

ORDINANCE NO. 209

AN ORDINANCE DECLARING AN EMERGENCY AND SUSPENDING THE EFFECT OF ORDINANCE NO. 147 OF THE CITY OF ANDOVER, KANSAS; AUTHORIZING SAID CITY TO ACQUIRE A TRACT OF LAND IN BUTLER COUNTY, KANSAS, FOR INDUSTRIAL DEVELOPMENT PURPOSES; AUTHORIZING THE PAYMENT OF THE COST OF PURCHASING, CONSTRUCTING AND EQUIPPING AN INDUSTRIAL FACILITY THEREON; AUTHORIZING AND DIRECTING THE ISSUANCE OF \$550,000.00 PRINCIPAL AMOUNT OF INDUSTRIAL REVENUE BONDS OF SAID CITY FOR THE PURPOSE OF PAYING THE COST OF PURCHASING, CONSTRUCTING AND EQUIPPING SUCH INDUSTRIAL FACILITY; PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A LEASE AND AGREEMENT BY AND BETWEEN SAID CITY, AS LANDLORD, AND INTERNATIONAL COLD STORAGE COMPANY, INC., A KANSAS CORPORATION, AS TENANT.

WHEREAS, the City of Andover, 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 Andover, 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. 12-1740 to 12-1749, as amended, said 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 \$550,000.00 be authorized and issued, for the purpose of providing funds to pay the cost of purchasing, constructing and equipping an industrial facility to be leased to International Cold Storage Company, Inc., a Kansas corporation, hereinafter sometimes referred to as "Tenant;"

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

SECTION 1. That an emergency is hereby declared, the effect of Ordinance No. 147 of the City of Andover, Kansas, is

hereby suspended, and the first reading of ^{this} said Ordinance is hereby waived by the governing body.

SECTION 2. That the City of Andover, Kansas, is hereby authorized to acquire the following described real estate situated in Butler County, Kansas:

The East half (E 1/2) of the West half (W 1/2) of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 17, T27S, R3E of the 6th P.M., Butler County, Kansas, also known and described as Stevens Addition to Andover, Butler County, Kansas,

subject to easements and restrictions of record, and to pay the cost of purchasing, constructing and equipping an industrial facility thereon (said real estate and buildings and other improvements relating thereto being sometimes hereinafter described as the "Facility") in accordance with the provisions of the Lease and Agreement dated as of April 1, 1974, by and between the City and said Tenant, (sometimes referred to hereinafter as the "Lease") hereinafter authorized, all at an amount which will not exceed the cost of \$550,000.00 to said City.

SECTION 3. That for the purpose of providing funds to pay the cost of purchasing, constructing and equipping the Facility, there shall be issued and hereby are authorized and directed to be issued a series of Industrial Revenue Bonds, Series A, 1974 of the City of Andover, Kansas, in the principal amount of \$550,000.00. 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 fees charged and rental received for the use of the Facility and not from any other fund or source.

SECTION 4. Said Industrial Revenue Bonds, Series A, 1974 of the City of Andover, Kansas, shall consist of 110 bonds, numbered from 1 to 110, inclusive, each of said Bonds being in the

denomination of \$5,000.00. All of said Bonds shall be dated April 1, 1974, and said Bonds shall be numbered, shall become due serially and shall bear interest as follows:

<u>Bond Numbers</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
1 to 6, Incl.	\$30,000.00	5-1/2%	April 1, 1978
7 to 13, Incl.	35,000.00	5-3/4%	April 1, 1979
14 to 20, Incl.	35,000.00	6%	April 1, 1980
21 to 28, Incl.	40,000.00	6.10%	April 1, 1981
29 to 36, Incl.	40,000.00	6-1/8%	April 1, 1982
37 to 45, Incl.	45,000.00	6.20%	April 1, 1983
46 to 54, Incl.	45,000.00	6-1/4%	April 1, 1984
55 to 64, Incl.	50,000.00	6.40%	April 1, 1985
65 to 74, Incl.	50,000.00	6.50%	April 1, 1986
75 to 85, Incl.	55,000.00	6.60%	April 1, 1987
86 to 97, Incl.	60,000.00	6.70%	April 1, 1988
98 to 110, Incl.	65,000.00	6.75%	April 1, 1989

Said Bonds shall bear interest from date, payable October 1, 1974, and thereafter semiannually on April 1 and October 1 in each year, at the rates hereinabove specified.

