

**TOPEKA DEVELOPMENT CORPORATION**  
**BOARD OF DIRECTORS**  
**AGENDA**  
**May 7, 2024 – 5:00 p.m. to 6:00 p.m.**  
**City of Topeka, Kansas**

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Board of Directors:

Michael A. Padilla, President  
Neil Dobler, Vice President  
Karen A. Hiller, Secretary  
Michelle Hoferer, Treasurer  
Christina Valdivia-Alcala, Director

Sylvia E. Ortiz, Director  
David Banks, Director  
Brett D. Kell, Director  
Marcus D.L. Miller, Director  
Spencer Duncan, Director

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**Addressing the Board of Directors:** Public comment for the meeting will be available In-person or via Zoom. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 4:00 p.m. on the meeting date after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting. View the meeting online at <https://www.topeka.org/communications/live-stream/> or at <https://www.facebook.com/cityoftopeka/>. If you do not have access to a viewing option, please contact the City Clerk at 785-368-3940 or email [cclerk@topeka.org](mailto:cclerk@topeka.org) to make arrangements for an in person location.

**Written public comment** may also be considered to the extent it is personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before the meeting date.

The Federal Communications Commission (FCC) has adopted use of the 711 dialing code for access to Telecommunications Relay Services (TRS). TRS permits persons with a hearing or speech disability to use the telephone system via a text telephone (TTY) or other device to call persons with or without such disabilities. To reach the City Clerk's office using the TRS, please dial 711.

Agendas are available in the City Clerk's Office, 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or on the City's website at <https://topekadevelopmentcorporation.com/>.

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**1. CALL TO ORDER:**

**2. PLEDGE OF ALLEGIANCE:**

**3. ROLL CALL:**

**4. APPROVAL of April 9, 2024 meeting minutes.**

**5. REVIEW and EVALUATE the offers received to own and operate Hotel Topeka.**

*(The Board will recess into Executive Session to discuss confidential offers for potential purchase pursuant to K.S.A. 75-4319(b)(4) allowing the discussion of financial affairs and trade secrets of a corporation.)*

**6. APPROVAL of \$217,254 from the Unassigned Reserve Fund for chiller rehab at Hotel Topeka contingent upon Governing Body approval of the transfer of the funds to the Topeka Development Corporation.**

*(Approval would authorize the use of \$217,254 for Trane Chiller rehab Hotel Topeka.)*

**7. DISCUSSION regarding the results of the 2023 Audit of Financial Statements of the Topeka Development Corporation, a component unit of the City of Topeka, Kansas.**

**8. OTHER NEW BUSINESS:**

**9. PUBLIC COMMENT:**

Public comment for the meeting will be available In-person or via Zoom. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 4:00 p.m. on the date of the meeting, after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting. Written public comment may also be considered to the extent it is submitted at the meeting or personally to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before the date. View the meeting online at <https://www.topeka.org/communications/live-stream/> or at <https://www.facebook.com/cityoftopeka/>.

**10. EXECUTIVE SESSION:**

*(Executive sessions will be scheduled as needed and may include topics such as personnel matters, considerations of acquisition of property for public purposes, potential or pending litigation in which the city has an interest, employer-employee negotiations and any other matter provided for in K.S.A. 75-4319.)*

**11. ADJOURNMENT**

# Topeka Development Corporation Board of Directors

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## **ITEM 4: April 9, 2024 TDC Meeting Minutes**

**Date:** May 7, 2024

**Contact Person:** Brenda Younger, Assistant Secretary

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**Topeka Development Corporation Board of Directors Meeting Minutes**  
**April 9, 2024**

The Topeka Development Corporation (TDC) Board of Directors met in the City Council Chambers at 5:00 p.m. with the following Board of Directors present: Karen Hiller, Sylvia Ortiz, David Banks, Neil Dobler (Vice President), Spencer Duncan and Michelle Hoferer -6. Brett Kell and Marcus D.L. Miller participated remotely -2. Board President Michael Padilla presided -1. Absent: Christina Valdivia-Alcala -1.

