

(Published in *The Legal Record* on April \_\_\_\_, 2016)

**ORDINANCE NO. 2396**

**AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF DE SOTO, KANSAS OF NOT TO EXCEED \$9,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS (HARP'S FOOD STORES, INC. PROJECT), SERIES 2016, TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR HARP'S FOOD STORES, INC. AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.**

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**WHEREAS**, the City of De Soto, Kansas (the "Issuer") is a municipal corporation and political subdivision duly organized and validly as a city of the second class; and

**WHEREAS**, the Issuer is authorized by K.S.A. 12-1740 to 12-1749d, 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 purchasing, 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 (Harp's Food Stores, Inc. Project), Series 2016 (the "Bonds"), in an aggregate principal amount not to exceed \$9,000,000, for the purpose of (a) acquiring, constructing and equipping a commercial project for Harp's Food Stores, Inc., an Arkansas corporation (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 Security Bank of Kansas City, 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 and equipped and 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 premium, if any, 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 COUNCIL OF THE CITY OF DE SOTO, 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 \$9,000,000, 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 an interest rate not to exceed 2.00% per annum, and shall mature not later than the year 2017, and shall have such redemption provisions, including premiums, and other terms 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 providing for the issuance thereunder of the Bonds and setting forth the terms and provisions applicable to the Bonds, including a pledge and assignment by the Issuer of the Trust Estate to the Bond Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Bond Indenture;

(b) Base Lease Agreement under which the Company will lease to the Issuer the property financed and refinanced with the proceeds of the Bonds in consideration of the Issuer's deposit of the proceeds of the Bonds into the funds described in the Bond Indenture; and

(c) Lease Agreement under which the Issuer will make the proceeds of the Bonds available to the Company for the purposes herein described in consideration of payments that will be sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds.

**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 of this ordinance or a summary thereof in the official newspaper of the Issuer.

**PASSED** by the city council of the City of De Soto, Kansas on April 7, 2016 and **APPROVED AND SIGNED** by the Mayor.

(Seal)  
ATTEST:

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

\_\_\_\_\_  
Mayor

(PUBLISHED IN *THE LEGAL RECORD* ON APRIL \_\_\_\_, 2016)

**SUMMARY OF ORDINANCE NO. \_\_\_\_\_**

On April 7, 2016, the city council of the City of De Soto, Kansas passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF DE SOTO, KANSAS OF NOT TO EXCEED \$9,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS (HARP'S FOOD STORES, INC. PROJECT), SERIES 2016, TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR HARP'S FOOD STORES, INC. AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.**

The Ordinance authorizes the Issuer to issue its Taxable Industrial Revenue Bonds (Harp's Food Stores, Inc. Project), Series 2016 in the maximum principal amount of \$9,000,000 for the purpose of (a) acquiring, constructing, improving and equipping a commercial facility to be located as 34080 Commerce Drive in De Soto, Kansas and (b) paying certain costs of issuance as more fully described in the Bond Indenture, the Base Lease Agreement and Lease Agreement authorized by the Ordinance. The Project will be leased by the City to Harp's Food Stores, Inc., an Arkansas corporation. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, De Soto City Hall, 32905 W. 84<sup>th</sup> Street, De Soto, Kansas 66018. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at \_\_\_\_\_ .com.

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

DATED: \_\_\_\_\_ \_\_\_\_, 2016.

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City Attorney