

(Published in the Andover Journal, December 19, 1974)

ORDINANCE NO. 224

AN ORDINANCE DECLARING AN EMERGENCY AND SUSPENDING THE EFFECT OF ORDINANCE NO. 147 OF THE CITY OF ANDOVER, KANSAS; AUTHORIZING SAID CITY TO MAKE ADDITIONS TO THE MANUFACTURING STRUCTURE NOW UNDER CONSTRUCTION AND HERETOFORE LEASED TO INTERNATIONAL COLD STORAGE COMPANY, INC.; AUTHORIZING THE PAYMENT OF THE COST OF MAKING SUCH ADDITIONS AND EQUIPPING THEM; AUTHORIZING AND DIRECTING THE ISSUANCE OF \$220,000.00 PRINCIPAL AMOUNT OF INDUSTRIAL REVENUE BONDS OF SAID CITY FOR THE PURPOSE OF PAYING SUCH COSTS; PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A SUPPLEMENT TO THE 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 \$220,000.00 be authorized and issued, for the purpose of providing funds to pay the cost of making additions to the manufacturing structure now under construction and heretofore leased to International Cold Storage Company, Inc., and equipping such additions, such structure having been heretofore 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 Ordinance is hereby waived by the governing body.

SECTION 2. That the City of Andover, Kansas, has been heretofore 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, T 27 S, R 3 E 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") heretofore authorized, all at an amount which will not exceed the cost of \$550,000.00 to said City. That said City is hereby authorized to make additions to said structure including equipping such additions, all in accordance with a supplement dated as of December 1, 1974, to said Lease.

SECTION 3. That for the purpose of providing funds to pay the cost of such additions and equipment, there shall be issued and hereby are authorized and directed to be issued a series of Industrial Revenue Bonds, Series B, 1974, of the City of Andover, Kansas, in the principal amount of \$220,000.00. 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 as added to and not from any other fund or source.

SECTION 4. Said Industrial Revenue Bonds, Series B, 1974, of the City of Andover, Kansas, shall consist of 44 bonds, numbered from 1 to 44, inclusive, each of said Bonds being in the denomination of \$5,000.00. All of said Bonds shall be dated December 1, 1974, and said Bonds shall be numbered, shall become due serially and shall bear interest as follows:

<u>Bond Numbers (Inclusive)</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
1 to 2	\$10,000	7-1/2%	December 1, 1978
3 to 4	\$10,000	7-3/4%	December 1, 1979
5 to 7	\$15,000	8%	December 1, 1980
8 to 10	\$15,000	8%	December 1, 1981
11 to 13	\$15,000	8.10%	December 1, 1982
14 to 17	\$20,000	8-1/4%	December 1, 1983
18 to 21	\$20,000	8-1/4%	December 1, 1984
22 to 25	\$20,000	8.40%	December 1, 1985
26 to 29	\$20,000	8-1/2%	December 1, 1986
30 to 34	\$25,000	8-3/4%	December 1, 1987
35 to 39	\$25,000	8-3/4%	December 1, 1988
40 to 44	\$25,000	8-3/4%	December 1, 1989

Said Bonds shall bear interest from date, payable June 1, 1975, and thereafter semiannually on December 1 and June 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 as supplemented, or (4) In the event the City shall default in the performance of its obligations under the Lease and Agreement as supplemented, or (5) At the expiration of the term of the Lease and Agreement as supplemented 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 22 to 44, inclusive, may be called for redemption and payment, in whole or in part, on December 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 heretofore 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

\$5,000.00

STATE OF KANSAS
COUNTY OF BUTLER
CITY OF ANDOVER

INDUSTRIAL REVENUE BOND

SERIES B, 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 December, 19____, and to pay interest thereon from the date hereof, at the rate of _____ percent (____%) per annum, payable June 1, 1975, and thereafter semiannually on December 1 and June 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 44 Bonds of like date and tenor, except as to rate of interest, privilege of redemption and maturity, numbered from 1 to 44, inclusive, aggregating the principal amount of \$220,000.00, 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 constructing and equipping additions to a manufacturing facility (which land and building are hereinafter sometimes referred to as the "Facility") heretofore 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 as supplemented 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 as supplemented 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 as supplemented; or (4) In the event the City shall default in the performance of its obligations under the Lease and Agreement as supplemented; or (5) At the expiration of the term of the Lease and Agreement as supplemented 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 22 to 44, inclusive, may be called for redemption and payment, in whole or in part, on December 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 December, 1974.