Public comment for the meeting was available via Zoom or in-person. Individuals were required to contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 4:00 p.m. on April 9, 2024, after which the City Clerk's Office provided the Zoom link information and protocols prior to the meeting start time. Written public comment was also considered to the extent it was personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before April 9, 2024.

PLEDGE OF ALLEGIANCE was cited by meeting participants.

**APPROVAL of the February 6, 2024 Board Meeting Minutes.**

Board Vice President Dobler moved to approve the minutes. The motion seconded by Director Banks carried unanimously on voice vote.

Mayor Padilla asked all those in favor of approving the minutes to indicate so verbally by saying “yea” and those opposing to indicate so verbally by saying “no.” The motion carried unanimously on voice vote. (9-0-0)

**APPROVAL of a request for Hotel Topeka operational funding in the amount of \$500,000 contingent upon Governing Body approval of the transfer of the funds to the Topeka Development Corporation.**

Braxton Copley, Project Manager, stated the request for an additional \$500,000 tranche of operational funds from the General Fund (Hotel Non-Departmental Expense) was for on-going operational expenses as well as small capital improvement projects to operate and maintain Hotel Topeka. He highlighted the summary of expenses to date included in the agenda packet and reported \$900,000 of the \$1 million authorized has been expended. He noted the \$10,000 to be expended for the Trane Chiller assessment would not be needed if the requested \$200,000 for rehab was granted. He reminded the Board under the terms of the management agreement they are required to maintain a minimum of \$150,000 in operational funding and as the owner, they are responsible for funding any shortfalls and they are required to fill the request within 10 days. Director Ortiz asked if the Hotel was operational.

Project Manager Copley stated they have hired a marketing manager as well as third party sites to promote the Hotel that was currently open for business.

Board Vice President Dobler requested and update on the REVPAR International Summary Analysis of Hotel Topeka be provided before the Board votes on the funding request.

Board Vice President Dobler moved to have the REVPAR Update take place prior to voting on the funding request. The motion was seconded by Director Hoferer.

Mayor Padilla asked all those in favor of receiving the update prior to voting on the funding request to indicate so verbally by saying “yea” and those opposing to indicate so verbally by saying “no.” The motion carried unanimously on voice vote. (9-0-0)

#### **UPDATE of REVPAR International Summary Analysis of Hotel Topeka.**

Braxton Copley, Project Manager, stated he was limited in the information he could provide to the Board in an open public meeting setting. He reported REVPAR International did put together materials for a Request for Information (RFI) which was shared with the Board in a weekly report. He stated the material was marketed to six individual owner/operators as well as two individuals with a deadline of April 5, 2024. Two submittals were received and provided to REVPAR for review and analysis. He stated he has requested REVPAR provide an update on those submittals in May 2024 to the Board in an executive session detailing offers and outlining their recommendations. He stated in order to be fair to the two individuals that have submitted offers, he would suggest the Board recess into executive session to allow him to provide more information relevant to the two offers.

Director Kell entered the room

Director Hoferer moved to recess into executive session to discuss confidential offers for potential purchase pursuant to K.S.A. 75-4319(b)(4) allowing the discussion of financial affairs and trade secrets of a corporation for a time not to exceed 20 minutes. The motion was seconded by Vice President Dobler.

Mayor Padilla asked all those in favor of recessing into executive session as stated by the City Attorney to indicate so verbally by saying “yea” and those opposing to indicate so verbally by saying “no.” The motion carried unanimously on voice vote. (9-0-0)

Director Valdivia-Alcala entered the room.

At the conclusion of a 20-minute time period, Board President Padilla reconvened the meeting into open session and announced no action was taken by the Board during the executive session.

**APPROVAL of a request for Hotel Topeka operational funding in the amount of \$500,000 contingent upon Governing Body approval of the transfer of the funds to the Topeka Development Corporation.**

Braxton Copley, Project Manager, stated approval of an additional \$500,000 tranche of operational funds from the General Fund (Hotel Non-Departmental Expense) to operate and maintain Hotel Topeka.

