

**ORDINANCE NO. 2766**

**AN ORDINANCE AUTHORIZING THE CITY OF GARDNER, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2023 (MAIN STREET MARKET PLACE), IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$4,000,000 FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING A COMMERCIAL FACILITY, AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.**

**WHEREAS**, the City of Gardner, Kansas (the “City”) is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities;

**WHEREAS**, pursuant to Resolution No. 2097, adopted by the Governing Body of the City on December 6, 2021, the City previously entered into a Second Amended and Restated Development Agreement for Project Area One in Main Street Market Place TIF District and CID, dated as of December 6, 2021 (the “Second A&R Development Agreement”), by and between the City and Group Gardner, LLC, a Kansas limited liability company (“Group Gardner”), for the acquisition, construction, and equipping of a new grocery store and pad sites, the redevelopment of an existing grocery store, and the performance of certain related improvements (collectively, the “Shopping Center Project”) within the City;

**WHEREAS**, following execution and delivery of the Second A&R Development Agreement, certain of the rights and obligations of Group Gardner thereunder with respect to redevelopment of the existing grocery store and certain pad sites were assigned to and assumed by DJC Properties, L.L.C., a Kansas limited liability company (“Company,” and, severally with Group Gardner, the “Developer”);

**WHEREAS**, at the Developer’s request, the City and the Developer entered into a Third Amended and Restated Development Agreement for Project Area One in Main Street Market Place TIF District and CID, dated as of February 6, 2023 (the “Third A&R Development Agreement”), approved by the Governing Body of the City on February 6, 2023, which amended and restated the Second A&R Development Agreement, as partially assigned to the Company, to modify the deadline for the Developer’s completion of renovations to the existing grocery store;

**WHEREAS**, pursuant to the Third A&R Development Agreement, the City agreed to consider issuing taxable industrial revenue bonds related to the development of a portion of the Shopping Center Project;

**WHEREAS**, pursuant to Resolution No. 2114 of the City, adopted on October 17, 2022 (the “Resolution of Intent”), the Governing Body of the City determined its intent to issue its taxable industrial revenue bonds in the principal amount not to exceed \$9,890,000 for the purpose of financing 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 within the City (collectively, the “IRB Project”) in order to enable an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment, and furnishings related to the IRB Project, and to lease the IRB Project to the Company, in accordance with the Act;

**WHEREAS**, the Governing Body of the City now finds and determines that it is desirable in order to promote, stimulate, and develop the general economic welfare and prosperity of the City and the State of Kansas that the City issue its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2023 (Main Street Market Place), in the principal amount not to exceed \$4,000,000 (the “Bonds”), for the purpose of paying a portion of the costs of acquiring, constructing, and equipping the IRB Project and authorizing the City to lease and sublease the IRB Project as more fully described in the Indenture, the Base Lease, and the Lease hereinafter authorized; and

**WHEREAS**, the City further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver: (i) a Trust Indenture (the “Indenture”), with BOKF, N.A., Kansas City, Missouri, as Trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Bonds; (ii) a Base Lease Agreement (the “Base Lease”), pursuant to which the City will lease the IRB Project from the Company; (iii) a Lease (the “Lease”), pursuant to which the City will lease back the IRB Project to the Company, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due; and (iv) a Bond Purchase Agreement providing for the sale of the Bonds by the City to the Company (the Indenture, the Base Lease, the Lease, and the Bond Purchase Agreement are referred to collectively herein as the “Bond Documents”);

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

**SECTION 1. Authority to Cause the IRB Project to be Acquired, Constructed, and Equipped.** The City is hereby authorized to cause the IRB Project to be acquired, constructed, and equipped all in the manner and as more particularly described in the Indenture, the Base Lease, and the Lease hereinafter authorized.

**SECTION 2. Authorization of and Security for the Bonds.** The City is hereby authorized and directed to issue the Bonds in the principal amount not to exceed \$4,000,000 for the purpose of providing funds to pay a portion of the costs of acquiring, constructing, and equipping the IRB Project. The 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 Bonds shall be special limited obligations of the City payable solely from the trust estate established under the Indenture, including revenues from the lease of the IRB Project. The Bonds shall not be general obligations of the City, nor constitute a pledge of the full faith and credit of the City and shall not be payable in any manner by taxation.

**SECTION 3. Execution of Bonds and Bond Documents.** The Mayor or acting Mayor of the City is hereby authorized and directed to execute the Bonds and deliver them to the Trustee for authentication on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor or acting Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of and as the act and deed of the City, in substantially the forms on file in the office of the City Clerk, with such corrections or amendments thereto as the Mayor or acting Mayor may approve, which approval shall be evidenced by his or her execution thereof, and to execute 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 and the Bond Documents. The City Clerk of the City is hereby authorized and directed to attest the execution of the Bonds, the Bond Documents and such other documents, certificates, and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the City's official seal.

**SECTION 4. Pledge of the IRB Project and Net Earnings.** The City hereby pledges the City's leasehold interest in the IRB Project and the net earnings generated under the Lease 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 shall be deemed to be paid within the meaning of the Indenture.

**SECTION 5. Further Authority.** The officials, officers, agents and employees of the City and Kutak Rock LLP, the City's Bond Counsel, 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 the provisions of this Ordinance and to carry out and perform the duties of the City with respect to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

**SECTION 6. Effective Date.** This Ordinance shall take effect from and after its passage by the Governing Body of the City, approval by the Mayor, and publication once in the official newspaper of the City.

*[remainder of page intentionally left blank]*

**PASSED** by the Governing Body of the City of Gardner, Kansas, on April 17, 2023.

**APPROVED** by the Mayor on April 17, 2023.

**CITY OF GARDNER, KANSAS**

/s/

\_\_\_\_\_  
Mayor

{Seal}

ATTEST:

/s/

\_\_\_\_\_  
City Clerk