres more or less, and being particularly described as follows: Beginning at a point which is 490 feet South and 130 feet West (North 89 degrees 44 minutes West) of the Northeast Corner of the Northwest Quarter aforesaid, thence South 123.5 feet, thence West (North 89 degrees 44 minutes West) 20.0 feet, thence South 140.1 feet, thence South (South 77 degrees 26 minutes West) 228.5 feet to the Easterly right-of-way line of U.S. Highway No. 36, thence following such right-of-way line (for the three calls following) North (North 35 degrees 26 minutes West) 125.0 feet, thence South (South 54 degrees 34 minutes West) 15.0 feet, thence North (North 35 degrees 26 minutes West) 218.5 feet to a point, thence North (North 54 degrees 34 minutes East) 50.0 feet, thence East (South 89 degrees 44 minutes East) 268.6 feet to a point, thence North 15 feet, thence East (South 89 degrees 44 minutes East) 145.0 feet to the point of beginning, and all according to plat of survey of Williamson Engineering and Surveying completed June 13, 1972.

subject to easements of record, and to pay the cost of purchasing, constructing and equipping a skilled nursing home facility thereon in accordance with the provisions of the Lease and Agreement dated as of July 1, 1972, by and between the City and said C M Corporation (sometimes referred to hereafter as the "Lease") hereinafter authorized, all at an amount which will not exceed the cost of \$650,000.00 to the City.

SECTION 2. For the purpose of providing funds to pay the cost of acquiring said real estate and of purchasing, constructing and equipping a facility to be leased to C M Corporation (sometimes referred to hereafter as the "Tenant"), there shall be issued and hereby are authorized and directed to be issued a series of Industrial Revenue Bonds, Series 1972-A of the City of Wathena, Kansas, in the principal amount of \$650,000.00. Said bonds herein authorized, hereinafter sometimes referred to as the "Bonds" or the "Revenue Bonds," and all interest thereon shall be paid solely from the money and revenue received from the Facility and not from any other fund or source. The City hereby pledges the Facility and the net earnings therefrom to the payment of the Bonds and the interest thereon.

SECTION 3. Said Industrial Revenue Bonds, Series 1972-A of the City of Wathena, Kansas, shall consist of 130 bonds, numbered from 1 to 130, inclusive, in denomination of \$5,000.00 each maturing in the years 1975 to 1990, inclusive. All of the Bonds shall be dated July 1, 1972, and said Bonds shall be numbered, shall bear interest, and shall become due serially on July 1 in each year as follows:

BOND NOS. (Incl.)	AMOUNT	BASE COUPON RATE	SUPPLEMENTAL COUPON RATE	TOTAL INTEREST RATE	MATURITY DATE
1 - 14	\$20,000.00	6-1/2%	1-1/2%	8%	7-1-75
5 - 9	25,000.00	6-1/2%	1-1/2%	8%	7-1-76
10 - 14	25,000.00	6-3/4%	1-1/4%	8%	7-1-77
15 - 19	25,000.00	6-3/4%	1-1/4%	8%	7-1-78
20 - 25	30,000.00	7 %	1 %	8%	7-1-79
26 - 31	30,000.00	7 %	1 %	8%	7-1-80
32 - 38	35,000.00	7-1/4%	3/4%	8%	7-1-81
39 - 45	35,000.00	7-1/4%	3/4%	8%	7-1-82
46 - 53	40,000.00	7-1/2%	1/2%	8%	7-1-83
54 - 61	40,000.00	7-1/2%	1/2%	8%	7-1-84
62 - 70	45,000.00	7-3/4%	1/4%	8%	7-1-85
71 - 80	50,000.00	7-3/4%	1/4%	8%	7-1-86
81 - 91	55,000.00	8 %	--	8%	7-1-87
92 - 103	60,000.00	8 %	--	8%	7-1-88
104 - 116	65,000.00	8 %	--	8%	7-1-89
117 - 130	70,000.00	8 %	--	8%	7-1-90

Said Bonds shall bear interest from date, payable January 1, 1973, and thereafter semiannually on July 1 and January 1 in each year until the principal is paid thereon.