Director Hiller questioned if the funds were to be allocated from the budgeted General Fund operating budget or allocated from reserves.

Leigha Boling, Assistant Treasurer, reported the funds would be allocated from the 2024 Operating Budget for hotel activities.

Amanda Stanley, City Attorney, clarified under Kansas law the City of Topeka budgets the entire General Fund, including this Non-Departmental Expense which would be considered a legally budgeted item and transfer of funds.

Board Vice President Dobler moved to approve a request for Hotel Topeka operational funding in the amount of \$500,000 contingent upon Governing Body approval of the transfer of the funds to the Topeka Development Corporation. The motion was seconded by Board President Padilla.

Director Banks stated he could not vote to approve the request in good conscience because his constituents do not support the request.

Director Miller entered the room.

The motion to approve a request for Hotel Topeka operational funding in the amount of \$500,000 contingent upon Governing Body approval of the transfer of the funds to the Topeka Development Corporation.

PUBLIC COMMENT was provided by the following individual:

Henry McClure spoke in support of the offer to purchase Hotel Topeka in the amount of \$7.6 million and stated he has been working with an investor that wants to relocate a business in Agricultural (Ag) Hall located at One Expocentre Drive, Topeka. He expressed concern with the large amount of deferred maintenance associated with Hotel Topeka and urged the Board to sale the property as soon as possible. He questioned if a Double Tree Hotel was the best use for the Hotel.

NO FURTHER BUSINESS appearing the meeting adjourned at 5:48 p.m.

# Topeka Development Corporation

## Board of Directors

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### **ITEM 5: Review & Evaluate Offers to Own/Operate Hotel Topeka**

**Date:** May 7, 2024

**Contact Person:** Braxton Copley, Project Manager

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No agenda attachments. The Board will recess into Executive Session to discuss confidential offers for potential purchase pursuant to K.S.A. 75-4319(b)(4) allowing the discussion of financial affairs and trade secrets of a corporation.

Topeka Development Corporation  
Board of Directors

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**ITEM 7: Approve \$217,254 request for Trane Chiller Rehab**

**Date:** May 7, 2024

**Contact Person:** Braxton Copley, Project Manager

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# CITY OF TOPEKA

Braxton Copley, Public Works Director  
Holliday Building, 620 SE Madison St.  
Topeka, KS 66603

[bcopley@topeka.org](mailto:bcopley@topeka.org)  
Tel: 785-368-2527  
[www.topeka.org](http://www.topeka.org)

## Memorandum

Date: May 1, 2024

To: Governing Body

Topeka Development Corporation Board of Directors

Cc: Richard U. Nienstedt, Interim City Manager

From: Braxton Copley, Public Works Director

Re: Rehab of Hotel Topeka Trane Chiller

At the April 23, 2024 Policy & Finance Committee meeting, committee members Marcus Miller, Spencer Duncan and Michelle Hoferer approved moving forward to the Governing Body, a resolution authorizing the use of \$217,254.24 from the unassigned reserve fund for the Trane chiller rehab at Hotel Topeka.

During the meeting, committee members requested answers to the following questions  
(answers are provided in italics below each question):

- 1) Will there be a warranty?  
*Yes*
- 2) If so how long is the warranty?  
*1 year on mechanical moving parts (no electronics), 90 days on labor with the standard agreement. If the property sign a service agreement with Trane (\$6K-\$8K per chiller, per year), they will do up to a 5-year warranty on mechanical moving parts (not electronics).*
- 3) How long will it take Trane to do the rehabilitation?  
*The rehab will take 2-3 weeks.*
- 4) Are there any long lead time parts needed for the rehabilitation?  
*Some parts may take up to 2 months.*
- 5) Do staff now know how to properly operate the unit to avoid damaging the condenser, evaporator and compressor again?  
*Yes*