(facsimile)

MAYOR

ATTEST:

(facsimile)

CITY CLERK

(FORM OF COUPON)

Coupon No. _____ (The first interest coupon)
being payable June 1, 1975))

Bond No. _____

On the first day of (June) (December))
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 B, 1974, dated)
December 1, 1974.)

June 1,
December 1,
19 ____

City of
Andover, Kansas
Industrial
Revenue Bond
Series B, 1974

No. _____

(facsimile)

MAYOR

Attest:

(facsimile)

CITY CLERK

\$ _____

STATE OF KANSAS)

COUNTY OF BUTLER)

ss.

I, the undersigned, City Clerk of the City of Andover,
Kansas, hereby certify that the within Industrial Revenue Bond,
Series B, 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)

count 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, as supplemented as of December 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 of and principal on the Bonds herein authorized and bonds of the Series A, 1974, 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 and all bonds of the Series A, 1974, 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 NO. 2 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 B, 1974 Bonds herein authorized and Series A, 1974 Bonds heretofore authorized, and all such bonds shall be equally and ratably secured by the pledge and covenants contained in this Ordinance and in Ordinance No. 209, 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 heretofore authorized and as supplemented as herein authorized.

(c) That a supplement to the Lease and Agreement heretofore 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 B, 1974 Bonds herein authorized and of the Series A, 1974 Bonds heretofore 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 as supplemented 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 as supplemented which require performance by, or impose duties on Tenant, and in the event of the occurrence of a default, as defined in the Lease as supplemented, will exercise all rights and remedies conferred by the Lease as supplemented for the full and complete

protection of the security and rights of the bondholders and to the extent permitted by the Lease as supplemented, 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, together with the consent of the holders of not less than seventy-five percent (75%) of the principal amount of the bonds authorized by Ordinance No. 209 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 heretofore authorized and as supplemented as 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 as supplemented, nor change or alter the time or times when the same are due and payable under said Lease as supplemented.

(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 as supplemented, except as provided for in the Lease as supplemented, nor any change, amendment, modification or termination of said Lease as supplemented, 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 as supplemented nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance, or any other charge on said payments or on the property subject to said Lease as supplemented, 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 as supplemented 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 as supplemented.

(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 as supplemented, 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 as supplemented and the City shall thereafter elect to terminate the Lease as supplemented, 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 bonds authorized by Ordinance No. 209 and 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 as supplemented and in this Ordinance and Ordinance No. 209. The Trustee, in administering the Lease and Agreement as supplemented and in 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 as supplemented. 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 as supplemented 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 as supplemented. 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 as supplemented shall be automatically reassigned to the City.

SECTION 17. The tract of land heretofore acquired pursuant to the provisions of Ordinance No. 209 hereinbefore described and the improvements to be acquired, installed and constructed thereon pursuant to this Ordinance and Ordinance No. 209 has been leased to International Cold Storage Company, Inc., as Tenant, under and pursuant to a Lease and Agreement dated as of April 1, 1974, which Lease and Agreement was supplemented, in the form attached to this Ordinance and made a part hereof by reference, which Lease Supplement the Mayor and City Clerk are hereby authorized and directed to execute for and on behalf of said City and to cause said Lease

Supplement 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, Ordinance No. 209, or of said Lease as supplemented, dated as of April 1, 1974, and supplemented as of December 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 and 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 14th day of December, 1974.

