

1 **RESOLUTION NO. 9379**

2
3 A RESOLUTION introduced by City Manager Stephen Wade establishing the City of
4 Topeka's policy for Rural Housing Incentive Districts.
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6 WHEREAS, the City of Topeka, Kansas (the "City") recognizes that it is essential
7 to stimulate economic growth and development of new residential housing developments
8 in order to provide services, employment and tax revenues for the benefit of the
9 community; and
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11 WHEREAS, the declared purpose of the Rural Housing Incentive District Act is to
12 encourage the development and renovation of housing in the rural areas of Kansas that
13 experience a shortage of housing by authorizing cities and counties to assist directly in
14 the financing of public improvements that will support such housing; and
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16 WHEREAS, the Housing Study identified a need for approximately 420 units per
17 year over the next 5 years to keep up with anticipated demand and another 2,300 units
18 to catch up from past demand in order to have a balanced market with lower housing cost
19 burdens; and
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21 WHEREAS, to meet these housing goals, the City recognizes the need to
22 occasionally assist in the redevelopment of property located within the City by the creation
23 of Rural Housing Incentive Districts (RHID), an economic development tool established
24 by K.S.A. 12-5241 et seq. for the financing of qualified redevelopment projects; and
25

26 WHEREAS, the City finds it in the best interest of the public it serves to establish
27 certain policies and guidelines for the consideration of proposals that may be presented
28 to the City by private developers requesting RHID assistance; and
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30 WHEREAS, all prospective RHID projects must be carefully evaluated by the City
31 because the character of tax revenues generated by different developments can vary
32 widely, and in most cases, will impact other taxing jurisdictions in the Topeka community;
33 and
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35 WHEREAS, the City desires to use RHID for projects that demonstrate the highest
36 public benefit and encourage an equitable distribution of projects citywide, including
37 downtown, in keeping with the documented demand for housing; and
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39 WHEREAS, each RHID application submitted to the City will be evaluated on its
40 own merits, and an evaluation of the proposal will be performed by a RHID Committee
41 comprised of City staff and/or consultants; and
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43 WHEREAS, all projects must demonstrate financial and economic reasons such
44 that but-for RHID assistance, the project could not proceed or could not address the City's
45 housing goals.
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47 NOW THEREFORE, THE RURAL HOUSING INCENTIVE DISTRICT POLICY
48 FOR THE CITY OF TOPEKA, KANSAS WILL BE AS FOLLOWS:
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50 **SECTION ONE: PREFERENCES FOR PROJECTS**
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52 1. The City will use RHID to address housing needs as described in its July
53 2020 Citywide Housing Market Study and Strategy document (the “Housing Study”) as
54 amended from time to time as needed. The City will amend this policy from time to time
55 to adjust the targets below for progress to date or to address changing needs as identified
56 by updates to its Housing Study. The Housing Study identified a need for approximately
57 420 units per year over the next 5 years to keep up with anticipated demand and another
58 2,300 units to catch up from past demand in order to have a balanced market with lower
59 housing cost burdens. The City’s current 3-year average is almost 270 new units per year.
60 Therefore, a target of up to 3,100 units over a 5-year period is the substantiated need that
61 is not being met by the market thus necessitating additional incentives. This total is further
62 broken down by affordable, workforce, senior, market rate, and upscale units as
63 referenced in the Housing Needs Analysis completed as an update to the Housing Study.
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65 2. The City will use RHID to encourage an equitable distribution of projects
66 citywide in keeping with the documented demand for 900 new units in downtown by 2030.
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68 3. Per the Housing Study findings for greater housing choices, priority should
69 be given to those projects that diversify the City’s inventory with more attached unit
70 typologies such as duplexes, townhomes, and multi-family projects.
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72 4. The City will reserve a portion of projected RHID benefits to develop,
73 improve or replace public infrastructure supporting housing developments and to fund
74 multi-modal connections (transit, biking, walking) to housing developments.
75

76 5. The City will use a “but-for” approach (i.e., but-for the presence of the RHID
77 incentive the project could not proceed or could not address the City’s housing goals) in
78 assessing the amount of RHID benefit granted to a housing development, maintaining
79 flexibility with respect to the amount of incremental taxes permitted to be captured and/or
80 the length of time an RHID will remain in place.
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82 6. Housing developers seeking RHID assistance will need to be prepared to:
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- 84 • Bear the costs of effecting an RHID incentive (estimated at \$25,000
85 to \$50,000 per project plan). Cost may include, but are not limited to,
86 updating the housing study, preparation of necessary resolutions,
87 ordinances, publication notices, development agreement, and
88 statutory feasibility findings. The City will first apply the
89 nonrefundable application fee described below towards the costs.
90 Once a better estimate of costs is obtained, the City may, at its sole
91 discretion, require a deposit to cover outstanding costs. If an
92 additional deposit is required in addition to the nonrefundable

93 application fee, the City shall return any balance from this deposit
94 upon the applicant's withdrawal of the application or the conclusion
95 of the approval processes.