At the option of the City, Bonds numbered 62 to 130, inclusive, maturing July 1, 1985, and thereafter, may be called for redemption and payment in whole or in part, in inverse numerical order, on July 1, 1984, or on any interest payment date thereafter at the par value thereof, plus accrued interest thereon to the date fixed for redemption and payment, together with a premium equal to five per cent (5%) of the principal amount of the Bonds so called for redemption and payment (\$250.00 per \$5,000.00); provided, that no such call shall reduce the BOND RESERVE ACCOUNT to less than \$100,000.00.

All of the Bonds of this issue shall be subject to redemption and payment at the option of said City on any interest payment date, at par and accrued interest to date of redemption, in the event that all or substantially all of the Facility subject to said Lease be condemned by any authority having the power of eminent domain, or in the event all or substantially all of such Facility is damaged or destroyed by fire or other casualty.

Notice of any call for redemption and payment shall be given by one publication in the official City paper of the City of Wathena, Kansas, and in the official state paper of the State of Kansas, at least thirty (30) days prior to the date fixed for redemption and payment. Said notice shall specify bond numbers of bonds to be redeemed and paid and such notice shall also be mailed by registered or certified mail not less than thirty (30) days prior to the date fixed for redemption and payment to Hanifen, Imhoff & Samford, Inc., 1624 Tremont Place, Denver, Colorado 80202. Interest shall cease on any of said Bonds so called for redemption and payment as of the date fixed for redemption and payment, provided funds are available to pay the same according to their terms.

Said Bonds and interest coupons to be attached thereto as hereinafter provided shall be payable in lawful money of the United State of America at the office of the Trustee and Paying Agent, The First National Bank of Manhattan, Manhattan, Kansas.

SECTION 4. Said Bonds and each of them shall be executed for and on behalf of the City by the Mayor and attested by the City Clerk, with the seal of the City affixed. Interest coupons shall be attached to said Bonds representing the interest to mature thereon, and said interest coupons shall bear the facsimile signatures of the Mayor and City Clerk of said City. All of said Bonds shall be registered by the signature of the City Clerk in substantially the form hereinafter set forth and such registration certificate shall be attested by the seal of the City; and all the Bonds shall be authenticated by the manual signature of an authorized officer of the Trustee and Paying Agent.

Interest due on each interest paying date shall be evidenced by two separate coupons on each bond, one of which coupons shall be known as the base coupon and the other shall be known as the supplemental coupon, except that interest due on Bonds No. 81 through 130, inclusive, shall be evidenced only by one coupon known as the "base coupon" and no supplemental coupon shall be attached to said Bonds. All base and supplemental coupons shall bear separate interest as set out in Section 3 of this ordinance, which interest shall total the rate shown as Total Interest Rate in said Section. All base coupons for each bond shall be printed and attached as one group of coupons. All supplemental coupons for each bond shall be printed and attached as a separate group of coupons and arranged in such manner that the supplemental coupons may be detached from the Bonds before any base coupons are detached, which detachments are hereby specifically authorized and shall not affect the validity of the Bonds or the coupons or the obligations of the City to pay principal and to pay the amount of such interest to the bearer of each coupon separately. The numbers of the base coupons shall be preceded by the prefix "A-" (e.g., A-17), and the numbers of the supplemental coupons shall be preceded by the prefix "B-" (e.g., B-17).

SECTION 5. Each of said Bonds and interest coupons and the certificates attached thereto shall be in substantially the following form:

No. \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF KANSAS  
COUNTY OF DONIPHAN  
CITY OF WATHENA

\$5,000.00

INDUSTRIAL REVENUE BOND  
SERIES 1972-A

KNOW ALL MEN BY THESE PRESENTS: That the City of Wathena in the County of Doniphan, State of Kansas, for value received, hereby promises to pay, out of the revenues hereinafter specified, to the bearer, the sum of