## Hotel Topeka (Revised) Expense Summary

4/19/2024 5:23 PM

Date	Description	Amount	Category
12/1/2023	TOP HOTEL - OPERATING RESERVE	131,335.09	ADMINISTRATIVE COSTS
12/5/2023	TOP HOTEL - OPERATING RES #1	18,664.91	ADMINISTRATIVE COSTS
12/5/2023	TOP HOTE OP RES ROUND	(0.09)	ADMINISTRATIVE COSTS
12/1/2023	TOPHOTEL - LOCKS	90,661.82	CAPITAL OUTLAY BLDING & IMPROV
12/1/2023	TOPHOTEL - SPRINKLERS	7,297.00	CAPITAL OUTLAY BLDING & IMPROV
12/1/2023	TOPHOTEL - ACTUATORS	19,106.09	CAPITAL OUTLAY BLDING & IMPROV
12/5/2023	TOP HOTEL - OPERATING RES #2	150,000.00	ADMINISTRATIVE COSTS
12/18/2023	DIRECTORS & OFFICERS PREMIUM	132.47	INSURANCE - ADMINISTRATIVE COST
1/1/2024	DIRECTORS & OFFICERS PREMIUM	649.53	INSURANCE
2/29/2024	TOPHOTEL - HORN STROBE	632.46	CAPITAL OUTLAY BLDING & IMPROV
2/29/2024	TOP HOTEL - OP TRANSFER 2	227,355.00	ADMINISTRATIVE COSTS
2/29/2024	TOPHOTEL - EMERGENCY WA EXTR	24,058.31	CAPITAL OUTLAY BLDING & IMPROV
3/31/2024	TOPHOTEL - BACKFLOW REPAIR	9,479.00	CAPITAL OUTLAY BLDING & IMPROV
3/31/2024	TOPHOTEL - DOOR LOCK SERVER	2,003.64	CAPITAL OUTLAY BLDING & IMPROV
3/31/2024	2024 TDC OPS TRSF #4	215,851.00	ADMINISTRATIVE COSTS
3/29/2024	TOPHOTEL - PULL STATION	2,168.54	CAPITAL OUTLAY BLDING & IMPROV
3/29/2024	TOPHOTEL - DRYWALL	2,971.53	CAPITAL OUTLAY BLDING & IMPROV
4/19/2024	LED lights #1	2,250.00	MAINT BLDG & GROUNDS
4/19/2024	TOPHOTEL - ACTUATORS 2ND INST	18,286.60	CAPITAL OUTLAY BLDING & IMPROV

**Total Hotel Disbursements** **922,902.90**

Resolution 9478 Limit 500,000.00

Resolution 9491 Limit 500,000.00

Resolution 9516 Limit 500,000.00

Subtotal Funding 1,500,000.00

Pending Requests Total 104,369.64

**Remaining Authority** **472,727.46**

Total Operating Expenditures	743,987.91
Total Approved and Paid Capital Expenditures	178,914.99

1 RESOLUTION NO. \_\_\_\_\_

2  
3 A RESOLUTION introduced by the Policy and Finance Committee comprised of  
4 Councilmembers Marcus Miller, Spencer Duncan and Michelle  
5 Hoferer, authorizing the use of \$217,254 from the Unassigned  
6 Reserve Fund for chiller rehab at Hotel Topeka.  
7

8 WHEREAS, Resolution No. 9512 establishes a policy regarding Unassigned  
9 Reserve Fund expenditures that requires Governing Body authorization; and

10 WHEREAS, the consultant that the City retained has completed a Property  
11 Condition Assessment (PCA) that identified that only one of two chillers is currently  
12 operational at Hotel Topeka and has recommended that the non-working chiller (the Trane  
13 Chiller) be replaced or rehabilitated as part of the immediate capital needs; and

14 WHEREAS, the Governing Body agrees with the need to have two chillers  
15 operational at Hotel Topeka.

16 NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE  
17 CITY OF TOPEKA, KANSAS, that it authorizes \$217,254 from the Unassigned Reserve  
18 Fund to the Topeka Development Corporation to rehabilitate the Trane Chiller. This  
19 project meets one or more of the conditions stated in Resolution No. 9512 for use of said  
20 funds.