Both principal and interest on each of said Bonds shall be payable in lawful money of the United States of America at the office of The Fourth National Bank and Trust Company, Wichita, in the City of Wichita, Kansas, herein sometimes referred to as the "Trustee" or as the "Paying Agent," or by both titles.

The Bonds of this issue shall become due without option of prior payment except as is hereinafter set forth:

- (a) At the option of the City, which option the City shall exercise upon written direction of Tenant, all of the Bonds of this issue may be called for redemption and payment, as a whole, on any interest payment date at the par value thereof, plus accrued interest thereon to the date fixed for redemption and payment:
 - (1) 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 (2) In the event all or substantially all of such Facility is damaged or destroyed by fire or other casualty to the extent that it cannot be economically restored or repaired for its intended use hereunder within six months, or to the

extent that the Tenant cannot carry on its operations for six months following such damage or destruction, or to the extent that the cost of repairing or restoring the Facility exceeds the total amount of insurance carried against damage by fire or other casualty, or (3) If as a result of any changes in the Constitution of the State of Kansas, or legislative or administrative action by the State of Kansas or any political subdivision thereof, or by the United States, or by reason of any action instituted in any court, the Lease shall have become void or unenforceable or impossible of performance without unreasonable delay, or if in any other way, by reason of such change in circumstances, unreasonable burdens or excessive liabilities shall have been imposed on Tenant including without limitation Federal, state or other ad valorem, property, income or other taxes not being imposed on the date of the Lease, or (4) In the event the City shall default in the performance of its obligations under the Lease and Agreement, or (5) At the expiration of the term of the Lease and Agreement or any prior termination thereof.

(b) At the option of the City, which option the City shall exercise upon written direction of Tenant, bonds numbered 55 to 110, inclusive, may be called for redemption and payment, in whole or in part, on April 1, 1984, or on any interest payment date thereafter in inverse numerical order at the par value thereof plus accrued interest thereon to the date fixed for redemption and payment, plus a premium of three percent (3%) of the principal amount of said Bonds so called for redemption and payment. Such call option may be exercised by the Trustee at any time allowed by the provisions hereof when there are sufficient monies in the Principal and Interest Account hereinafter created to pay the principal, premium and accrued interest to the call date on one or more outstanding bonds, but such call option shall be exercised only upon the written direction of Tenant.

Notice of any redemption shall be given by one publication in the official state newspaper of the State of Kansas, and

by one publication in the official city paper of the City of Andover, at least thirty (30) days prior to the date fixed for redemption and payment. If less than all of the then outstanding bonds are to be called for redemption and payment, the notice shall specify the numbers of the bonds to be redeemed and paid. Notice of such redemption shall also be given to The Columbian Securities Corporation, 700 Rule Building, 321 East William, Wichita, Kansas 67202 by registered or certified mail at least thirty (30) days prior to the date fixed for redemption and payment. Interest shall cease on any of said Bonds so called for redemption and payment as of the redemption date, provided funds are available to pay the same according to their terms.

Replacement bonds are hereby authorized to be issued by the City to replace bonds of this issue which are lost, destroyed, mutilated, defaced or which for any other reason the Trustee deems a replacement to be necessary. In such event such replacement shall be made pursuant to such procedures and requirements as the Trustee shall deem proper and sufficient to fully protect the City in the premises, which procedures and requirements may include the posting of an indemnity bond and the payment of all expenses involved in the replacement except where the replacement is for a bond physically delivered to the Trustee and the necessity for replacement is no fault of the holder. Such replacement bond shall be in the same form as the original, bear the same number as the original, except that a supplemental letter shall be added thereto, and shall be manually executed by the Mayor and manually attested by the City Clerk. Any such replacement bonds shall be considered the same as and have the same force and effect as the original bonds of this issue.

SECTION 5. Said Bonds and each of them shall be executed for and on behalf of the City by the facsimile signature of the Mayor and attested by the facsimile signature of the City Clerk, with the seal of the City affixed. Said Bonds shall be registered in the office of the City Clerk and attested by the seal of the

City. Each of said Bonds shall be authenticated by the manual signature of an authorized officer of the Trustee. Interest coupons shall be attached to such 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.