FIVE THOUSAND DOLLARS

in lawful money of the United States of America on the first day of July, 19\_\_\_\_, and to pay interest thereon from the date hereof at the rate of \_\_\_\_\_ per cent (\_\_\_\_%) per annum payable January 1, 1973, and thereafter semiannually on July 1 and January 1 in each year after the date hereof until the said principal sum shall have been paid, upon presentation and surrender of the interest coupons hereto attached, bearing the facsimile signatures of the Mayor and the City Clerk of said City as said coupons severally become due, both principle of and interest on this Bond being payable at the offices of The First National Bank of Manhattan, Manhattan, Kansas. Interest falling due on each interest payment date is represented by two interest coupons, one in the amount of \$\_\_\_\_\_ known as the "base" or "A" coupon and the other in the amount of \$\_\_\_\_\_ known as the "supplemental" or "B" coupon. Either of the two coupons scheduled to mature on each of the several interest payment dates may be presented for payment and will be paid separately and apart from the other coupon representing the interest due on such interest payment date. (The foregoing two sentences shall be omitted in Bonds No. 81 through 130, inclusive.)

THIS BOND is one of an authorized series of 130 bonds of like date and tenor, except as to number, interest rate, privilege of redemption and maturity, aggregating the principal amount of \$650,000.00, numbered from 1 to 130, inclusive, becoming due in the years 1975 to 1990, inclusive, being in denomination of \$5,000.00 each, all authorized by Ordinance No. 290 of said, issued for the purpose of providing funds to pay the cost of acquiring certain real estate, and of constructing and equipping a skilled nursing home facility thereon (said real estate building and equipment hereinafter sometimes referred to as the "Facility") to be leased to C M Corporation, an Iowa corporation (hereinafter sometimes referred to as the "Tenant"), by the authority of and in conformity with the provisions, restrictions, and limitations of the Constitution and Statutes of the State of Kansas, including K.S.A. Sections 12-1740 to 12-1749, inclusive, and all amendments thereof and acts supplemental thereto, and all other provisions of the laws of said State applicable thereto; and this bond and all interest and premium, if any, hereon are to be paid by said City of Wathena, Kansas, solely and only from the money and revenue received from the Facility and not from any other fund or source. Pursuant to the provisions of said statute, the governing body of the City has pledged said Facility and the net earnings therefrom to the payment of the series of Bonds of which this Bond is a part, and the interest thereon. Reference is hereby made to the Ordinance aforesaid and to said Lease from the City to C M Corporation for a description of the covenants of the City with respect to the collection, segregation and application of the revenues of said Facility, the nature and extent of the security of said Bonds, the rights, duties and obligations of the City and of the Trustee with respect thereto and the rights of the holders thereof.

At the option of the City, bonds numbered 62 to 130, inclusive, of the series of BONds of which this bond is one, may be called for redemption and payment in whole or in part in inverse numerical order, on July 1, 1984, or on any interest payment date thereafter at the par value thereof, plus accrued interest thereon to the date fixed for redemption and payment, together with a premium equal to five per cent (5%) pf the principal amount of the bonds so called for redemption and payment (\$250.00 per \$5,000.00); provided, that no such call shall reduce the BOND RESERVE ACCOUNT to less than \$100,000.00.

Each of the bonds of the Series of which this bond is one is subject to redemption and payment prior to their respective maturities on any interest payment date, in the event that all or substantially all of the Facility leased to said enant be condemned by any authority having the power of eminent domain, or in the event all or substantially all of said Facility be damaged or destroyed by fire or other casulty, at the par value thereof, plus accrued interest thereon to date of redemption.

Notice of the City's intention to redeem and pay said bonds, specifying the numbers of the bonds to be redeemed and paid shall be given by registered or certified mail to Hanifen, Imhoff & Samford, Inc., 1624 Tremont Place, Denver, Colorado 80202, the original underwriters of said Bonds, not less than thirty (30) days prior to the date fixed for redemption and payment and by one publication in the official city paper of the City of Wathena, Kansas, and in the official state paper of the State of Kansas, not less than thirty (30) days before the date fixed for redemption and payment. Interest shall cease on any of said Bonds so called for redemption and payment as of the date fixed for redemption and payment, provided funds are available to pay the same according to their terms.

The Ordinance aforesaid provides that upon fulfillment of certain conditions, additional bonds may be issued from time to time pursuant to supplemental ordinances, and all such bonds will be equally and ratably secured by the pledge and covenants made therein, and will be a parity in all respects with the Bonds of this issue, except as otherwise may be expressly provided or permitted.

This Bond shall not be valid for any purpose until the Certificate of Authentication hereon shall have been signed by the Trustee.

