

## **RESOLUTION NO. 2114**

**A RESOLUTION DECLARING THE INTENT OF THE CITY OF GARDNER, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS IN THE APPROXIMATE PRINCIPAL AMOUNT OF \$9,890,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY WITHIN THE CITY (MAIN STREET MARKET PLACE).**

**WHEREAS**, the City of Gardner, Kansas (the “City”), is authorized and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, construct and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into leases or lease-purchase agreements with any person, firm or corporation for said facilities and to issue revenue bonds for the purpose of paying the cost of such facilities;

**WHEREAS**, pursuant to the Second Amended and Restated Development Agreement dated as of December 6, 2021 (as amended or supplemented, the “Development Agreement”), by and between the City and Group Gardner, LLC, a Kansas limited liability company (the “Developer”), the City has agreed to consider issuing industrial revenue bonds in order to enable an exemption on all or a portion of the sales taxes levied by Kansas governmental entities related to the development of property generally located at the northwest corner of E. Main Street and N. Moonlight Road in the City;

**WHEREAS**, the Developer has requested the City issue its industrial revenue bonds in the approximate principal amount of \$9,890,000 to finance a portion of the costs of acquiring, constructing and equipping the redevelopment of the former grocery store located at or near 830 E. Main Street, including buildings, improvements and equipment, together with site improvements for a single pad site located at or near 838 E. Main Street (collectively, the “Project”), in order to promote, stimulate and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof;

**WHEREAS**, pursuant to Section 703 of the Development Agreement, the Developer has indicated that it is assigning a portion of its rights under the Development Agreement, including the right to request industrial revenue bond financing for a portion of the costs of acquiring, constructing, and equipping the Project, to a Developer affiliate, DJC Properties, L.L.C., a Kansas limited liability company (the “Company”);

**WHEREAS**, the Company will lease the Project to the City, and the City will lease the Project back to the Company; and

**WHEREAS**, subject to the provisions of Section 3 of this Resolution, the City desires to finance a portion of the cost of acquiring, constructing and equipping the Project by the issuance of its industrial revenue bonds in the approximate principal amount of \$9,890,000 pursuant to the

Act, said bonds to be payable solely out of the rentals, revenues and receipts derived from the lease of the Project to the Company from the City;

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:**

**Section 1.** Subject to the provisions of Section 3 of this Resolution, it is hereby found and declared that the issuance of the Industrial Revenue Bonds (Taxable Under Federal Law), Series 2023 (Main Street Market Place), in the approximate principal amount of \$9,890,000 (the “Bonds”), by the City for the purpose of financing a portion of the cost of the proposed Project to be leased to the Company will promote, stimulate and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof as well as further promoting, stimulating and developing the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof.

**Section 2.** Subject to the provisions of Section 3 of this Resolution, the Governing Body of the City hereby intends to authorize the issuance of the Bonds pursuant to the Act and all necessary regulatory approvals, and upon the conditions more fully set forth in Section 3 hereof.

**Section 3.** Notwithstanding this Resolution of intent of the City to issue the Bonds, the issuance of the Bonds is expressly subject to presentation, completion and final approval by the Governing Body of the City of each of the conditions set forth in subparagraphs (a) through (f) below. In addition, the issuance of such Bonds is also conditioned on and subject to the reservations of rights set forth in subparagraphs (g) and (h) below:

- (a) Satisfactory negotiation and approval of a base lease, lease agreement, trust indenture, ordinance and other documents necessary for the issuance of the Bonds;
- (b) Obtaining all necessary zoning and building permits and compliance with all necessary regulatory approvals and with City ordinances;
- (c) Successful private placement of the Bonds or other purchase method approved by the City;
- (d) Approval of the Bonds by Bond Counsel, Kutak Rock LLP, and approval of certain legal matters pertaining to the Bonds by counsel to the Company;
- (e) Adequate security for the payment of the Bonds;
- (f) Compliance with the terms and conditions of the Development Agreement;
- (g) The City hereby reserves the right to rescind this Resolution of intent if the conditions specified in this Section 3 are not, in the sole judgment of the City, satisfied, or upon change of federal or state law or regulations affecting the City’s issuing authority; and

(h) If the Bonds are not issued for any reason, including noncompliance with the conditions of this Section 3, the City shall not be subject to any liability, whatsoever, to the Company.

**Section 4.** Subject to the conditions and prior approvals of Section 3, the Company is hereby authorized to proceed with all matters necessary to accomplish the purposes set forth in this Resolution.

**Section 5.** The Mayor, City Council, City Administrator, Finance Director, Bond Counsel, City Attorney and other officers, employees and representatives of the City are hereby directed to take such action as they deem necessary in cooperation with all persons involved with the financing of the Project in order to present the necessary documents to the Governing Body of the City for final action. In connection therewith, Bond Counsel is directed to work with the Company and its counsel, and all others necessary, to accomplish the purposes set forth herein.

**Section 6.** The City and the Company expect to incur expenses in connection with the acquisition, construction and equipping of the Project prior to the issuance of the Bonds. The City and the Company hereby reasonably expect to reimburse certain of such expenditures in connection with the Project from the proceeds of the Bonds.

**Section 7.** This Resolution shall take effect and be in full force on the date it is adopted by the Governing Body and signed by the Mayor. This Resolution shall be of no effect and shall be null and void on December 31, 2023, in the event the Bonds have not been issued by such date.

*[remainder of page intentionally left blank]*

**ADOPTED** by the Governing Body of the City of Gardner, Kansas, on October 17, 2022.

**CITY OF GARDNER, KANSAS**

By \_\_\_\_\_ /s/  
Mayor

(Seal)

Attest:

\_\_\_\_\_/s/  
City Clerk