Eugene Miller MAYOR

ATTEST:

Patricia M. Stuenkel
CITY CLERK

(SEAL)

SUPPLEMENT TO LEASE AND AGREEMENT

THIS SUPPLEMENT TO LEASE AND AGREEMENT made and entered into as of the 1st day of December, 1974, by and between the CITY OF ANDOVER (Landlord), a municipal corporation of the State of Kansas, and INTERNATIONAL COLD STORAGE COMPANY, INC. (Tenant), a Kansas corporation.

W I T N E S S E T H :

WHEREAS, Landlord is a duly existing municipality, a city of the third class, with full lawful power and authority to enter into this Supplement to Lease and Agreement, acting by and through its governing body; and

WHEREAS, Landlord, in furtherance of the purposes and pursuant to the provisions of K.S.A. 12-1740 to 12-1749, as amended, and in order to provide for industrial development and to provide employment opportunities for its citizens and for the citizens of the Andover metropolitan area and to promote the economic stability of the State of Kansas, has:

(a) Issued its Industrial Revenue Bonds, Series A, 1974, in the aggregate principal amount of \$550,000.00 under and pursuant to Ordinance No. 209 of the Landlord; and

(b) Acquired, purchased, constructed and equipped a certain industrial facility (hereafter the "Facility"), for which funds were provided by the issuance and sale of said Series A, 1974, Bonds; and

(c) Leased said Facility to Tenant, under and by virtue of a certain Lease and Agreement dated as of April 1, 1974; and

WHEREAS, in reliance upon negotiations heretofore had, and in order to expedite the anticipated public benefits hereunder by

STATE OF KANSAS, BUTLER COUNTY, SS
This instrument was filed for record on the
28 day of Jan. 19 75
at 1:00 o'clock P M and duly recorded
In book 313 page 412
Duke Rose
REGISTER OF DEEDS

COMPARED ✓
NUMERICAL ✓
DIRECT ✓
INDIRECT ✓
REGISTRATION ✓

MISC. BOOK 313 PAGE 412

RTN City Clerk 12/28/74
City of Andover

avoiding delays which would otherwise occur before commencement of construction while procedural requirements were being complied with and the funds made available to Landlord, Tenant has proceeded with plans for the construction and equipping of additions to the Facility; and

WHEREAS, under Ordinance No. 209 of the Landlord, the Landlord is authorized to issue additional Industrial Revenue Bonds for the purpose of providing funds to pay all or a portion of the cost of construction and equipping such enlargements, extensions and additions to the Facility, such additional bonds to be on a parity, equally and ratably secured by a pledge of the Facility and the net revenues therefrom, with said Series A, 1974 Bonds; and

WHEREAS, to provide the funds to pay the cost of constructing and equipping the additions, Tenant has requested the issuance of such additional parity bonds, and Landlord intends to issue and sell its Industrial Revenue Bonds, Series B, 1974, in the aggregate principal amount of Two Hundred Twenty Thousand and no/100 Dollars (\$220,000.00), hereinafter sometimes called the Series B, 1974 Bonds. The Series B, 1974 Bonds shall be on a parity, equally and ratably secured by a pledge of the Facility and the net revenues therefrom, with said Series A, 1974 Bonds. Tenant acknowledges that the net proceeds from the sale of said Series B, 1974 Bonds may be inadequate to pay for the completed additions and equipment and agrees to contribute its own funds to pay any balance required to fully complete such additions, including machinery and equipment; and despite any such payments by Tenant, the completed Facility and the additions thereto shall be owned by Landlord. Said Series B, 1974 Bonds will be authorized by an ordinance of the Landlord, hereinafter sometimes called the "Series B, 1974 Bond Ordinance," a copy of which Bond Ordinance is attached hereto and made a part hereof; and

WHEREAS, in order to provide for the foregoing and in

order to comply with certain provisions of Ordinance No. 209 of Landlord, it has been determined that the said Lease and Agreement dated as of April 1, 1974, should be in certain respects supplemented hereby.

NOW, THEREFORE, in consideration of the premises, of other good and valuable considerations, and of the mutual benefits, covenants and agreements herein contained, the parties hereto agree as follows:

SECTION 1. Construction and Equipping of Additions.