AND IT IS HEREBY DECLARED AND CERTIFIED that all acts, conditions and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas and the ordinances of the City of Wathena.

IN WITNESS WHEREOF, the City of Wathena, in the State of Kansas, by its governing body, has caused this bond to be signed by its Mayor and attested by its City Clerk, and its corporate seal to be hereto affixed and the interest coupons hereto attached to be signed with the facsimile signatures of said officers, and this bond to be dated this first day of July, 1972.

\_\_\_\_\_  
Mayor

(S E A L)

ATTEST:

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

(FORM OF COUPON)

Coupon No. \_\_\_\_\_ The first interest coupon being )  
payable January 1, 1973. ) Bond No. \_\_\_\_\_ )  
) On the First day of (July) (January) )  
19\_\_ (unless the Bond to which this coupon is ) July 1, )  
attached shall have been previously called for ) January 1, )  
redemption and payment duly provided for) the )  
City of Wathena, Kansas, will pay bearer, )  
solely from the money and revenue received )  
from the Facility described in the Bond to ) 19\_\_ )  
which this coupon is attached, and not from )  
any other fund or osurce \_\_\_\_\_ )  
Dollars (\$\_\_\_\_) in lawful money of the )  
United States of America, at The First )  
National Bank of Manhattan, Manhattan, ) City of )  
Kansas, being six months' interest on its ) Wathena, Kansas )  
Industrial Revenue Bond, Series 1972-A, )  
dated July 1, 1972, No. \_\_\_\_\_ )  
) Industrial Revenue )  
(facsimile) ) Bond )  
Mayor )  
Attest: ) Series 1972-A )  
) )  
(facsmilie) )  
\_\_\_\_\_ )  
City Clerk ) \$ \_\_\_\_\_ )

CITY CLERK'S REGISTRATION CERTIFICATE

STATE OF KANSAS )  
) ss:  
COUNTY OF DONIPHAN)

I, the undersigned, City Clerk of the City of Wathena, Kansas, hereby certify that the within Industrial Revenue Bond, Series 1972-A, of the City of Wathena, Kansas, has been duly registered in my office according to law.

WITNESS my hand and official seal this \_\_\_\_\_, 1972.

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

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THIS BOND is one of those authorized and described in the within mentioned Ordinance No. 290 of the City of Wathena, Kansas.

THE FIRST NATIONAL BANK OF  
MANHATTAN  
Manhattan, Kansas

By \_\_\_\_\_  
Authorized Officer



SECTION 6. The Mayor and City Clerk are hereby authorized and directed to prepare and execute in the manner hereinbefore specified the Industrial Revenue Bonds, Series 1972-A, of the City herein authorized, and to deposit said Bonds with the Trustee. Trustee is authorized to authenticate and to deliver said Bonds to Hanifen, Imhoff & Samford, Inc., the underwriters thereof, on payment of the purchase price to the Trustee.

SECTION 7. So long as the Lease and Agreement, referred to more specifically in Section 14 of this Ordinance, is in effect and not in default, one or more Series of additional Industrial Revenue Bonds of the City may be authenticated and delivered upon original issuance for the purpose of providing extensions or additions to, or improvements of, the Facility. The bonds of each such series shall be prepared and executed in substantially the form and manner provided for in this Ordinance for the Series 1972-A Bonds. Said bonds shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of the sale of such bonds, the bonds shall be delivered by the Trustee to the purchaser thereof, but only upon receipt by the Trustee of:

(a) A copy of the supplemental ordinance, duly certified by the City Clerk, authorizing such bonds and providing the terms thereof;

(b) An original executed counterpart of amendments or supplements to the Lease and Agreement, more specifically described in Section 14 of this Ordinance, and which amendments or supplements shall expressly provide that, for all purposes, the property leased thereunder shall include any land, buildings, machinery, equipment or other items being paid for out of the proceeds of any additional bonds;

(c) A written legal opinion by an attorney or firm of attorneys of recognized standing on the subject of municipal bonds, to the effect that the issuance of such additional bonds and the execution thereof have been duly authorized in accordance with law, that all conditions precedent to the delivery thereof have been fulfilled, and that the issuance of the additional bonds will not affect the exemption from federal income taxation of the interest on the Bonds herein authorized;

(d) Proof satisfactory to the Trustee that C M Corporation and its subsidiaries had, for the immediately preceding twelve-(12) month period, net the earnings from the Facility before taxes of at least 140% of the average combined principal and interest requirements on such additional bonds being issued together with the Series 1972-A Bonds and any additional bonds theretofore issued under this Section 7; and

(e) Evidence satisfactory to the Trustee that C M Corporation is not in default in the payment of base rent and additional rent due under the Lease and is otherwise not in default in any way thereunder.