- 96 • Provide the contractual and financial feasibility guarantees
97 contemplated in the RHID statute (see K.S.A. 12-5245(a)(6)).
- 98 • Provide detailed information regarding the type, timing and
99 implementation plan for the housing they propose to develop.
- 100 • Provide all information to the City required to effect an RHID project
101 plan, as contemplated by Kansas law.
- 102 • Provide evidence in support of its need for RHID incentive under the
103 but-for principle.

104 **SECTION TWO: PROCESS**

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107 1. *Creation of a District.* The City intends to use the Housing Study, as updated
108 from time-to-time at the discretion of the City, to meet the statutory requirement (K.S.A.
109 12-5244) that the City conduct a "housing needs analysis" to determine that "housing
110 needs exist" in Topeka.

111
112 Either the City or a housing developer may initiate the district creation process by
113 delivering to the City Manager a District Pre-Application consisting of the following:

- 114
115 a) A cover letter requesting the creation of a district, including a general
116 description of the housing development expected to occur within the district,
117 the names of the housing developer or developers expected to construct
118 such housing, the expected timing of such housing development, a narrative
119 describing how the district is likely to address the policy goals of the Housing
120 Study and discussion of how the use of RHID is consistent with the City's
121 but-for principle.
- 122 b) A legal description of the proposed district and a map depicting the existing
123 parcels of real estate in the proposed district.
- 124 c) Evidence of site control or a detailed plan for which the developer intends
125 to secure site control.
- 126 d) A certification that neither the developer entity nor any of its
127 shareholders/partners/members is delinquent on its property tax or special
128 assessment payments on any property it owns or controls in Shawnee
129 County.
- 130 e) A certification that neither the developer entity nor any of its
131 shareholders/partners/members has any outstanding utility bills, zoning or
132 property maintenance, or other code cases pending with the city.
- 133 f) A non-refundable application fee of \$5,000. If the Developer withdraws the
134 application, the City Governing Body elects not to create the District or does
135 not approve the Housing Plan, or Kansas Secretary of Commerce elects to
136 not approve the application, the City shall keep the application fee to
137 reimburse it for the costs of processing and reviewing the application. The
138 Developer shall not be entitled to any refund of the fee.

139
140 Within thirty (30) days of receipt of a complete District Pre-Application, the City Manager
141 will direct the preparation of a resolution for consideration by the Topeka Governing Body
142 at a regular meeting not later than sixty (60) days following the City Manager's receipt of
143 a complete District Pre-Application. The resolution shall include:

- 144
145 a) The legal description and the map provided in the District Pre-Application;
146 and
147 b) The findings required in K.S.A. 12-5244(a)(1) through (a)(4).
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149 If the resolution is adopted by the Topeka Governing Body, the City Manager or designee
150 will provide for publication of the adopted resolution as required in K.S.A. 12-5244(b) and
151 will request approval by the Kansas Secretary of Commerce in the manner provided in
152 K.S.A. 12-5244(c).
153

154 2. *Creation of a Housing Development Plan.* Once the Kansas Secretary of
155 Commerce has approved creation of a district, one or more housing developers may
156 petition the City Manager for the execution of a housing development plan within such
157 district. This petition will need to include all of the following:

- 158
159 a) Narrative describing the overall development plan specifically addressing
160 how the plan meets the policy goals of the Housing Study.
161 b) A legal description of the proposed project area if such project area is not
162 coterminous with the district boundaries.
163 c) A map of the proposed project area if such project area is not coterminous
164 with the district boundaries.
165 d) A table (Excel format preferred) listing (i) each parcel within the proposed
166 project area, listing the current Shawnee County assessed valuation of land
167 and improvements separately and (ii) the property owner's name and
168 address for each parcel.
169 e) A narrative and a graphical description of the housing and public facilities
170 that the developer will construct or improve, and the location of each within
171 the project area.
172 f) A narrative describing any improvements the developer expects the City to
173 make to support the planned project, including any on or off-site public
174 infrastructure and coordination with other public agencies, etc.
175 g) A listing of the names, addresses and specific interests in real estate in the
176 project area of the housing developer(s) responsible for development of the
177 housing and public facilities in the project area.
178 • For the purpose of this requirement, "housing developer(s)" means
179 both the name of the business entity or entities, and the natural
180 persons comprising the ownership of such entity or entities.
181 h) A detailed total development cost budget for the housing and other
182 improvements to be constructed including an identification of costs for which
183 the developer will seek reimbursement from RHID proceeds.