Landlord covenants to cause the additions to the Facility to be constructed and machinery and equipment to be purchased therefor in accordance with plans and specifications prepared by Tenant and placed on file with Landlord's City Clerk and Trustee, and to pay for the same as provided in this Section. After consultation with Tenant, Landlord hereby designates and appoints JAMES C. McCLURE as Project Manager and as Landlord's duly authorized agent to perform and exercise certain of the authorities, discretions and elections of Landlord and to supervise the completion of the additions and who may direct the Trustee to make payments to the contractor or contractors and suppliers out of the proceeds of the Bonds, and further appoints ROBERT O. LARGE as Successor Project Manager. In the event of the illness, death or absence from the Andover metropolitan area of the Project Manager, the Successor Project Manager shall exercise all of the functions and have all of the powers of the Project Manager. Landlord and Tenant together shall have the right to remove and from time to time designate a new Project Manager. Said Project Manager shall also direct reimbursement to Tenant for sums theretofore expended by it for construction of the additions, including but not limited to architects' and engineers' fees, labor, materials and other similar payments. Such directions shall be supported by detailed lists showing descriptions and prices.

It is contemplated that the net proceeds of the Bonds may

be insufficient fully to pay all sums required to be paid fully to complete the additions, including any equipment additions and extras, lien free. Tenant hereby agrees to pay any such deficiency by making such payments directly to the contractors or suppliers, and Tenant shall save Landlord whole and harmless from any obligation to pay such deficiency. Landlord shall not make any changes in or amendments to the construction contracts without Tenant's prior written consent. Tenant may request the Project Manager to make changes and alterations in the plans and specifications and so long as such changes do not impair the market value or the usefulness of the additions or of the facility or change the character of the structures thereon so that they will not be appropriate or usable, the Project Manager shall authorize such changes to be made. Tenant agrees to pay any excess costs which may result from any such changes. In addition thereto, Tenant covenants that it will pay or cause to be paid any and all additional expenses reasonably required in connection with this Supplement and the Series A, 1974 Bond Ordinance, including but not limited to architects' fees and all charges, fees and costs incurred by Landlord in connection with or incident to the sale of the Bonds, including, but not limited to, the fees of the fiscal adviser, fees of bond counsel and other other expenses incurred in the authorization, issuance, sale, preparation and delivery of the Bonds not paid out of the CONSTRUCTION FUND NO. 2.

SECTION 2. Supplemental Rent.

(a) Supplemental Basic Rent. In addition to all sums required to be paid by Tenant as basic or additional rent or otherwise under the provisions of the Lease and Agreement dated as of April 1, 1974, Tenant shall pay supplemental basic rent hereunder as set forth in the Schedule of Basic Rent, "Exhibit A," attached hereto and incorporated herein by reference. It is understood and agreed that the supplemental basic rent payments set forth in Exhibit A are calculated to provide to the Trustee sufficient funds to pay in full the

principal of and interest on the Series B, 1974 Bonds as the same become due and payable. The amount of such supplemental basic rent payments shall, however, be reduced by the amount of any balance held by the Trustee in the BOND AND INTEREST ACCOUNT and available for such purpose upon rental payment dates, and the Trustee shall notify the Tenant not less than ten (10) days before any such rental becomes due of the amount of the reduction in rent, if any, and the Tenant shall be required to pay only such net amount of rent.

Tenant may at any time prepay all or any part of the supplemental basic rent provided for hereunder. If at any time the amount held by the Trustee, as provided for in the Series B, 1974 Bond Ordinance, is sufficient to pay in full the principal of and interest on all outstanding Series B, 1974 Bonds, either at maturity or on earlier redemption and the Landlord and Trustee have caused all of the Series B, 1974 Bonds to be called for redemption and payment and funds are available in the hands of the Trustee to pay the principal of and interest on all of the Series B, 1974 Bonds, then no further supplemental basic rent shall be payable hereunder, and any funds representing payment of supplemental basic rent which are then held by the Trustee and are in excess of the amount required to pay the Series B, 1974 Bonds in full as aforesaid shall be refunded to Tenant as excess rent.