Each series of additional bonds issued pursuant to this Section 7 shall be equally and ratably secured under this Ordinance with, and shall in all respects be on a parity with, the Series 1972-A Bonds and all other series of additional bonds, if any, issued pursuant to this Section 7, without preference, priority or distinction of any bonds or coupons over any other except as expressly provided in or permitted by this Ordinance. In the event of the issuance of any such additional bonds, the City may pledge the Facility and the net earnings therefrom to the payment of such additional bonds and the interest

thereon, provided the City also pledges the additional facilities paid for out of the proceeds of the additional bonds to the payment of the Bonds and the interest thereon.

SECTION 8. There is hereby authorized and ordered to be established in the hands of The First National Bank of Manhattan, Manhattan, Kansas, hereby designated as the "C M CORPORATION CONSTRUCTION FUND," hereinafter referred to as the "CONSTRUCTION FUND." From the proceeds of the sale of the Bonds the Trustee shall transfer any accrued interest received on sale of the Bonds to the PRINCIPAL AND INTEREST ACCOUNT hereinafter created; and shall also transfer from the Bond proceeds to the PRINCIPAL AND INTEREST ACCOUNT the sum of \$52,000.00 for the purpose of paying interest during construction of the Improvements defined in the Lease. The balance of the Bond proceeds shall be deposited in said CONSTRUCTION FUND. The Trustee shall make disbursements from said CONSTRUCTION FUND in accordance with this Ordinance and the Lease and Agreement.

The Trustee is hereby authorized to pay from the CONSTRUCTION FUND on orders signed by the Project Manager designated in the Lease and Agreement such sums as may be necessary to cover the cost of the real estate, payments required to be made under the construction contracts, architects' and engineers' fees, and miscellaneous expenses covering the completion of the Facility, including all necessary equipment for said Facility, and such sums as may be necessary to pay fiscal fees, attorneys' fees, and miscellaneous expenses covering issuance of the Bonds. The Trustee may rely upon orders of the Project Manager and shall not be required to determine whether there has been a proper application of funds. Following the completion of the Facility and the payment of all construction expense, which completion and payment shall be evidenced by the certificate of the Project Manager, any balance remaining in the CONSTRUCTION FUND shall be transferred by the Trustee to the PRINCIPAL AND INTEREST ACCOUNT hereafter created.

SECTION 9. There is hereby authorized and ordered to be established in the hands of the Trustee two additional separate accounts as follows:

- (1) "C M CORPORATION PRINCIPAL AND INTEREST ACCOUNT, ACCOUNT NO. 1, " hereinafter referred to as the "PRINCIPAL AND INTEREST ACCOUNT" or as "ACCOUNT NO. 1," and
- (2) "C M CORPORATION BOND RESERVE - EMERGENCY RESERVE ACCOUNT, ACCOUNT NO. 2," hereinafter referred to as the "BOND RESERVE - EMERGENCY RESERVE ACCOUNT," or as "ACCOUNT NO. 2."

The City covenants and agrees that from and after the delivery of any of the Revenue Bonds herein authorized, and continuing so long as any of said Bonds shall remain outstanding, said City will maintain said accounts and each of them with the Trustee. All monies due under the Lease between the City and C M Corporation, dated as of July 1, 1972, shall be paid to and deposited with said The First National Bank of Manhattan, Manhattan, Kansas, as Trustee and shall be applied and allocated by said Trustee when received so long as any of the Bonds herein authorized remain outstanding and unpaid, as follows:

- (a) From base rental due under the Lease, there shall first be credited to and deposited in said PRINCIPAL AND INTEREST ACCOUNT beginning June 15, 1973, and continuing on the fifteenth day of each month thereafter monthly amounts which shall be equal to a pro rata portion of the next maturing interest requirements; and beginning June 15, 1974, and continuing on the fifteenth day of each month thereafter, from base rental due under the Lease there shall be credited to and deposited in said PRINCIPAL AND INTEREST ACCOUNT monthly amounts which shall be equal to a pro rata

portion of the next maturing principal on the Bonds. In determining such pro rata amounts, the amount of any other monies in the PRINCIPAL AND INTEREST ACCOUNT, such as accrued interest received on the sale of the Bonds, or investment income, may be taken into consideration. The monies in the PRINCIPAL AND INTEREST ACCOUNT shall be used solely and only to pay interest and principal on the Bonds when due or to retire all the Bonds prior to maturity when properly subject to call and when cash funds are available to pay all outstanding Bonds in full plus interest and call premium, if any.

(b) The Trustee shall credit to and deposit in the BOND RESERVE - EMERGENCY RESERVE ACCOUNT all remaining base rent received under the Lease not required for the deposits under subsection (a) above. Monies in the BOND RESERVE - EMERGENCY RESERVE ACCOUNT shall be used, to the extent necessary, to prevent default in the payment of principal or interest on the Bonds only when there are not sufficient monies available in the PRINCIPAL AND INTEREST ACCOUNT to prevent default thereon, and the Trustee is specifically authorized to transfer monies from the BOND RESERVE - EMERGENCY RESERVE ACCOUNT to the PRINCIPAL AND INTEREST ACCOUNT at the times and in the amounts as may be required to prevent such default or to provide the funds required for the next succeeding interest or principal payment date, as the case may be. Amounts

credited to and deposited in said BOND RESERVE - EMERGENCY RESERVE ACCOUNT shall also be expended and used by the Trustee for emergency repairs and replacements of the Facility when no other funds are available and also may be used in whole or in part to call and pay outstanding BONDS; provided that, no such call shall reduce the amount in the BOND RESERVE - EMERGENCY RESERVE ACCOUNT to less than \$100,000.00.

SECTION 10. Monies in the CONSTRUCTION FUND; the PRINCIPAL AND INTEREST ACCOUNT and the BOND RESERVE - EMERGENCY RESERVE ACCOUNT shall be invested by the Trustee, on instructions from Tenant, in obligations of the United States Government, in obligations of an agency of the United States Government, in obligations guaranteed by the United States Government or an agency thereof, or in Certificates of Deposit of a state or national bank, including Trustee Bank, in such amounts and maturing at such times as shall reasonably provide for monies to be available when required in said accounts. All income from investment of the CONSTRUCTION FUND, the PRINCIPAL AND INTEREST ACCOUNT and the BOND RESERVE - EMERGENCY RESERVE ACCOUNT shall accrue to and become a part of and transfer to said PRINCIPAL AND INTEREST ACCOUNT. All income from investments shall be credited to base rent and reduce Tenant's obligation to the extent thereof as provided in the Lease. In determining the amount held in any account under the provisions of this Ordinance, obligations shall be valued at their principal par value or at their then redemption value, whichever is lower.

SECTION 11. So long as any of the principal of and interest on any of the Revenue Bonds herein authorized remain outstanding and unpaid, the City covenants with each of the purchasers and owners of said Bonds as follows:

- (a) The City will comply fully with all the terms, provisions and conditions of the Lease which require

performance by, or impose duties on the City that it will not permit any default to occur on the part of the City; that it will fully and promptly enforce all of the terms, provisions and conditions of the Lease which require performance by, or impose duties on C M Corporation, and in the event of the occurrence of a default, as defined in the Lease, will exercise all rights and remedies conferred by the Lease for the full and complete protection of the security and rights of the bondholders and to the extent permitted by the Lease, will use its best efforts to procure a new tenant or tenants for the leased property under lease provisions which will provide funds sufficient in amount to make the rental payments and other charges which C M Corporation is required to make under the Lease dated as of July 1, 1972. If the City is unable to procure a new tenant who will enter such a lease, the City may, with the consent of the holders of not less than sixty-six and two thirds per cent ( $66\frac{2}{3}\%$ ) in principal amount of the Bonds herein authorized at the time outstanding, sell the Facility leased at a price not less than the amount of then outstanding Revenue Bonds, plus interest then unpaid.

