

ORDINANCE NO. 2663

AN ORDINANCE OF THE CITY OF GARDNER, KANSAS, AUTHORIZING THE CITY TO ISSUE INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2020 (MAIN STREET MARKET PLACE), IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$9,500,000, FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF 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 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 lease and 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, the Governing Body of the City adopted Resolution No. 2010 on February 18, 2019 (the “Resolution of Intent”), indicating its intent to issue the principal amount of not to exceed \$19,390,000 of industrial revenue bonds pursuant to the Act, in order to finance a portion of the costs of acquiring, constructing and equipping an approximately 60,000 square foot grocery store, the redevelopment of an existing grocery store, and the development of two pad sites, including buildings, improvements and equipment (collectively, the “Master Project”), generally located at the northwest corner of E. Main Street and N. Moonlight Road in the City, 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 (the “State”) and the health of the citizens thereof;

WHEREAS, the developer of the Master Project, Super Market Developers, Inc., a Missouri corporation (the “Company”), has proceeded with the acquisition, construction, and equipping of the new grocery store (referred to herein as the “Project”) but has indicated that redevelopment of the existing grocery store will be deferred;

WHEREAS, the Company has requested that the City issue one series of industrial revenue bonds to finance a portion of the construction of the Project now and, when redevelopment of the existing grocery store moves forward, consider a resolution of intent to issue a second series of industrial revenue bonds to finance the balance of the Master Project;

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 that the City issue its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2020 (Main Street Market Place) (the “Bonds”), in the principal amount not to exceed \$9,500,000, to be issued for the purpose of financing the acquisition, construction and equipping the 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 dated as of May 1, 2020 (the “Indenture”), with UMB Bank, 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 dated as of May 1, 2020 (the “Base Lease”), pursuant to which the City will lease the Project from the Company; (iii) a Lease dated as of May 1, 2020 (the “Lease”), pursuant to which the City shall lease back the 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 dated as of the date of issuance of the Bonds (the “Bond Purchase Agreement”) providing for the sale of the Bonds by the City to the Company (collectively, (i) through (iv) are referred to 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 Project to be Acquired, Constructed and Equipped. The City is hereby authorized to cause the 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 aggregate principal amount of not to exceed \$9,500,000 for the purpose of providing funds to pay the costs of acquiring, constructing and equipping the 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 Project. The Bonds shall not be general obligations of the City, nor constitute a pledge of the 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 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 Project and Net Earnings. The City hereby pledges the City’s interest in the 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 and comply with the intent of this Ordinance and to carry out, comply with 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 in the official newspaper of the City.

PASSED by the Governing Body on May 4, 2020.

APPROVED by the Mayor on May 4, 2020.

CITY OF GARDNER, KANSAS

By: _____/s/_____
Mayor

{Seal}

ATTEST:

_____/s/_____
City Clerk