

**RESOLUTION NO. 24-1069**

**RESOLUTION DETERMINING THE INTENT OF THE CITY OF OLATHE, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN ONE OR MORE SERIES IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$6,500,000 TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING A COMMERCIAL PROJECT FOR THE BENEFIT OF 3RD OLATHE REAL ESTATE LLC, AND ITS SUCCESSORS AND ASSIGNS (THIRD STREET SOCIAL)**

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**WHEREAS**, the City of Olathe, Kansas (the “City”), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

**WHEREAS**, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the “Act”), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act, and to lease such facilities to private persons, firms or corporations; and

**WHEREAS**, 3rd Olathe Real Estate LLC, a Kansas limited liability company (the “Company”) has submitted to the City an Application for the Issuance of Industrial Revenue Bonds (the “Application”) requesting that the City finance the cost of acquiring land and acquiring, constructing, equipping and improving an approximately 8,500 square foot commercial restaurant facility, and approximately 3,000 square feet of other restaurant, retail, and/or other commercial use(s) within the City, as more fully described in the Application (the “Project”) through the issuance of its industrial revenue bonds in the principal amount not to exceed \$6,500,000 (the “Bonds”), and to lease the Project to the Company and its successors and assigns, in accordance with the Act; and

**WHEREAS**, the City and Company have entered into that certain Development Agreement (Third Street Social) dated as of August 14, 2024 (the “Development Agreement”), relating to the Project; and

**WHEREAS**, it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City finance the costs of the Project by the issuance of the Bonds under the Act in the principal amount not to exceed \$6,500,000, such Bonds to be payable solely out of rentals, revenues and receipts derived from the lease of the Project by the City to the Company.

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

**Section 1. Approval of Project.** The City Council (the “Governing Body”) of the City hereby finds and determines that the acquiring, constructing and equipping of the Project will promote the general welfare and economic prosperity of the City of Olathe, Kansas, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas, and the issuance of the Bonds to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act. The Project shall be located at the northwest corner of West Loula Street and South Kansas Avenue within the corporate boundaries of the City, as further described in the Application.

**Section 2. Intent to Issue Bonds.** The Governing Body hereby determines and declares the intent of the City to acquire, construct and equip the Project out of the proceeds of the Bonds of the City in the principal amount not to exceed \$6,500,000 to be issued pursuant to the Act.

**Section 3. Ad Valorem Tax Abatement.** Subject to the conditions in Section 4 and compliance with the Act, in consideration of the Company’s decision to acquire, construct and equip the Project, the City hereby agrees to take all appropriate action to request the Kansas Board of Tax Appeals to approve a 100% ad valorem property tax abatement (not including special assessments and taxes that may not be abated by the City under Kansas law) for all property (including real property, building improvements, machinery and equipment) financed with the proceeds of the Bonds.

In consideration of the City’s agreement to request such 100% abatement, the Company will agree to make payments in lieu of tax as follows:

<u>Year</u> <sup>1</sup>	<u>Approximate Percentage of Payments in Lieu</u> <sup>2</sup>
1	0%
2	0%
3	0%
4	0%
5	0%
6	0%
7	0%
8	0%
9	0%
10	0%

<sup>1</sup>Year refers to the first full calendar year following the issuance of the Bonds.

<sup>2</sup>Excludes the school district’s capital outlay levy that cannot be abated under state law.

provided, however, any agreed upon valuation for determining the amount of such payment in lieu of tax and any property for which the City shall determine the payment in lieu of tax shall be in excess of that shown above, shall be set forth in the performance-based tax agreement executed by the City and the Company. The Project financed with the Bonds shall be entitled to a 10-year tax abatement, with the first year of the abatement being the year beginning on the January 1 following the year the Bonds are issued. The foregoing percentages are subject to adjustment in accordance with the performance-based tax abatement agreement for the Project.

**Section 4. Provision for the Bonds.** Subject to the conditions of this Resolution, the City expresses its intent to (i) issue its Bonds to pay the costs of acquiring, constructing and equipping the Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by ordinance of the City; (ii) provide for the lease (with an option to purchase) of the Project to the Company; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement the aforesaid.