(b) The City will enforce collection of the rental payments and other charges in the amounts and at the times set forth in the Lease authorized hereby and will not reduce or cause or permit to be reduced the rental payments and other charges fixed, established and required by the Lease, nor change or alter the

time or times when the same are due and payable under said Lease, all the foregoing at no cost to the City.

(c) That until payment of all the Bonds and interest thereon has been duly made or provided for, the City will not consent to any assignment or other transfer, in whole or in part, of the interest of Tenant in the Lease, except as provided for in the Lease, nor any change, amendment, modification or termination of said Lease which will in any manner affect adversely the rights, remedies or interest of the holders of the Bonds

(d) The City will not issue any other obligations payable from payments made by Tenant pursuant to the Lease, nor voluntarily create or cause to be created any debts, lien, pledge, assignments, encumbrance, or any other charge on said payments or on the property subject to said Lease, but nothing herein shall prevent the issuance of additional bonds in the manner and on the conditions set forth in Section 7 of this Ordinance.

(e) The City will cause C M Corporation to keep constantly insured all buildings and improvements from time to time constituting a part of the Facility in the manner provided for by the Lease herein authorized. The City's share of the proceeds of any such insurance policies shall be payable to and deposited with the Trustee as Insurance Trustee. Any of the proceeds of such policies shall be used and applied in the manner set forth in Section 19 of said Lease.

( )



(f) The City will cause the Trustee to keep books and records relating to the Facility which shall be separate and apart from all other books, records and accounts of the City in which correct entries shall be made in accordance with standard principles of accounting of all transactions relating to the leased property and improvements and the original purchasers of the Revenue Bonds herein authorized, and any bondholder or any representative of Tenant shall have the right at all reasonable times to inspect all records, accounts and data of the City relating to the leased property and improvements. The Trustee shall at least once a year furnish a report of rental paid and the funds and accounts required hereby. A copy of said report shall be available to any bondholder and a copy shall also be mailed to Hanifen, Imhoff & Samford, Inc., Denver, Colorado, and to City and C M Corporation.

SECTION 12. The provisions of the Bonds authorized by this Ordinance and the provisions of this Ordinance may be modified or amended at any time by the City with the written consent of the Trustee, the Tenant and the holders of not less than sixty-six and two thirds per cent (66-2/3%) in aggregate principal amount of the bonds herein authorized at the time outstanding; provided, however, that no modification or amendment shall permit or be construed as permitting (a) the extension of the maturity of the principal of any of the bonds issued hereunder, or the extension of the maturity of any interest on any bonds issued hereunder; or (b) a reduction in the principal amount of any bonds or the rate of interest thereon, or (c) a reduction in the aggregate principal amount of bonds the consent of the holders of which is required for any such amendment or modification. Any provisions of the Bonds or of this Ordinance may, however, be

modified or amended in any respect with the written consent of the Tenant and the consent of the holders of all of the bonds then outstanding. Every amendment or modification of a provision of the Bonds or of this Ordinance to which the written consent of the bondholders is given as above provided shall be expressed in an ordinance of the City amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. It shall not be necessary to note on any of the outstanding bonds any reference to such amendment or modification, if any. A certified copy of every such amendatory or supplemental ordinance, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the City Clerk and shall be made available for inspection by the Tenant and by the holder of any Bond or prospective purchaser or holder of any bond authorized by this Ordinance, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance or of this Ordinance will be sent by the City Clerk to any such bondholder or prospective bondholder. Nothing in this Section 12 shall, however, be construed as requiring the consent of any or all bondholders to the issuance of additional bonds in the manner and on the conditions set forth in Section 7 of this Ordinance. The consent of Tenant to any of the foregoing shall not be required when Tenant is in default under the Lease.