SECTION 6. Each of said Bonds and the interest coupons and certificates attached thereto shall be in substantially the following form:

No. _____

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF BUTLER
CITY OF ANDOVER

\$5,000.00

INDUSTRIAL REVENUE BOND
SERIES A, 1974
(INTERNATIONAL COLD STORAGE COMPANY, INC.)

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

FIVE THOUSAND DOLLARS

in lawful money of the United States of America on the first day of April, 19 and to pay interest thereon from the date hereof, at the rate of percent (%) per annum, payable October 1, 1974, and thereafter semiannually on April 1 and October 1 in each year until the said principal sum shall have been paid, both principal of and interest on this Bond being payable at the office of The Fourth National Bank and Trust Company, Wichita, in the City of Wichita, Kansas, the Trustee and Paying Agent, such interest to be paid to bearer upon presentation and surrender of the interest coupons attached, bearing the facsimile signatures of the Mayor and City Clerk of said City as said coupons severally become due.

THIS BOND is one of an authorized series of 110 Bonds of like date and tenor, except as to rate of interest, privilege of redemption and maturity, numbered from 1 to 110, inclusive, aggregating the principal amount of \$550,000.00, each in denomination of \$5,000.00, authorized by Ordinance No. of said City and issued for the purpose of providing funds to pay the cost of acquiring land and purchasing, constructing and equipping thereon an industrial facility (which land and building are hereinafter sometimes referred to as the "Facility") to be leased to International Cold Storage Company, Inc., a Kansas corporation, 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 hereon are to be paid by said City of Andover, Kansas, solely and only from the money and revenue received from the fees charged and rental received for the use of 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, including all rentals, 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 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.

The Bonds of this issue shall become due without option of prior payment except as is hereinafter set forth:

(a) At the option of the City, which option the City shall exercise upon written direction of Tenant, all of the Bonds of this issue may be called for redemption and payment, as a whole, on any interest payment date at the par value thereof, plus accrued interest thereon to the date fixed for redemption and payment: (1) 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 (2) In the event all or substantially all of such Facility is damaged or destroyed by fire or other casualty to the extent that it cannot be economically restored or repaired for its intended use hereunder within six months, or to the extent that the Tenant cannot carry on its operations therein for six months following such damage or destruction, or to the extent that the cost of repairing or restoring the Facility exceeds the total amount of insurance carried against damage by fire or other casualty; or (3) If as a result of any changes in the Constitution of the State of Kansas, or legislative or administrative action by the State of Kansas or any political subdivision thereof, or by the United States, or by reason of any action instituted in any court, the Lease shall have become void or unenforceable or impossible of performance without unreasonable delay, or if in any other way, by reason of such change in circumstances, unreasonable burdens or excessive liabilities shall have been imposed on Tenant including without limitation Federal, state or other ad valorem, property, income or other taxes not being imposed on the date of the Lease; or (4) In the event the City shall default in the performance of its obligations under the Lease and Agreement; or (5) At the expiration of the term of the Lease and Agreement or any prior termination thereof.

(b) At the option of the City, which option the City shall exercise upon written direction of Tenant, bonds numbered 55 to 110, inclusive, may be called for redemption and payment, in whole or in part, on April 1, 1984, or on any interest payment date thereafter in inverse numerical order at the par value thereof plus accrued interest thereon to the date fixed for redemption and payment, plus a premium of three percent (3%) of the principal amount of said Bonds so called for redemption and payment. Such call option may be exercised by the Trustee at any time allowed by the provisions hereof when there are sufficient monies in the Principal and Interest Account referred to in the Ordinance aforesaid to pay the principal, premium and accrued interest to the call date on one or more outstanding bonds, but such call option shall be exercised only upon the written direction of Tenant.

Notice of any redemption shall be given by one publication in the official state newspaper of the State of Kansas, and by one publication in the official city paper of the City of Andover, at least thirty (30) days prior to the date fixed for redemption and payment. If less than all of the then outstanding bonds are to be called for redemption and payment, the notice shall specify the numbers of the bonds to be redeemed and paid. Notice of such redemption shall also be given to The Columbian Securities Corporation, 700 Rule Building, 321 East William, Wichita, Kansas 67202 by registered or certified mail at least thirty (30) days prior to the date fixed for redemption and payment. Interest shall cease on any of said Bonds so called for redemption and payment as of the redemption date, 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 such bonds will be equally and ratably secured by the pledge and covenants made therein and will be on 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.