**Section 5. Conditions to Issuance.** The issuance of the Bonds and the execution and delivery of any documents related to such Bonds are subject to: (i) obtaining any necessary governmental approvals (including, but not limited to, approval of a final site development plan in accordance with the City’s Unified Development Ordinance); (ii) agreement by the City, the Company and the purchaser of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof, and (b) mutually acceptable terms and conditions of any documents related to the issuance of the Bonds and the Project; (iii) the Company’s compliance with the City’s policies relating to the issuance of industrial revenue bonds

and ad valorem tax abatement (including, but not limited to, Section 2.B. of City Council Policy F-5 (Industrial Revenue Bond and Tax Abatement Policy), which section provides, in part, that “[p]rojects must utilize construction materials and provide an architectural design that exceeds the minimum requirements set forth in the City’s Unified Development Ordinance”); (iv) the passage and publication of an Ordinance authorizing the issuance of the Bonds; and (v) Company’s payment of all of the costs of issuance related to the issuance of the Bonds.

**Section 6. Sale of the Bonds.** The sale of the Bonds shall be the responsibility of the Company; provided, however, arrangements for the sale of the Bonds shall be acceptable to the City.

**Section 7. Limited Obligations of the City.** The Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the amounts derived by the City under a Lease Agreement with respect to the Bonds and as provided herein and are secured by a transfer, pledge and assignment of and a grant of a security interest in the trust estate to the bond trustee for the Bonds and in favor of the owners of the Bonds, all as provided in the Bond Indenture. The Bonds shall not constitute a general obligation of the City, the State or of any other 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, the State or of any other political subdivision thereof and shall not be payable in any manner by taxation, but shall be payable solely from the funds provided for as provided in the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

**Section 8. Required Disclosure.** Any disclosure document prepared in connection with the placement or offering of any series of Bonds shall contain substantially the following disclaimer:

NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT, OTHER THAN WITH RESPECT TO INFORMATION CONCERNING THE CITY CONTAINED UNDER THE CAPTIONS “THE CITY” AND “LITIGATION - THE CITY” HEREIN, HAS BEEN SUPPLIED OR VERIFIED BY THE CITY, AND THE CITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

**Section 9. Authorization to Proceed.** The Company is hereby authorized to proceed with the acquiring, constructing and equipping of the Project, including the necessary planning and engineering for the Project and entering into of contracts and purchase orders in connection therewith, and to advance such funds as may be necessary to accomplish such purposes, and, to the extent permitted by law and upon compliance with the other requirements of this Resolution, the City will reimburse the Company for all expenditures paid or incurred therefor out of the proceeds of the Bonds.

**Section 10. No Reliance on Resolution.** Kansas law provides that the City may only issue the Bonds by passage of an Ordinance and compliance with other state law requirements. The City has not yet passed an Ordinance for the Bonds. This Resolution only evidences the intent of the current Governing Body to issue such Bonds for the Project. The Company should not construe the adoption of this Resolution as a promise or guarantee that the Ordinance for the Bonds will be passed or that the Project will be approved.

**Section 11. Termination of Resolution.** This Resolution shall terminate three years from the date of the adoption of this Resolution unless (i) the Bonds have been issued for the Project or (ii) a building permit has been issued by the City for the Project. In addition, this Resolution shall terminate upon termination of the Development Agreement. The City, upon the written request of the Company, may extend this time period.

**Section 12. Benefit of Resolution.** This Resolution will inure to the benefit of the City and the Company. The City may, at the prior written request of the Company or as otherwise provided for in the Development Agreement, assign all or a portion of the Company's interest in this Resolution to another entity, and such assignee will be entitled to the benefits of the portion of this Resolution assigned and the proceedings related hereto.

**Section 13. Further Action.** Counsel to the City and Gilmore & Bell, P.C., Bond Counsel for the City, together with the officers and employees of the City, are hereby authorized to work with the purchaser of the Bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the Bonds and other actions contemplated hereunder.

**Section 14. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

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**ADOPTED** on December 3, 2024.

**CITY OF OLATHE, KANSAS**

[SEAL]

By: \_\_\_\_\_  
John Bacon, Mayor

ATTEST:

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Brenda Swearingian, City Clerk

Resolution of Intent  
3rd Olathe Real Estate LLC – Third Street Social