SECTION 13. The provisions of this Ordinance shall constitute a contract between the City of Wathena, Kansas, and the holders of the Revenue Bonds herein authorized, and the holder of any one or more of said Bonds may sue, in any action, in mandamus, injunction, or other proceedings, either at law or in equity, to enforce or compel performance of all duties and obligations required by this Ordinance to be done or performed by said City. The City hereby pledges the Facility hereinabove described together with all additions thereto, all machinery and equipment therein, and thereon purchased or acquired from bond proceeds, including any replacements provided for in the Lease and Agreement, to

the payment of the Bonds authorized herein and all interest thereon, such pledge to be enforced in the manner provided by law. Nothing contained in this Ordinance shall, however, be construed to impose on said City any duty or obligation to levy any taxes either to meet any obligation contained herein or to pay the principal of or interest on the Revenue Bonds of the City herein authorized.

SECTION 14. The tract of land to be acquired pursuant to the provisions of this Ordinance hereinbefore described and the Improvements to be acquired, installed and constructed thereon pursuant to this Ordinance and as defined in the Lease, shall be leased to C M Corporation under and pursuant to a Lease Agreement dated as of July 1, 1972, in the form attached to this Ordinance and made a part hereof by reference, which Lease the Mayor and City Clerk are hereby authorized and directed to execute for, on behalf of and as the act and deed of the City. The Mayor and City Clerk are further authorized and directed to execute and acknowledge a Notice of said Lease in such form as they may deem adequate and to have the same recorded in the office of the Register of Deeds of Doniphan County, Kansas.

SECTION 15. The First National Bank of Manhattan, Manhattan, Kansas, hereinabove designated as Trustee and Paying Agent hereunder, shall have all the power of the City as herein described upon the filing with the City Clerk of the City of a written acceptance of the office of Trustee and Paying Agent. Said Trustee may enforce in the name of the City or in its own name the Lease and Agreement and this Ordinance. Should said Trustee fail to accept such office or should it later resign as Trustee and Paying Agent, the City reserves the right by Ordinance to select and designate a successor Trustee and Paying Agent which shall be a bank or trust company having trust powers located in the State of Kansas and having combined capital accounts of not less than \$2,000,000 and which successor Trustee and Paying Agent shall have all the power and duties of the Trustee and Paying Agent herein designated upon acceptance of the office of

Trustee and Paying Agent. When all of the Bonds have been paid in full, together with all interest thereon and all fees and charges of Trustee and Paying Agent, the balance, if any, in the CONSTRUCTION FUND, the PRINCIPAL AND INTEREST ACCOUNT and the BOND RESERVE - EMERGENCY RESERVE ACCOUNT, or any other account required herein, shall be paid over by the Trustee and Paying Agent to C M Corporation or its assigns, as excess rent, and when said accounts have been reduced to a zero balance the office of Trustee and Paying Agent shall terminate.

The Trustee and Paying Agent shall have no duties except those specifically provided for in the Lease and Agreement and in this Ordinance. The Trustee and Paying Agent in administering the Lease and Agreement and this Ordinance, shall be entitled to advice of counsel and shall be protected for any action taken in good faith in reliance upon such advice- The Trustee and Paying Agent shall be entitled to rely fully upon any reports, certificates or opinions furnished to it by the Project Manager pursuant to the Lease. The Trustee and Paying Agent shall not be liable for any action taken by it in good faith and reasonably believed by it to be within the discretion or power conferred by this Ordinance or be responsible for the consequences of any oversight or error of judgment reasonably made by it and the Trustee and Paying Agent shall be answerable only for its own acts, receipts, neglects and defaults and not for those of any person, firm or corporation employed and selected by it with reasonable care. Trustee and Paying Agent shall be entitled to a reasonable fee and its expenses all of which shall be paid by Tenant.

SECTION 16. The City hereby assigns to the Trustee and Paying Agent herein designated, the Lease of the Facility. Such assignment shall continue only so long as any of the Bonds (including interest thereon) authorized hereunder shall be outstanding and unpaid, and when said Bonds (including interest thereon) shall have all been paid or cash provisions shall have been made for their payment, said Lease shall automatically be reassigned to the City.

SECTION 17. If any one or more of the covenants, agreements or pro-

visions of this Ordinance or of said Lease dated as of July 1, 1972, should be held contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds or coupons issued hereunder, or the Lease.

SECTION 18. This Ordinance shall take effect and be in force from and after its passage and publication in the official City paper.

PASSED AND APPROVED at Wathena, Kansas, this 7th day of August, 1972.

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Mayor

ATTEST:

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City Clerk