

TRIPLETT, WOOLF & GARRETSON, LLC

ORDINANCE NO. 1581

OF THE

CITY OF ANDOVER, KANSAS

AUTHORIZING THE ISSUANCE OF

\$1,150,000

CITY OF ANDOVER, KANSAS  
TAXABLE INDUSTRIAL REVENUE BONDS  
SERIES 2014  
(VORNADO AIR, LLC)

(Published in *The Butler County Times-Gazette*, November \_\_\_\_\_, 2014)

ORDINANCE NO. 1581

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2014 (VORNADO AIR, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,150,000 FOR THE PURPOSES OF (1) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING AN EXPANSION TO AN EXISTING WAREHOUSE FACILITY LOCATED IN THE CITY OF ANDOVER, KANSAS; AND (2) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION OF A FIRST SUPPLEMENTAL TRUST INDENTURE BY AND BETWEEN THE CITY AND UMB BANK, N.A., KANSAS CITY, MISSOURI, AS TRUSTEE; AUTHORIZING EXECUTION OF A FIRST SUPPLEMENTAL LEASE BETWEEN THE CITY AND VORNADO AIR, LLC; APPROVING THE FORM OF A GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY, VORNADO AIR, LLC, AND UMB BANK, N.A., WICHITA, KANSAS, AS PURCHASER OF THE BONDS.

WHEREAS, the City of Andover, Kansas (the “Issuer”) is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to issue revenue bonds to pay the cost of certain facilities, as such term is defined in the Act, for the purposes set forth in the Act, and to lease and otherwise dispose of such facilities to any person, firm or corporation; and

WHEREAS, pursuant to the Act, the City previously issued its Taxable Industrial Revenue Bonds, Series 2011 (Vornado Air, LLC) (the “2011 Bonds”) dated November 17, 2011, in the original principal amount of \$1,000,000, for the purposes of (i) purchasing, acquiring, constructing, furnishing and equipping an expansion to an existing warehouse located adjacent to the existing facilities at 415 E. 13<sup>th</sup> St. in the City (the “2011 Project”), which 2011 Project, together with said existing facilities, are referred to collectively herein as the “Existing Facilities” and currently leased to Vornado Air, LLC, a Delaware limited liability company; and

WHEREAS, the Issuer has previously adopted its Resolution No. 14-21 evidencing its preliminary intent to issue Bonds in one or more series in an aggregate principal amount of not to exceed One Million One Hundred Fifty Thousand Dollars (\$1,150,000) for the purpose of (i) purchasing, acquiring, constructing, furnishing and equipping an expansion to the existing warehouse included in the Existing Facilities (the “2014 Additions”) (the Existing Facilities, 2011 Project, and 2014 Additions being collectively referred to herein as, the “Facilities”) and (ii) paying certain costs of issuance; and

WHEREAS, the Issuer has heretofore and does hereby find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds,

Series 2014 (Vornado Air, LLC), to be dated as of their issuance and delivery, in the aggregate principal amount of \$1,150,000 (the “2014 Bonds”) for the purpose of paying (i) the costs of the 2014 Additions and (ii) paying certain costs of issuance associated with the 2014 Bonds; and

WHEREAS, the Bonds and the interest thereon shall not constitute an indebtedness of the Issuer, within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability by the Issuer, nor shall any 2014 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer. The 2014 Bonds are not general obligations of the Issuer and are payable solely and only from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease (hereinafter defined) and, under certain circumstances, from the proceeds of the 2014 Bonds and insurance and condemnation awards; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance, execution and delivery of said 2014 Bonds (i) to execute and deliver a First Supplemental Trust Indenture, dated as of December 1, 2014 (the “First Supplemental Indenture”), which supplements and amends a Trust Indenture, dated as of November 15, 2011 (the “2011 Indenture”), each by and between the Issuer and UMB Bank, n.a., Kansas City, Missouri, as Trustee (the “Trustee”), for the purpose of issuing and securing the 2014 Bonds, as provided therein; (ii) execute and deliver a First Supplemental Lease Agreement, dated as of December 1, 2014 (the “First Supplemental Lease”), which supplements and amends a Lease Agreement, dated as of November 15, 2011 (the “2011 Lease”), each by and between the Issuer, as landlord, and Vornado Air, LLC, as Tenant (the “Tenant”) for the purpose of leasing the Facilities to the Tenant in consideration for payments of Basic Rent, Additional Rent and other charges provided for therein; and (iii) to execute such other documents and agreements in connection with the issuance of the 2014 Bonds as hereinafter provided (the 2011 Lease and the First Supplemental Lease collectively referred to herein as the “Lease”); and

WHEREAS, pursuant to the terms of the 2011 Indenture and the First Supplemental Indenture (collectively, the “Indenture”), the 2014 Bonds shall be equally and ratably secured and on a parity with the 2011 Bonds and any Additional Bonds (collectively, the “Bonds”).

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

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and Lease hereinafter authorized and defined.

Section 2. Authorization to Cause the 2014 Additions to be Purchased, Acquired, Constructed, Equipped and Installed. The governing body of the Issuer hereby declares that the 2014 Additions, if in being, would promote the welfare of the City of Andover, Kansas, and the Issuer is hereby authorized to provide for payment of the Costs of the Project in accordance with the provisions of the Indenture, all as provided herein and the Indenture and Lease hereinafter authorized.