(b) Supplemental Additional Rent. Tenant shall pay as supplemental additional rent all such sums of money, in addition to supplemental basic rent, as shall be necessary to pay in full the principal of and interest on all the Series B, 1974 Bonds as the same become due and payable and all other sums necessary to fully retire the Series B, 1974 Bonds. If at any time any amounts paid by Tenant to the Trustee as supplemental additional rent hereunder are or become in excess of the amounts required for the purpose for which they were paid, such excess amounts shall be refunded to Tenant.

(c) Charges, Fees and Expenses of Trustee. Tenant shall


IN WITNESS WHEREOF, Landlord, being hereunto authorized by valid and subsisting ordinance duly adopted, has caused this Supplement to Lease and Agreement to be executed and delivered in its name and behalf by and through its Mayor and City Clerk, and Tenant, pursuant to valid and subsisting resolutions of its Board of Directors, has caused this Supplement to Lease and Agreement to be executed and delivered in its name and behalf by and through its officers thereunto duly authorized, all the day and year first above written.

CITY OF ANDOVER, KANSAS

By: Eugene Miller MAYOR

Landlord

ATTEST:

Patricia M. Stenke CITY CLERK


INTERNATIONAL COLD STORAGE COMPANY, INC.

By: [Signature] PRESIDENT

Tenant

ATTEST:

Deane Stevens SECRETARY



ACKNOWLEDGMENTS

STATE OF KANSAS)
)
BUTLER COUNTY) ss.

BE IT REMEMBERED, That on this 17th day of DECEMBER, 1974, before me, a notary public, in and for said county and state aforesaid came EUGENE MILLER, Mayor of the City of Andover, Kansas, a municipal corporation, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.



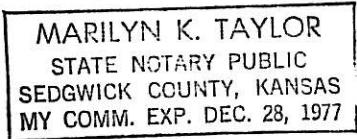
Roy Hoyle
Notary Public
Roy Hoyle

My Commission Expires:
SEP 3, 1975

STATE OF KANSAS)
)
SEDGWICK COUNTY) ss.

BE IT REMEMBERED, That on this 9th day of JANUARY, 1975, before me, a notary public, in and for said county and state aforesaid came Deane Stevens and FRANK D Stevens JR, President of INTERNATIONAL COLD STORAGE COMPANY, INC., to me personally known to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.



Marilyn K. Taylor
Notary Public
Marilyn K. Taylor

My Commission Expires:

\$220,000.00

CITY OF ANDOVER, KANSAS

Industrial Revenue Bonds

INTERNATIONAL COLD STORAGE COMPANY, INC.

<u>Year</u>	<u>Par Amount</u>	<u>Coupon</u>	<u>Interest</u>	<u>Total Principal And Interest</u>	<u>Year</u>
1975			\$ 18,382.50	\$ 18,382.50	1975
1976			18,382.50	18,382.50	1976
1977			18,382.50	18,382.50	1977
1978	\$ 10,000	7-1/2%	18,382.50	28,382.50	1978
1979	10,000	7-3/4%	17,632.50	27,632.50	1979
1980	15,000	8%	16,857.50	31,857.50	1980
1981	15,000	8%	15,657.50	30,657.50	1981
1982	15,000	8.10%	14,457.50	29,457.50	1982
1983	20,000	8-1/4%	13,242.50	33,242.50	1983
1984	20,000	8-1/4%	11,592.50	31,592.50	1984
1985	20,000	8.40%	9,942.50	29,942.50	1985
1986	20,000	8-1/2%	8,262.50	28,262.50	1986
1987	25,000	8-3/4%	6,562.50	31,562.50	1987
1988	25,000	8-3/4%	4,375.00	29,375.00	1988
1989	25,000	8-3/4%	2,187.50	27,187.50	1989
TOTALS	\$220,000		\$194,300.00	\$414,300.00	

EXHIBIT "A"