

RESOLUTION NO. 2061

A RESOLUTION OF THE CITY OF GARDNER, KANSAS, APPROVING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR A DEVELOPMENT PROJECT WITHIN THE CITY; AND WAIVING NOTICE OF THE EXERCISE OF A PURCHASE OPTION IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2020 (MAIN STREET MARKET PLACE).

WHEREAS, the City of Gardner, Kansas (the "City"), is a duly organized city, created, organized and existing under the laws of the State of Kansas;

WHEREAS, pursuant to Resolution No. 2011, adopted by the Governing Body of the City on February 18, 2019, the City previously entered into a Development Agreement for Project Area One in Main Street Market Place TIF District and CID, dated as of February 18, 2019 (the "Original Agreement"), by and between the City and Super Market Developers, Inc. (the "Developer"), for the acquisition, construction, and equipping of a grocery store and two pad sites, the redevelopment of an existing grocery store, and the performance of certain related improvements (collectively, the "Project") within the City;

WHEREAS, the City and the Developer have determined it necessary and desirable to enter into an Amended and Restated Development Agreement (the "A&R Development Agreement") to amend and restate the Original Agreement and set forth certain rights and obligations between the parties concerning the construction of turn lanes to provide access to the Project;

WHEREAS, pursuant to K.S.A. 12-1740 *et seq.* and Ordinance No. 2663, passed by the Governing Body of the City on May 4, 2020, the City has previously issued its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2020 (Main Street Market Place), dated as of May 22, 2020, in the principal amount of not to exceed \$9,500,000 (the "IRBs");

WHEREAS, in connection with the issuance of the IRBs, the Developer leased a portion of the Project to the City, and the City leased a portion of the Project back to the Developer;

WHEREAS, the Developer has completed the improvements financed with the IRBs, has requested that the City redeem the IRBs, and has provided notice of its intent to exercise its purchase option of the City's leasehold interest in the portion of the Project financed by the IRBs; and

WHEREAS, and the City finds it necessary and desirable to waive the 30-day notice for the exercise of the Developer's purchase option contained in the Lease dated as of May 1, 2020 (the "Lease"), by and between the City and the Developer and delivered in connection with the issuance of the IRBs;

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

Section 1. The City is hereby authorized to enter into the A&R Development Agreement by and between the City and the Developer in substantially the form presented to and reviewed by the Governing Body on the date of this Resolution (copies of this document shall be on file in the records of the City) with such changes therein as shall be approved by the Mayor, with the Mayor's signature thereon being conclusive evidence of his approval thereof and the same are hereby approved in all respects.

Section 2. The City hereby waives the requirement contained in Section 17.1 of the Lease that the closing date for the Developer's purchase of the City's leasehold interest be not less than 30 days after receipt of notice thereof from the Developer.

Section 3. The Mayor, City Clerk, and other officers and representatives of the City are hereby authorized and directed to execute, seal, attest, and deliver the A&R Development Agreement and such other documents, certificates and instruments as may be necessary and desirable to carry out and comply with the intent of this Resolution, for and on behalf of and as the act and deed of the City.

Section 4. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED by the Governing Body of the City of Gardner, Kansas on October 5, 2020.

CITY OF GARDNER, KANSAS

(Seal)

/s/
Mayor

ATTEST:

/s/
City Clerk