Section 3. Authorization of and Security for the 2014 Bonds. There is hereby authorized and directed to be issued certain revenue bonds to be designated “City of Andover, Kansas, Taxable Industrial Revenue Bonds, Series 2014 (Vornado Air, LLC),” in the aggregate principal amount of \$1,150,000 (the “2014 Bonds”) for the purpose of paying (i) the costs of the 2014 Additions and (ii) certain costs of issuance associated with the 2014 Bonds.

The 2014 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The 2014 Bonds and any Additional Bonds thereafter authorized by the Issuer and the Trustee in their sole and absolute discretion (herein the “Bonds”) shall be on a parity with, and equal in priority to, one another and with the 2011 Bonds and any Additional Bonds which may be issued on a like parity within the meaning and pursuant to the terms and provision of the Indenture herein defined. The 2014 Bonds shall be special limited obligations of the Issuer payable solely from the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Facilities. The 2014 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 4. Authorization of First Supplemental Indenture. The Issuer is hereby authorized to enter into the First Supplemental Indenture (as defined above) under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the 2014 Bonds, the Trust Estate created thereby, all upon the terms and conditions set forth in the Indenture.

Section 5. Lease of Facilities. The Issuer shall cause the 2014 Additions to be acquired and shall lease the 2014 Additions to the Tenant, pursuant to and in accordance with the terms and provisions of the First Supplemental Lease.

Section 6. Approval of the Form of First Supplemental Guaranty Agreement. The form of Guaranty Agreement, dated as of December 1, 2014 (the “Guaranty Agreement”), pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the 2014 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2014 Bonds, is hereby approved.

Section 7. Authorization of Bond Purchase Agreement. The 2014 Bonds shall be sold and delivered pursuant to and in accordance with the terms and provisions of the Bond Purchase Agreement, dated as of December 1, 2014 (the “Bond Purchase Agreement”), by and between the Issuer, the Tenant, and UMB Bank, n.a., Wichita, Kansas, as the Purchaser of the 2014 Bonds.

Section 8. Execution of Series 2014 Bonds and Related Agreements and Documents. The Mayor of the governing body of the Issuer is hereby authorized and directed to execute the 2014 Bonds and deliver same to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor, or President of the Council, is authorized and directed to execute and deliver the First Supplemental Indenture, the

First Supplemental Lease and the Bond Purchase Agreement for and on behalf of and as the act and deed of the Issuer in substantially the forms as they are presented today with such minor corrections or amendments thereto as the Mayor, or President of the Council, shall approve (after consultation with the Bond Counsel), which approval shall be evidenced by his or her execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk or any Deputy City Clerk of the Issuer are hereby authorized and directed to attest the execution of the 2014 Bonds, the First Supplemental Indenture, the First Supplemental Lease and the Bond Purchase Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 9. Pledge of the Facilities. The Issuer hereby pledges the Facilities (including the 2014 Additions) and the net earnings therefrom to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds issued under the Indenture shall be deemed to have been paid within the meaning of the Indenture.

Section 10. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the 2014 Bonds, the First Supplemental Indenture, the First Supplemental Lease and the Bond Purchase Agreement, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the Issuer and publication once in the official newspaper of the Issuer.

*[Remainder of Page Intentionally Left Blank]*

PASSED, ADOPTED AND APPROVED by the Governing Body of the City of Andover, Kansas this 25th day of November, 2014.

CITY OF ANDOVER, KANSAS

[seal]

By \_\_\_\_\_  
Ben Lawrence, Mayor

ATTEST:

By \_\_\_\_\_  
Susan C. Renner, City Clerk

EXCERPT OF MINUTES

The City Council of the City of Andover, Kansas, met in regular session, at the usual meeting place in said City on November 25, 2014, at 7:00 p.m., with the Mayor Ben Lawrence presiding, and the following members present: Troy Tabor, Sheri Geisler, Clark Nelson, Caroline Hale, and Kris Estes.

and the following members absent: Byron Stout IV

Among other business, there came on for consideration and discussion the following:

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2014 (VORNADO AIR, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,150,000 FOR THE PURPOSES OF (1) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING AN EXPANSION TO AN EXISTING WAREHOUSE FACILITY LOCATED IN THE CITY OF ANDOVER, KANSAS; AND (2) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION OF A FIRST SUPPLEMENTAL TRUST INDENTURE BY AND BETWEEN THE CITY AND UMB BANK, N.A., KANSAS CITY, MISSOURI, AS TRUSTEE; AUTHORIZING EXECUTION OF A FIRST SUPPLEMENTAL LEASE BETWEEN THE CITY AND VORNADO AIR, LLC; APPROVING THE FORM OF A GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY, VORNADO AIR, LLC, AND UMB BANK, N.A., WICHITA, KANSAS, AS PURCHASER OF THE BONDS.

After discussion, upon motion by Council Member Clark Nelson, seconded by Council Member Caroline Hale, each section of the Ordinance was passed by a majority of the members elect.

A majority of the members having voted in favor of the passage of said Ordinance, it was designated Ordinance No. 1581 and was ordered to be executed by the Mayor and by the City Clerk, and the City Clerk was directed to publish the Ordinance one time in the official city newspaper as required by law and provided therein.

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CITY CLERK'S  
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the November 25, 2014 meeting of the governing body of the City of Andover, Kansas.

[seal]

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Susan C. Renner, City Clerk