

ORDINANCE NO. 2439

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SPECIAL OBLIGATION TAX INCREMENT REVENUE BONDS (COMMERCE DRIVE PROJECT), SERIES 2018 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,200,000 OF THE CITY OF DE SOTO, KANSAS, FOR THE PURPOSE OF FINANCING CERTAIN REDEVELOPMENT PROJECT COSTS IN CONNECTION WITH THE PROJECT PLAN; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO; AND APPROVING A FIRST AMENDMENT OF REDEVELOPMENT AGREEMENT.

WHEREAS, the City of De Soto, Kansas (the “City”), is a municipal corporation duly organized and validly existing under the laws of the State of Kansas; and

WHEREAS, the City has the authority to adopt tax increment financing pursuant to the Kansas Tax Increment Redevelopment Act, constituting sections K.S.A. 12-1770 *et seq.*, as amended (the “Act”); and

WHEREAS, the City created a redevelopment district by the adoption of Ordinance No. 2385 on September 2, 2015, which consists of one project area; and

WHEREAS, the City adopted the redevelopment project plan for (the “Project Plan”) by the adoption of Ordinance No. 2391 on January 6, 2016, which Ordinance was made effective as of December 31, 2016; and

WHEREAS, in order to govern and implement the Project Plan the City and Harp’s Food Stores, Inc. (the “Developer”) entered into a Commerce Drive Tax Increment Financing Redevelopment District Redevelopment Agreement dated as of January 7, 2016 (the “Redevelopment Agreement”); and

WHEREAS, the City has determined that it is necessary and desirable to issue its Special Obligation Tax Increment Revenue Bonds (Commerce Drive Project) (the “Bonds”), in the maximum aggregate principal amount of \$2,200,000 to pay a portion of the Redevelopment Project Costs and pay the costs of issuing the Bonds and to amend the Redevelopment Agreement.

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

Section 1. Definitions of Words and Terms. In addition to words and terms defined elsewhere in this Ordinance, capitalized words and terms used in this Ordinance shall have the meanings set forth in the Bond Trust Indenture dated as of the date stated therein (the “Indenture”), between the City and Security Bank of Kansas City (the “Trustee”).

Section 2. Authorization of the Bonds. The City is hereby authorized to issue and sell the Bonds in the original aggregate principal amount of not to exceed \$2,200,000, the proceeds of which will be used to pay the Redevelopment Project Costs and pay certain issuance costs related to the Bonds. The Bonds shall be (i) issued and secured pursuant to the herein authorized Indenture (ii) shall be issued in a principal amount of not to exceed \$2,200,000 and in the Authorized Denominations, (iii) shall bear interest at an interest rate of not to exceed 5.00%, (iv) shall have a final maturity no later than 2037, (iv) shall be privately placed with the Purchaser(s), and (vii) prepayable at any time without penalty.

The final terms of the Bonds shall have such other terms and provisions, shall be issued, executed, authenticated and delivered in such manner and shall be subject to such provisions, covenants and agreements, as are set forth in the Indenture upon the execution thereof. The signature of the Mayor when executing such Indenture shall constitute conclusive evidence of the Mayor's approval and the City's approval thereof.

Section 3. Security for the Bonds. The City shall deposit the Incremental Tax Revenues into the Tax Increment Fund. The moneys and securities now or hereafter held in, and moneys and securities to be deposited in the Tax Increment Fund and all interest and earnings thereon and proceeds thereof, are hereby pledged to secure the payment of the Bonds. The moneys in the Tax Increment Fund shall be administered and applied solely for the purposes and in the manner provided in this Ordinance. The Incremental Tax Revenues shall be determined and collected in the manner provided by law and as provided in the Indenture.

The Bonds, together with interest and premium, if any, thereon are not general obligations of the City but are limited obligations payable solely from the Trust Estate pledged to the payment thereof under the Indenture and shall be a valid claim of the respective holders thereof only against the Trust Estate and other moneys held by the Trustee and the revenues so pledged as aforesaid. In no event shall the Bonds be payable out of any funds or properties other than those pledged or acquired under the Indenture, and the Bonds shall not be deemed to constitute a debt or liability of the State of Kansas, the City or of any political subdivision thereof and the issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State of Kansas or any political subdivision thereof to levy any form of taxation therefor or to budget or make any appropriation for their payment. Nothing in the Bonds, the Indenture, the proceedings of the City authorizing the Bonds or the Act shall be construed to be a debt or loan of credit of the City, the State or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 4. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the City at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver each of such documents to which the City is a party (the "City Documents") with such changes therein as shall be approved by the officer or officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval and the City's approval thereof:

- (a) Bond Trust Indenture dated as of the date stated therein, between the City and Security Bank of Kansas City, Missouri, as trustee;
- (b) Tax Compliance Agreement dated as of the date stated therein, between the City and the Trustee (the "Tax Compliance Agreement"); and
- (c) First Amendment of Redevelopment Agreement between the City and the Developer.

Section 5. Execution of Bonds and Documents. The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor of the City is hereby authorized and directed to execute the City 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, for and on behalf of and as the act and deed of the City. The Clerk of the City is hereby authorized and

directed to attest to and affix the seal of the City to the Bonds, the City Documents and such other documents, certificates and instruments as may be necessary.

Section 6. Tax Covenants. The City covenants and agrees that it will comply with all applicable provisions of the Code and the Tax Compliance Agreement necessary to maintain the exclusion from federal gross income of the interest on the Bonds.

Section 7. Further Authority. The City shall, and the officers, employees and agents of the City 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 City Documents, including, but not limited to, agreements with respect to the investment of funds held under the Indenture.

Section 8. Governing Law. This Ordinance and the Bonds shall be governed by and construed in accordance with the applicable laws of the State.

Section 9. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication (or a summary thereof) in the official City newspaper.

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PASSED by the governing body of the City on February 15, 2018 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

Gilmore & Bell, P.C., City Bond Counsel