

ORDINANCE NO. 438

AN ORDINANCE RELATING TO THE SALE AND CONVEYANCE OF CERTAIN DESCRIBED REAL ESTATE OWNED BY THE CITY OF WATHENA, KANSAS TO BEVERLY ENTERPRISES - KANSAS, INC.; PROVIDING FOR SUCH SALE AND CONVEYANCE PURSUANT TO EXERCISE OF AN OPTION PREVIOUSLY GRANTED TO C M CORPORATION, AN IOWA CORPORATION, PREDECESSOR IN INTEREST OF THE SAID BEVERLY ENTERPRISES; AND AUTHORIZING AND EMPOWERING THE MAYOR AND THE CITY CLERK OF SAID CITY TO EXECUTE, ACKNOWLEDGE, AND DELIVER A SPECIAL WARRANTY DEED OF CONVEYANCE OF SUCH REAL ESTATE FOR AND ON BEHALF OF THE CITY.

WHEREAS, Section 29 of that certain Lease and Agreement dated July 1, 1972 (herein LEASE) Notice of which is recorded in Book 157 at Page 23 of the records in the office of the Register of Deeds of Doniphan County, Kansas, wherein the City of Wathena, Kansas (herein CITY) is Landlord and C M Corporation, an Iowa Corporation authorized and qualified to transact business in the State of Kansas (herein CM) is tenant, grants to C M the right and option to purchase the hereinafter described real estate under the terms and conditions of purchase as specified in the LEASE and Section thereof and all pursuant to Ordinance No. 290 of the CITY enacted August 7, 1972, and published in The Wathena Times, Official City Newspaper, August 10, 1972; and,

WHEREAS, Section 21 of the LEASE grants to C M the right to assign its rights and interests under the LEASE as part of a transaction involving the merger and consolidation of C M, or the sale of all or substantially all of its assets to another corporation, and whereby such assignee corporation shall expressly assume and agree to perform all of C M's obligations under the LEASE SUBJECT, HOWEVER, to the consent of the CITY; and,

WHEREAS, pursuant to Section 21 of the LEASE and with written consent of the CITY, C M did assign all of its right, title and interest under the LEASE to Beverly Enterprises - Kansas, Inc. (herein BE) by virtue of BE's purchase of one hundred percent (100%) of the issued and outstanding stock of C M; and,

WHEREAS, BE has delivered to the CITY written notice of BE's election to exercise its option to purchase the hereinafter described real estate all as required and provided for under said Section 29 of the LEASE; and,

WHEREAS, all conditions precedent to the execution and delivery by the CITY to BE of a Special Warranty Deed of conveyance for the hereinafter described real estate as set forth and specified in Section 29 of the LEASE have been fully met and

complied with and duly and legally performed in the manner in such LEASE made and provided and the CITY should deliver to BE the required Special Warranty Deed for the said real estate;

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

SECTION 1. EXECUTION AND DELIVERY OF DEED AUTHORIZED. Pursuant to Section 29 of that certain Lease described in the preamble hereof, the Mayor and City Clerk of the City of Wathena, Kansas, should be and they are hereby authorized and empowered to execute, acknowledge, attest by corporate seal of the City over the City Clerk's signature, and (after having first received from Beverly Enterprises-Kansas, Inc. the sum of One Hundred Dollars [\$100.00]) deliver to Beverly Enterprises - Kansas, Inc., the Special Warranty Deed of the City of Wathena, Kansas, for the following described real estate situate in the City of Wathena in Doniphan County, Kansas, to wit:

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 & Surveying completed June 13, 1972,

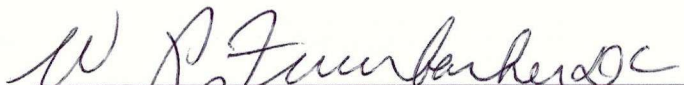
SUBJECT TO: (i) Easements, restrictions and reservations now of record, (ii) The rights of the public in and to any part of the premises, lying or being in public roads, alleys or highways, and (iii) Taxes for assessments, general and special, not now due or payable,

conveying to Beverly Enterprises - Kansas, Inc. the full fee simple title thereto, free and clear of all liens and encumbrances whatsoever except only (a) those described immediately above, (b) those to which the title was subject on the date of the commencement of the term of the LEASE of such real estate to C M and (c) taxes and assessments, general and special, if any.

SECTION 2. FILING OF CERTIFIED COPY. Upon and after the passage, approval and publication of this Ordinance, the City Clerk shall file a certified, true and correct copy of this Ordinance for recording in the office of the Register of Deeds of Doniphan County, Kansas.


SECITON 3. EFFECTIVE DATE. This Ordinance shall be in force and take effect from and after its publication in the official City newspaper.

PASSED by the Council and APPROVED by the Mayor on the 2nd day of April, 1991.


W. P. Feuerbacher, Mayor of
Wathena

ATTEST:

(CITY SEAL)


Ronald V. Gabriel, City Clerk