- 184 i) A narrative describing all public incentives sought in support of the planned
185 project (including those that might be provided by other government
186 agencies, foundations or non-profits), including identification of whether the
187 developer seeks potential bond financing related to the RHID.
- 188 j) A detailed construction schedule, identifying any phasing of construction
189 anticipated.
- 190 k) A detailed financial pro forma, showing the operation of the project over the
191 life of the RHID, including sufficient detail on assumptions so the City may
192 determine, among other things, the developer's expectations for the number
193 and potential valuation of housing units to be constructed, the developer's
194 expected private financing for the project (including debt, equity and other
195 sources), and sufficient other detail to permit the City to make the required
196 statutory finding as provided in K.S.A. 12-5245(a)(7).
- 197 l) A detailed description of the contractual assurances the developer is willing
198 to make, including any financial guarantees it is willing to provide, to
199 "guarantee the financial feasibility" of the project, all as required by K.S.A.
200 12-5245(a)(6) (together, the "Plan Pre-Application"), along with
201 commercially reasonable information evidencing developer's financial and
202 operational capabilities to effect the proposed project as presented.
203

204 Unless there are extenuating circumstances, within fifteen (15) days of receipt of a
205 complete Plan Pre-Application, the City Manager will direct the City's Finance Director, or
206 other City Manager designee, to review the Plan Pre-Application for completeness
207 (compared both to statutory requirements and the requirements of this policy), to prepare
208 a financial analysis of the developer's proposal and to provide a written report to the City
209 in conformance with K.S.A. 12-5245(a)(7).
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211 The City's Finance Director may request additional information from the developer to
212 assist in its analysis and the developer may request to provide certain information directly
213 to the City's Finance Director, particularly with respect to its financial capacity to perform.
214 The Finance Director may also consider: (a) the extraordinary or unique costs of the
215 housing development plan; (b) the developer's (and its shareholders'/partners'/members')
216 compliance with other City development agreements; (c) the creditworthiness of the
217 developer; and (d) the experience of the developer constructing, completing and
218 managing projects of a similar nature, scale and complexity. The City's Finance Director
219 will provide its written report in draft to the City Manager within thirty (30) days after receipt
220 of the Plan Pre-Application and any supplemental information it requests of the developer.
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222 As authorized under the Kansas Open Records Act, the City will treat as confidential any
223 such sensitive financial information provided by the applicant or its guarantors to the City's
224 Finance Director, other city advisors or legal counsel, and will, if requested, enter on the
225 City's behalf into a non-disclosure agreement; provided, however, that such advisors or
226 legal counsel must have the right under such agreement to convey their conclusions
227 about the applicant's ability to meet the requirements above based upon its review.
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229 Concurrently with the City Finance Director’s work, the City Manager will coordinate with
230 City departments, as applicable, to identify any concerns with the City’s ability to support
231 the proposed project, including, but not limited to, availability of utilities, the cost to
232 construct public infrastructure identified by the developer as the City’s responsibility,
233 traffic considerations and the ability to provide public safety services to the project, etc.
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235 3. *RHID Review Team.* Within fifteen (15) days of receipt of the City Finance
236 Director’s draft analysis, the City Manager will convene a meeting of the RHID Review
237 Team to include: the Mayor, Deputy Mayor, affected district council member(s), City
238 Manager, Finance Director, Public Works Director, Utilities Director, Planning Director
239 and City Attorney. In the absence of one of the named members above, the City Manager
240 may designate alternative members to the RHID Review Team as appropriate. The RHID
241 Review Team will review the Plan Pre-Application, the City Finance Director’s draft
242 analysis and the City Manager’s review of the City’s ability to support the project, and may
243 call on the financial advisor, City bond counsel and other resources to assist in its
244 deliberations.
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246 After reviewing the information presented, the RHID Review Team may (i) request the
247 City Manager to seek additional information or provide additional analysis; (ii) make a
248 recommendation to the Governing Body to establish the District and approve the plan
249 with or without conditions; or (iii) not approve the plan.
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251 In the event the RHID Review Team requests the City Manager obtain additional
252 information from the developer, it will include a reasonable timeline for the completion of
253 such additional work and a schedule for its reconsideration. Upon reconsideration, the
254 RHID Review Team may take one of the actions identified above.
255