IN WITNESS WHEREOF, the City of Andover, in the State of Kansas, by its governing body, has caused this Bond to be signed by the facsimile signature of its Mayor and attested by the facsimile signature of its City Clerk, and its corporate seal to be hereto affixed, and this Bond to be dated this first day of April, 1974.

(facsimile)

MAYOR

ATTEST:

(facsimile)
CITY CLERK

(FORM OF COUPON)

Coupon No. _____ (The first interest coupon
being payable October 1, 1974) _____) Bond No. _____)

On the first day of (April) (October) 19_____, (unless the bond to which this coupon is attached shall have been previously called for redemption and payment duly provided for) the City of Andover, Kansas, will pay bearer, solely from the money and revenue received from the fees charged and rentals received from the use of the Facility described in the bond to which this coupon is attached, and not from any other fund or source, Dollars, in lawful money of the United States of America, at the office of The Fourth National Bank and Trust Company, Wichita, in the City of Wichita, Kansas, being six months' interest on its Industrial Revenue Bond, Series A, 1974, dated April 1, 1974.

No. _____) Series A, 1974)

(facsimile
Mayor

\$ _____)

Attest:

(facsimile
City Clerk

STATE OF KANSAS)
) ss.
BUTLER COUNTY)

I, the undersigned, City Clerk of the City of Andover, Kansas, hereby certify that the within Industrial Revenue Bond, Series A, 1974, of the City of Andover, Kansas, has been duly registered in my office according to law.

WITNESS my hand and official seal this _____.

CITY CLERK

(Seal)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of those described in the within mentioned Ordinance No. _____ of the City of Andover, Kansas.

By _____ Authorized Officer

(Bank's Seal)

SECTION 7. The Mayor and City Clerk are hereby authorized and directed to prepare and execute in the manner hereinbefore specified the Industrial Revenue Bonds, Series A, 1974, of the City herein authorized, and to deliver said Bonds to the representative of the underwriters thereof, on payment of the purchase price of said Bonds by said purchaser to the Trustee for the account of the City.

SECTION 8. There is hereby authorized and directed to be established in the hands of the Trustee a separate fund or account, designated as the "INTERNATIONAL COLD STORAGE COMPANY, INC. CONSTRUCTION FUND," hereinafter referred to as the "CONSTRUCTION FUND." The proceeds from the sale of said Bonds, less any expenses incurred by said City in connection with the sale thereof, including but not limited to underwriting expenses, legal fees and the payment of all costs incident to the acquisition of the real estate leased to said Tenant, if any, shall be deposited in said CONSTRUCTION FUND. Any accrued interest received by said City upon delivery of the Bonds shall be deposited in the INTERNATIONAL COLD STORAGE COMPANY, INC. PRINCIPAL AND INTEREST ACCOUNT hereinafter created. The Trustee shall make disbursements from said CONSTRUCTION FUND in accordance with the terms and provisions of the Lease dated as of April 1, 1974, between said City and said Tenant, authorized by the provisions of this Ordinance. Following completion of the Facility and the payment of all construction expenses, 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 said PRINCIPAL AND INTEREST ACCOUNT.

SECTION 9. There is hereby authorized and directed to be established in the hands of the Trustee a separate fund or account designated as the "INTERNATIONAL COLD STORAGE COMPANY, INC. PRINCIPAL AND INTEREST ACCOUNT," herein referred to as the "PRINCIPAL AND INTEREST ACCOUNT." The City covenants and agrees that from and after the delivery of any of the Bonds herein authorized,