21 ADOPTED and APPROVED by the Governing Body \_\_\_\_\_.

22 CITY OF TOPEKA, KANSAS  
23  
24

25 \_\_\_\_\_  
26 Michael Padilla, Mayor

27 ATTEST:  
28  
29

30 \_\_\_\_\_  
31 Brenda Younger, City Clerk



Trane U.S. Inc.  
11211 Lakeview Avenue  
Lenexa, KS 66219  
Phone: (913) 599-4664  
Fax: (913) 599-4669  
Service Contact: (913) 599-4664

February 21, 2024

HOTEL TOPEKA AT CITY CENTER  
1717 SW TOPEKA BLVD  
Topeka, KS 66612-6661  
(785) 431-4725

Site Address:  
Hotel Topeka at City Center  
1717 SW Topeka Blvd  
Topeka, KS 66612

**ATTENTION:** Wayne Wazlawik

**PROJECT NAME:** Hotel Topeka at City Center Chiller Overhaul

### **TRANE COMPRESSOR OVERHAUL FOR CENTRAVAC®**

Trane's CenTraVac Compressor Overhaul service program is a major inspection and maintenance program that brings the chiller compressors to like new condition. A chiller overhaul is recommended by Trane Service to be done every 8 to 10 years depending upon severity of use.

Per the attached proposal, it is our recommendation that your chiller be scheduled for a CenTraVac Compressor Overhaul. This is based on the deep dive of the unit that Trane performed on 2/2/2024.

Thank you for giving us this opportunity. If you have any questions or concerns, please call me at (913) 225-4134.



Sincerely,

Chad Bertelsmeier  
Direct Account Manager  
E-mail: Chad.Bertelsmeier@trane.com  
Cell: (913) 225-4134  
**Trane**

## PROPOSAL

We are pleased to offer you this proposal for performance of the following Services for the Equipment listed:

# Hotel Topeka at City Center

The following "Covered Equipment" will be serviced at Hotel Topeka at City Center:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Chiller #1	1	Trane	RTHDUB2FXT	U18E01188	Chiller #1

## SCOPE:

- Plug 5 Condenser Tubes (Failed ECTT)
- Compressor Replacement and removal
- Oil Separator
  - o Cond Pressure Transducer
  - o O/rings in&out
  - o Service Valve
  - o (5) Relief Valves
- Discharge Line Replacement
  - o (2) Orings
  - o HPC Switch
  - o Isolation Butterfly Valve
- Oil Tank
  - o Optical Sensor
  - o (2) Elm01405
  - o Masher Oil Solenoid Valve
  - o Oil Cooler
  - o TXV For Oil Cooler
  - o (2) Service Valves on oil Line
- Evaporator Parts
  - o Gas Pump Assembly
    - Fill solenoid Valve
    - Drain Solenoid Valve
    - Check Valve
    - (No Coils Needed)
  - o (2) Suction Line Orings
  - o Charging Valve at bottom of Evap
  - o Service Valve near evap pressure Transducer
  - o Evap Pressure Transducer
  - o Liquid Level Sensor
  - o Liquid Level Canister Housing
  - o EXV
  - o (2) Sight glasses on EXV Housing
  - o Gasket from EXV Housing to evap
  - o Ring from EXV Housing to liquid Line