256 In the event the RHID Review Team makes a recommendation to not approve, the City
257 Manager will report on the action of the RHID Review Team at a future Governing Body
258 meeting.
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260 In the event the RHID Review Team makes a recommendation of approval:
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- 262 a) The City Attorney, or appropriate designee, will prepare the resolution
263 contemplated in K.S.A. 12-5245(b), setting a date for a public hearing on
264 the creation of the district for inclusion on a regular City Governing Body
265 agenda within thirty (30) days of the action of the RHID Review Team.
- 266 b) The City Attorney, or appropriate designee, will prepare a funding
267 agreement, to be considered at the same meeting as the resolution setting
268 the public hearing, under which the developer(s) will agree to pay the City
269 sufficient moneys to cover the City’s costs in analyzing and effecting the
270 district’s creation.
- 271 c) The City Attorney, or appropriate designee, will draft a development
272 agreement and enter into negotiations with the developer and its counsel
273 on the contents of such development agreement. The purpose of the
274 development agreement will be to translate into contract form the rights,

275 responsibilities and obligations of both the City and the developer in the
276 implementation of the housing development plan. The City Attorney may
277 involve the City's financial advisor, bond counsel and other resources in the
278 development and review of the development agreement.

279 d) The City's Finance Director will finalize its analysis for inclusion in the
280 Governing Body agenda packet and will incorporate any provisions from the
281 development agreement that might affect its analysis.

282 e) The City Manager will work with appropriate City departments to review
283 project budgets for any capital improvements required to effect the housing
284 development plan.

285 f) The City Planning Director, or appropriate designee, will work with the
286 developer to effect any planning and zoning approvals required to effect the
287 housing development plan.
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289 4. *Governing Body Review and Approval.* Once a housing development plan
290 is recommended for approval from the RHID Review Team, it will appear on the
291 Governing Body agenda as follows:
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293 a) Approval of a funding agreement with the developer(s).

294 b) A resolution setting a public hearing on the creation of the district, consistent
295 with the requirements of K.S.A. 12-5245(b), at least thirty (30) and not more
296 than seventy (70) days from the adoption date of this resolution.

297 c) After this public hearing is held, at the same meeting or at a subsequent
298 meeting, the Governing Body may consider an ordinance creating the
299 district and adopting the housing development plan.

300 d) At the meeting at which the Governing Body considers the ordinance
301 creating the district and adopting the housing development plan it will also
302 consider:

303 i. Approval of the fully-negotiated development agreement(s) with the
304 housing developer(s) for the project(s).

305 ii. Approval of any other City-provided incentives related to the
306 project(s).

307 iii. Approval of project budgets related to any City-financed
308 infrastructure related to the project(s) including the adoption or
309 amendment of the CIB/CIP, if necessary.

310 iv. Approval of any planning or zoning matters required to effect the
311 project(s).

312 e) The effectiveness of all such related matters will be conditioned upon the
313 RHID district creation ordinance surviving the thirty (30) day veto period of
314 Shawnee County and any affected school district.
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316 **SECTION THREE: INCENTIVE STRUCTURE**

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318 1. *Presumption of Pay-As-You-Go Incentives.* The City will begin negotiations
319 with housing developers with the presumption that it will structure RHID incentives on a
320 pay-as-you-go basis.

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2. *Reimbursable Costs.* The City will generally consider all statutorily-permitted uses of RHID proceeds as reimbursable costs (see K.S.A. 12-5249); provided, however, the City will generally not reimburse land acquisition costs from owners affiliated with the housing developer unless the developer provides evidence of its actual acquisition costs from a bona fide arms-length purchase from an unaffiliated owner or the housing developer can provide satisfactory evidence to the City Manager that the land acquisition was purchased at fair market value which may include the cost of reimbursing delinquent special assessments or other delinquent taxes from an owner affiliated with the housing developer and that the reimbursement of the acquisition costs satisfy the public purpose doctrine.

3. *Downtown.* Buildings or structures must be more than twenty-five (25) years old and used primarily for residential use located in the central business district or in a business or commercial district within a qualified census tract as approved by the Secretary of Commerce. Certification of the building/structure’s age must be provided to the Secretary of Commerce. Improvements are limited to the second or higher floors. Improvements for commercial purposes are not eligible. K.S.A. 12-5249

4. *Bonds.* The City will generally not consider the issuance of special obligation bonds. A housing developer may petition the City Manager in writing to issue bonds secured by the proceeds of an RHID if:

- a) The project is complete, leased-up (multifamily)/substantially occupied (single family) and stabilized (multifamily).
- b) Shawnee County has completed at least four (4) tax valuations of the district.
- c) RHID-eligible costs exceed \$3 million.

