

ORDINANCE NO. 8153

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LEAVENWORTH, KANSAS OF NOT TO EXCEED \$12,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (SUPER MARKET DEVELOPERS, INC. PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR SUPER MARKET DEVELOPERS, INC., AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Leavenworth, Kansas, (the “Issuer”) is a municipal corporation and political subdivision duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, the Issuer is authorized by K.S.A. 12-1740 to 12-1749e, inclusive, as amended, (collectively, the “Act”) to issue revenue bonds, the proceeds of which shall be used for the purpose of paying all or part of the cost of acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes; and

WHEREAS, pursuant to the Act, the Issuer proposes to issue its Taxable Industrial Revenue Bonds, Series 2020 (Super Market Developers, Inc., Project), in an aggregate principal amount not to exceed \$12,000,000 (the “Bonds”) for the purpose of (a) acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, and remodeling a commercial facility for Super Market Developers, Inc., a Missouri corporation registered and in good standing as a foreign corporation in the State of Kansas (the “Company”), and (b) paying certain costs of issuance, all as further described in the hereinafter referred to Bond Indenture and Lease Agreement; and

WHEREAS, the Bonds will be issued under a Bond Trust Indenture dated as of the date set forth therein (the “Bond Indenture”), by and between the Issuer and UMB Bank n.a., Kansas City, Missouri, with one or more offices in the State of Kansas, as Bond Trustee (the “Bond Trustee”); and

WHEREAS, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement of even date herewith (the “Base Lease”) between the Company and the Issuer; and

WHEREAS, simultaneously with the execution and delivery of the Bond Indenture, the Issuer will enter into a Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), by and between the Issuer, as lessor, and the Company, as lessee, pursuant to which the Project (as defined in the Bond Indenture) will be acquired, constructed, reconstructed, improved, equipped, furnished, repaired, and remodeled pursuant to which the Issuer will lease the Project to the Company, and the Company will agree to pay Lease Payments (as defined in the Bond Indenture) sufficient to pay the principal of and interest on the Bonds; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the Issuer execute and deliver certain documents and that the Issuer take certain other actions as herein provided.

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

Section 1. Findings and Determinations. The Issuer hereby makes the following findings and determinations with respect to the Company and the Bonds to be issued by the Issuer, based upon representations made to the Issuer:

- (a) The Company has properly requested the Issuer's assistance in financing the costs of the Project;
- (b) The issuance of the Bonds for the purpose of providing funds to finance the costs of the Project is in furtherance of the public purposes set forth in the Act; and
- (c) The Bonds are being issued for a valid purpose under and in accordance with the provisions of the Act.

Section 2. Authorization of the Bonds. The Issuer is hereby authorized to issue the Bonds in the aggregate principal amount of not to exceed \$12,000,000, which shall be issued under and secured by and shall have the terms and provisions set forth in the Bond Indenture. The Bonds shall bear interest at the fixed rate of 5.00% and shall mature not later than the year 2025, and shall have such redemption provisions as set forth in the Bond Indenture. The final terms of the Bonds shall be specified in the Bond Indenture, and the signatures of the officers of the Issuer executing such Bond Indenture shall constitute conclusive evidence of their approval and the Issuer's approval thereof.

Section 3. Limited Obligations. The Bonds shall be limited obligations of the Issuer, payable solely from the sources and in the manner as provided in the Bond Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Bond Indenture) to the Bond Trustee and in favor of the owners of the Bonds, as provided in the Bond Indenture. The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the Issuer, the State of Kansas (the "State") or of any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the Issuer, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general credit or against its taxing power.

Section 4. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the Issuer (copies of which documents, upon execution thereof, shall be filed in the office of the City Clerk), and the Issuer is hereby authorized to execute and deliver each of such documents (the "Issuer Documents") with such changes therein (including the dated date thereof) as shall be approved by the officials of the Issuer executing such documents, such officials' signatures thereon being conclusive evidence of their approval and the Issuer's approval thereof:

- (a) Bond Indenture;
- (b) Base Lease Agreement;
- (c) Lease Agreement; and

(d) Bond Purchase Agreement.

Section 5. Execution of Bonds and Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds by manual or facsimile signature and to deliver the Bonds to the Bond Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Bond Indenture. The Mayor of the Issuer is hereby authorized and directed to execute and deliver the Issuer Documents for and on behalf of and as the act and deed of the Issuer. The City Clerk of the Issuer is hereby authorized and directed to attest, by manual or facsimile signature, to the Bonds, the Issuer Documents 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 6. Further Authority. The Issuer shall, and the officials, agents and employees of the Issuer are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments, including, without limitation, any credit enhancement and security documents, arbitrage certificate, redemption notices, closing certificates and tax forms, 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 Issuer with respect to the Bonds and the Issuer Documents.

Section 7. Effective Date. This Ordinance shall take effect and be in full force immediately after its adoption by the Governing Body of the Issuer and publication in the official newspaper of the Issuer.

PASSED by the Governing Body of the City of Leavenworth, Kansas this 10th day of November, 2020.

CITY OF LEAVENWORTH, KANSAS

/s/ Myron J. "Mike" Griswold
Myron J. "Mike" Griswold, Mayor

(Seal)

ATTEST:

/s/ Carla K. Williamson
Carla K. Williamson, CMC City Clerk

[SUMMARY ORDINANCE FOR PUBLICATION]

(PUBLISHED IN *The Leavenworth Times* ON November 14, 2020)

SUMMARY OF ORDINANCE NO. 8153

On November 10, 2020, the governing body of the City of Leavenworth, Kansas, passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LEAVENWORTH, KANSAS OF NOT TO EXCEED \$12,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (SUPER MARKET DEVELOPERS, INC. PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR SUPER MARKET DEVELOPERS, INC., AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

The bonds approved by the Ordinance are being issued in an aggregate principal amount not to exceed \$12,000,000 for the purpose of acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, and remodeling a commercial facility located approximately at 2107 S. 4th Street, Leavenworth, Kansas and paying certain costs of issuance of the bonds. The bonds shall be limited obligations of the City of Leavenworth, Kansas payable from lease payments to be made by Super Market Developers, Inc., in amounts sufficient to pay the principal of and interest on the bonds. The bonds and interest thereon shall not be deemed to constitute a debt or liability of the City of Leavenworth, the State of Kansas (the "State") or of any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City of Leavenworth, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and the Bond Indenture. The issuance of the bonds shall not, directly, indirectly or contingently, obligate the City of Leavenworth, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 100 North 5th Street. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at the City Clerk's office 100 North 5th Street, Leavenworth, Kansas.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: November 10, 2020.

/s/ David E. Waters
David Waters, City Attorney