- Condenser Parts
  - o (10) Tube Plugs
  - o Service valve on top of condenser.
  - o Charging Valve on bottom of condenser
  - o Isolation Service Valve on bottom of Condenser
  - o (2) Gaskets for isolation Service Valve
  - o Need Oil fittings for compressor (3)
  - o Oil Sump
- Seal entire unit – Dehydrate entire unit and run R-134b through the unit to descale, and remove all grime and rust throughout the unit. This is a multi-cycle in order to get it back to as new as possible. This is a (5) day process.
  - o Flushing Procedure:
    - We will first Flush the chiller out with refrigerant brought on site to use as a flushing gas. This is to help remove any standing water as well as reduce the number of debris in the chiller.
  - o Unit Dehydration
    - This will be measured on the micron Level
    - Our normal acceptance criteria would be when the unit is able to hold a 1,000 micron vacuum hold test for 4 hours with no more than 2000 micron rise in that time
    - We will leave the unit under vacuum (nitrogen blanket may be needed)
    - When completed we will disconnect all equipment as necessary
- Startup Unit and verify operation.

Trane plans to remove the Trane chiller from Hotel Topeka – load it up on a truck – and take it to the Trane Parts center in Topeka at a staging area.

This will give us access to Forklifts – easier access – removal and changing of a 600 lb compressor – and all the parts will be stored in a staging area at the parts center. This also gives us access to 480 for the descaling/R-134b equipment.

PRICING AND ACCEPTANCE

TOTAL PRICE: .....\$198,677.86 USD

State Tax 6.50% \$12,914.06

County Tax 1.35% \$2,682.15

City Tax 1.50% \$2,980.17

Estimated Invoice Total \$217,254.24

CLARIFICATIONS

1. Price does not include applicable sales taxes, which will be added and reflected on the invoice(s).
2. Any service not listed is not included.
3. Work will be performed during normal Trane business hours.
4. Fan coil to be reinstalled by customer once Chiller is relocated and reinstalled

I appreciate the opportunity to earn your business and look forward to helping you with all of your service needs. Please contact me if you have any questions or concerns.

In addition to any other amounts then due hereunder, if this Agreement is terminated or cancelled prior to its scheduled expiration, Customer shall pay to Company the balance of any amounts billed to but unpaid by Customer. In the event a "Service Project" is also included as part of the Agreement funding option, Customer shall pay to Company the Cancellation Fee which shall be set forth in "Exhibit A" Cancellation Schedule attached hereto, which Cancellation Fee represents unbilled labor, non-labor expenses, and parts materials and components. Subject only to a prior written agreement signed by Trane, payment is due upon receipt of invoice in accordance with Section 7 of the attached Terms and Conditions – Quoted Service.

This proposal is valid 30 days from February 21, 2024.

This agreement is subject to Customer's acceptance of the attached Trane Terms and Conditions – Quoted Service.

CUSTOMER ACCEPTANCE	TRANE ACCEPTANCE Trane U.S. Inc.
_____ Authorized Representative	_____ Submitted By: Chad Bertelsmeier
_____ Printed Name	_____ Proposal Date: February 09, 2024
_____ Title	_____ Cell: (913) 225-4134
_____ Purchase Order	_____ Office: (913) 599-4664
_____ Acceptance Date	_____ License Number:
	_____ Authorized Representative
	_____ Title
	_____ Signature Date

**TERMS AND CONDITIONS – QUOTED SERVICE**

**“Company” shall mean Trane U.S. Inc..**

To obtain repair service within the scope of Services as defined, contact your local Trane District office identified on the first page of the Agreement by calling the telephone number stated on that page. That Trane District office is responsible for Company's performance of this Agreement. Only Trane authorized personnel may perform service under this Agreement. For Service covered under this Agreement, Company will be responsible for the cost of transporting a part requiring service.

**1. Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the “Agreement”) resulting from Company's proposal (the “Proposal”) for the services (the “Services”) on equipment listed in the Proposal (the “Covered Equipment”). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

**2. Connected Services.** In addition to these terms and conditions, the Connected Services Terms of Service (“Connected Services Terms”), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

**3. Acceptance.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon the Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to provide Services in accordance with the Proposal. If Customer does not reject or object in writing to Company within 10 days, the Company's counteroffer will be deemed accepted. Customer's acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Services rendered by Company to the date of cancellation.