and continuing so long as any of said Bonds shall remain outstanding, the City will maintain said account with the Trustee. All monies due under said Lease between the City and International Cold Storage Company, Inc., dated as of April 1, 1974, shall be paid to and deposited with the Trustee and shall be deposited in said PRINCIPAL AND INTEREST ACCOUNT. Except as hereinafter provided, all amounts credited to and deposited in said PRINCIPAL AND INTEREST ACCOUNT shall be expended and used by the Trustee for the sole purpose of paying the interest on and principal of the Bonds herein authorized as and when the same become due, and the Trustee shall apply said amounts immediately upon receipt, if necessary, for the purpose of paying said principal and interest. Monies in the PRINCIPAL AND INTEREST ACCOUNT may also be used upon direction by Tenant to pay the charges and fees of the Trustee for its services, provided the monies then on hand in the PRINCIPAL AND INTEREST ACCOUNT are sufficient for such purpose. When all of the Bonds herein authorized, all interest thereon, and redemption premium, if any, and all fees and charges of the Trustee shall have been paid in full, the Trustee shall without other direction than is contained herein pay over to International Cold Storage Company, Inc. any balance remaining in said PRINCIPAL AND INTEREST ACCOUNT.

SECTION 10. Monies in the CONSTRUCTION FUND and the PRINCIPAL AND INTEREST ACCOUNT shall be invested by the Trustee in such amounts and at such times as shall reasonably provide for monies to be available in said accounts when required, in obligations of the United States Government or agencies thereof, or in obligations guaranteed by the United States Government or agencies thereof, or in Certificates of Deposit issued by the commercial department of any state or national bank, including Trustee, provided said Certificates of Deposit are insured by an agency of the United States Government. The Trustee shall have complete discretion in determining maturity dates of such investments so as to adequately anticipate its future cash needs in said accounts. All interest on any bonds or obligations held in any of said accounts

shall accrue to and become a part of such fund or account. In determining the amount held in said accounts, such obligations shall be valued at their principal par value or at their then market value, whichever is lower.

SECTION 11. Additional industrial revenue bonds may be issued by the City from time to time to pay for all or a portion of the cost of improvements or additions to the Facility, which additional bonds shall be in all respects on a parity with the Series A, 1974 Bonds herein authorized, and all such bonds shall be equally and ratably secured by the pledge and covenants contained in this Ordinance, provided, however, that such additional parity bonds shall be issued only upon the following conditions:

(a) That such additional bonds and the improvements or additions to the Facility be authorized by an ordinance of the City supplemental to this Ordinance.

(b) That Tenant is not in default under any of the covenants, terms or conditions of the Lease and Agreement herein authorized.

(c) That a supplement to the Lease and Agreement herein authorized be executed by and between the City and the Tenant extending such Lease and Agreement to such improvements or additions to the Facility and providing for an increase in rental to cover the principal and interest requirements of such additional bonds on substantially the same terms and conditions as the original Lease and Agreement.

(d) That issuance of such additional bonds shall not affect the exemption from federal income taxation of the bonds herein authorized.

(e) That the Trustee and the original purchaser of the Series A, 1974 Bonds herein authorized shall have given their prior written consent to the issuance of such additional bonds, which consent shall not be unreasonably withheld.

SECTION 12. So long as any of the principal of and interest on the 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 neither make nor permit Tenant or Trustee to make any use of the proceeds of the Bonds herein authorized which if such use had been reasonably expected on the date of issuance of said Bonds, would have caused said Bonds to be arbitrage bonds within the meaning of Section 103(d) of the Internal Revenue Code of 1954, as amended, and the City will comply with, and will take all necessary action to cause Tenant and Trustee to comply with, all applicable requirements of said Section 103(d) and the rules and regulations of the United States Treasury Department thereunder for so long as any of said Bonds remain outstanding and unpaid.

(b) 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 and 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 Tenant, 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 Tenant is required to make under the Lease. If the City is unable to procure a new tenant who will enter into such a Lease, the City may, with the consent of the holders of not less than seventy-five percent (75%) of the principal amount of the Bonds herein authorized at the time outstanding, sell the Facility at a price not less than the amount of the then outstanding Revenue Bonds plus any

necessary call premium, plus expenses incidental to the payment of the Bonds.

(c) 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.

(d) That until payment of all of 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 bondholders.

(e) Any purchase price of the leased property received by the City following the termination of the Lease, any proceeds of condemnation awards or any advance rental payments will be used solely and exclusively to redeem and pay according to their terms any of the Revenue Bonds herein authorized then outstanding and unpaid and subject to redemption and payment. Upon receipt of any such funds, the City shall proceed promptly to call said Revenue Bonds for redemption and payment and shall give notice thereof provided for by the terms of this Ordinance. Such funds shall be deposited with the Trustee, and the same shall be used solely for the payment of the Revenue Bonds herein authorized, accrued interest thereon, any premium provided for by this Ordinance and the fees and charges of the Trustee for paying the same.