Upon receiving a petition for bond issuance, the City Manager will engage the City’s financial advisor to assess the feasibility of bond issuance given the track record of the project, the potential size of the financing and then-current market conditions. If the City’s financial advisor determines that a bond financing would be feasible and par offered would be likely to exceed \$3 million, the financial advisor will report its findings to the City Manager along with an estimate of the potential transaction costs to effect the financing.

If a bond financing would be feasible, upon receipt of the financial advisor’s findings, the City Manager will communicate the findings with the housing developer to determine whether the housing developer desires to proceed. If the housing developer desires to proceed, the City Manager will, within fifteen (15) days, convene the RHID Review Team to evaluate the housing developer’s petition for bond issuance and the financial advisor’s report.

After reviewing the information presented, the RHID Review Team may (i) request the City Manager seek additional information or provide (or commission) additional analysis;

366 (ii) decline to advance the housing developer’s petition for bond issuance; or (iii) direct
367 the City Finance Director to proceed with execution of a potential bond issuance.

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369 Upon direction from the RHID Review Team to proceed, the Finance Director will
370 coordinate with the City’s financial advisor and bond counsel to commence execution of
371 a bond financing. The financial advisor will advise on method of sale and will assist the
372 Finance Director in the selection of one or more underwriters for the financing. City bond
373 counsel will prepare a bond sale intent resolution, describing the intended sale and
374 authorizing appointment of the underwriter, directing staff and advisors/counsel to effect
375 the financing, and causing the preparation of customary bond and sale documents.

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377 Within thirty (30) days of bond counsel’s preparation of the bond sale intent resolution,
378 the City Manager will calendar the resolution for consideration by the Governing Body. If
379 the Governing Body adopts the bond sale intent resolution, the City will use its best efforts
380 to cause the issuance of the bonds.

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382 5. *No Issuance by Third Parties.* The City will not consent to and will include
383 language in any development agreement prohibiting the issuance of bonds by any third-
384 party on behalf of the developer to be secured by an assignment of the developer’s rights
385 under the development agreement. For the purposes of clarity, this language is not
386 intended to prevent or preclude developer’s collateral assignment of the development
387 agreement to a bank to secure the developer’s private financing of the project.

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389 **SECTION FOUR: HOUSING DEVELOPER GUARANTEES**

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391 1. *Assurances Required.* The City interprets K.S.A. 12-5245(a)(6) as requiring
392 that housing developers provide contractual assurances of their performance under a
393 development agreement related to an RHID project. The City will expect a housing
394 developer to offer one or more of the following contractual assurances of performance as
395 part of the development agreement. The City does not expect a developer to provide all
396 of these contractual assurances and will work with the developer on what is the most
397 appropriate assurance for a particular project:

- 398
399 a) A firm commitment to construct and complete a substantial percentage of
400 the housing units and related infrastructure proposed in its Plan Pre-
401 Application within a specified timeframe.
- 402 b) A performance and payment bond sufficiently sized to cause completion of
403 a substantial percentage of the housing units and infrastructure proposed
404 in its Plan Pre-Application.
- 405 c) A bank letter of credit sufficiently sized to secure completion of a substantial
406 percentage of the housing units and infrastructure proposed in its Plan Pre-
407 Application.
- 408 d) Personal financial guarantees of one or more owners of the developer to
409 ensure completion of a substantial percentage of the housing units and
410 infrastructure proposed in its Plan Pre-Application.

411 e) Other contractual assurances that, in the sole determination of the City,
412 meet the intent of the statute.

413

414 **SECTION FIVE: CITY REMEDIES IN THE EVENT OF DEVELOPER DEFAULT**

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416 Each development agreement will identify the conditions under which a developer may
417 cause a default under the agreement. The City may impose one or more of the following
418 remedies if a default occurs and is not cured timely:

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420 a) Reduction to or elimination of the amount of RHID proceeds that can be
421 used to reimburse eligible costs.

422 b) Shortening of the expiration of the RHID incentive.

423 c) Cross-default against other incentives granted by the City.

424 d) Other penalties or claw backs unique to each development agreement.

425

426 ADOPTED and APPROVED by the Governing Body on December 20, 2022.

427

CITY OF TOPEKA, KANSAS

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Michael A. Padilla, Mayor

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434 ATTEST:

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Brenda Younger, City Clerk