**4. Cancellation by Customer Prior to Services; Refund.** If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer's account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer's right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

**5. Cancellation by Company.** This Agreement may be cancelled by Company for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to performance of any Services hereunder and Company will refund to Customer, or credit Customer's account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

**6. Services Fees and Taxes.** Fees for the Services (the “Service Fee(s)”) shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company's regular business hours and any after-hours services shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due.

**7. Payment.** Payment is due upon receipt of Company's invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due or otherwise enforcing these terms and conditions.

**8. Customer Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead).

**9. Performance.** Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances as of the time Company performs the Services. Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company. Customer must reimburse Company for services, repairs, and/or replacements performed by Company at Customer's request beyond the scope of Services or otherwise excluded under this Agreement. The reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials. Prior to Company performing the additional services, repairs, and/or replacements, Customer may request a separate written quote stating the work to be performed and the price to be paid by Customer for the work.

**10. Customer Obligations.** Customer shall: (a) provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; and (b) unless otherwise agreed by Customer and Company, at Customer's expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.

**11. Exclusions.** Unless expressly included in the Proposal, the Services do not include, and Company shall not be responsible for or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement (“Pre-Existing Conditions”) including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and
- (e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

**12. Limited Warranty.** Company warrants that: (a) the material manufactured by Company and provided to the Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement and (b) the labor/labour portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion (the “Limited Warranty”). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. Exclusions from this Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of Company equipment may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company (“Third-Party Product(s)”) are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR**



**SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN.**

THE REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND. EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO

**13. Indemnity.** To the maximum extent permitted by law, Company and Customer shall indemnify and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

**14. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), INCLUDING CONTAMINANTS LIABILITIES, OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.

**15. CONTAMINANTS LIABILITY**

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGED TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANTS LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANT LIABILITIES.**

**16. Asbestos and Hazardous Materials.** The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

**17. Insurance.** Company agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company or its insurer waive its right of subrogation

**18. Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days' notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

**19. General.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Services are performed without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

**20. Equal Employment Opportunity/Affirmative Action Clause.** Company is a United States federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in

41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250; and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

**21. U.S. Government Contracts.**

**The following provision applies only to direct sales by Company to the US Government.** The Parties acknowledge that all items or services ordered and delivered under this Agreement / Purchase Order are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. **The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. government contract, Customer agrees and hereby certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to contractor's Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of this offer or agreement, other than the Proposal or this Agreement.

**22. Limited Waiver of Sovereign Immunity.** If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-10.48 (0821)  
Supersedes 1-10.48 (0720)

## **SECURITY ADDENDUM**

This Addendum shall be applicable to the sale, installation and use of Trane equipment and the sale and provision of Trane services. "Trane" shall mean Trane U.S. Inc. for sales and services in the United States, or Trane Canada ULC for sales and services in Canada.

1. **Definitions.** All terms used in this Addendum shall have the meaning specified in the Agreement unless otherwise defined herein. For the purposes of this Addendum, the following terms are defined as follows:

"Customer Data" means Customer account information as related to the Services only and does not include HVAC Machine Data or personal data. Trane does not require, nor shall Customer provide personal data to Trane under the Agreement. Such data is not required for Trane to provide its Equipment and/or Services to the Customer.

"Equipment" shall have the meaning set forth in the Agreement.