(f) 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 debt, lien, pledge, assignments, encumbrance, or any other charge on said payments or on the property subject to said Lease, provided that this shall not be deemed to

prohibit the issuance of additional industrial revenue bonds under the provisions of Section 10 hereof.

(g) The City will cause Tenant to keep constantly insured all buildings and improvements from time to time constituting a part of the property and premises leased to Tenant 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 Article XXI of said Lease.

(h) The City will keep books and records, or 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 current entries shall be made in accordance with standard principles of accounting of all transactions relating to the Facility, and the original purchasers of the Revenue Bonds herein authorized, 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 Facility.

In the event said books and records are maintained by the City rather than by the Trustee, the City shall, at least once a year, at the expense of Tenant, cause such books, records and accounts to be properly audited by a competent auditor or accountant of recognized standing, and shall make said audit available at all reasonable times to any bondholder or to Tenant. A copy of said audit shall also be mailed to The Columbian Securities Corporation, Wichita, Kansas, the original purchaser of the Bonds.

SECTION 13. 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 holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds herein authorized at the time outstanding; provided, however, that no such modification or amendment

shall permit to 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 of 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 provision of the Bonds or of this Ordinance may, however, be modified or amended in any respect with the written 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 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 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.

SECTION 14. The provisions of this Ordinance shall constitute a contract between the City of Andover, 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 constituting a

part of said Facility, including any replacements thereof and all accretions thereto, subject to the replacement provisions 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 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.

In the event that Tenant shall default under the Lease and the City shall thereafter elect to terminate the Lease and Agreement and the rights of the Tenant thereunder, the City covenants and agrees that it will, upon written demand from the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds herein authorized at the time outstanding (including any additional bonds which may have been issued under the provisions of Section 11 hereof), convey the Facility to or for the benefit of the holders of said Bonds or their nominee, wherein the holders of said Bonds shall succeed to all of the rights and remedies of the City and Trustee against the Tenant, and the City and the Trustee shall be relieved and released of all further obligation with respect thereto.

SECTION 15. The Fourth National Bank and Trust Company, Wichita, hereinbefore 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, the City reserves the right by Ordinance to select and designate a successor Trustee which shall be a bank having trust powers or a trust company and which successor Trustee shall have all the powers and duties of the Trustee herein designated upon acceptance of the office of

Trustee. When all of the Bonds have been paid in full, together with all interest thereon and premium, if any, and all Trustee's Paying Agent's fees, the balance, if any, in all of the accounts shall be paid over by the Trustee to Tenant, and when all of said accounts have been reduced to a zero balance the office of Trustee shall terminate.

The Trustee shall have no duties except those specifically provided for in the Lease and Agreement and in this Ordinance. The Trustee 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 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 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 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 with reasonable care.

SECTION 16. The City hereby assigns to the Trustee herein designated the Lease to Tenant of the Facility, and further agrees to execute a separate recordable assignment of all of its rights thereunder and hereby irrevocably authorizes the Trustee and any successor Trustee to enforce in the name of the City or in the name of the Trustee all of the rights of the City under said Lease. 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 provisions made for their payment, said Lease shall be automatically reassigned to the City.

SECTION 17. 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 shall be leased to International Cold Storage Company, Inc., as Tenant, under and pursuant to a Lease and Agreement dated as of April 1, 1974, 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 cause said Lease to be recorded in the Office of the Register of Deeds of Butler County, Kansas. Said officers are further authorized and directed to execute all such other documents and certificates, and to do all such other things as may be reasonably required in connection with the issuance and delivery of the Bonds herein authorized, and not prohibited herein.

SECTION 18. If any one or more of the covenants, agreements or provisions of this Ordinance or of said Lease dated as of April 1, 1974, should be held contrary to any express provision of law or 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, 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 19. This Ordinance shall take effect and be in force from and after its passage and publication in the official city paper.

PASSED by the governing body of the City of Andover,
Kansas, the 26th day of March, 1974.

Eugene Miller
MAYOR

ATTEST: (S. a. 1.)

Patricia M. Stueckle
CITY CLERK