"HVAC Machine Data" means data generated and collected from the product or furnished service without manual entry. HVAC Machine Data is data relating to the physical measurements and operating conditions of a HVAC system, such as but not limited to, temperatures, humidity, pressure, HVAC equipment status. HVAC Machine Data does not include Personal Data and, for the purposes of this agreement, the names of users of Trane's controls products or hosted applications shall not be Personal Data, if any such user chooses to use his/her name(s) in the created accounts within the controls product (e.g., firstname.lastname@address.com). HVAC Machine Data may be used by Trane: (a) to provide better support services and/or products to users of its products and services; (b) to assess compliance with Trane terms and conditions; (c) for statistical or other analysis of the collective characteristics and behaviors of product and services users; (d) to backup user and other data or information and/or provide remote support and/or restoration; (e) to provide or undertake: engineering analysis; failure analysis; warranty analysis; energy analysis; predictive analysis; service analysis; product usage analysis; and/or other desirable analysis, including, but not limited to, histories or trends of any of the foregoing; and (f) to otherwise understand and respond to the needs of users of the product or furnished service. "Personal Data" means data and/or information that is owned or controlled by Customer, and that names or identifies, or is about a natural person, such as: (i) data that is explicitly defined as a regulated category of data under any data privacy laws applicable to Customer; (ii) non-public personal information ("NPI") or personal information ("PI"), such as national identification number, passport number, social security number, social insurance number, or driver's license number; (iii) health or medical information, such as insurance information, medical prognosis, diagnosis information, or genetic information; (iv) financial information, such as a policy number, credit card number, and/or bank account number; (v) personally identifying technical information (whether transmitted or stored in cookies, devices, or otherwise), such as IP address, MAC address, device identifier, International Mobile Equipment Identifier ("IMEI"), or advertising identifier; (vi) biometric information; and/or (vii) sensitive personal data, such as, race, religion, marital status, disability, gender, sexual orientation, geolocation, or mother's maiden name.

"Security Incident" shall refer to (i) a compromise of any network, system, application or data in which Customer Data has been accessed or acquired by an unauthorized third party; (ii) any situation where Trane reasonably suspects that such compromise may have occurred; or (iii) any actual or reasonably suspected unauthorized or illegal Processing, loss, use, disclosure or acquisition of or access to any Customer Data.

"Services" shall have the meaning set forth in the Agreement.

2. **HVAC Machine Data; Access to Customer Extranet and Third Party Systems.** If Customer grants Trane access to HVAC Machine Data via web portals or other non-public websites or extranet services on Customer's or a third party's website or system (each, an "Extranet"), Trane will comply with the following:
  - a. **Accounts.** Trane will ensure that Trane's personnel use only the Extranet account(s) designated by Customer and will require Trane personnel to keep their access credentials confidential.
  - b. **Systems.** Trane will access the Extranet only through computing or processing systems or applications running operating systems managed by Trane that include: (i) system network firewalls; (ii) centralized patch management; (iii) operating system appropriate anti-malware software; and (iv) for portable devices, full disk encryption.
  - c. **Restrictions.** Unless otherwise approved by Customer in writing, Trane will not download, mirror or permanently store any HVAC Machine Data from any Extranet on any medium, including any machines, devices or servers.
  - d. **Account Termination.** Trane will terminate the account of each of Trane's personnel in accordance with Trane's standard practices after any specific Trane personnel who has been authorized to access any Extranet (1) no longer needs access to HVAC Machine Data or (2) no longer qualifies as Trane personnel (e.g., the individual leaves Trane's employment).
  - e. **Third Party Systems.** Trane will provide Customer prior notice before it uses any third party system that stores or may otherwise have access to HVAC Machine Data, unless (1) the data is encrypted and (2) the third party system will not have access to the decryption key or unencrypted "plain text" versions of the HVAC Machine Data.

3. Customer Data; Confidentiality. Trane shall keep confidential, and shall not access or use any Customer Data and information that is marked confidential or by its nature is considered confidential ("Customer Confidential Information") other than for the purpose of providing the Equipment and Services, and will disclose Customer Confidential Information only: (i) to Trane's employees and agents who have a need to know to perform the Services, (ii) as expressly permitted or instructed by Customer, or (iii) to the minimum extent required to comply with applicable law, provided that Trane (1) provides Customer with prompt written notice prior to any such disclosure, and (2) reasonably cooperate with Customer to limit or prevent such disclosure.
4. Customer Data; Compliance with Laws. Trane agrees to comply with laws, regulations governmental requirements and industry standards and practices relating to Trane's processing of Customer Confidential Information (collectively, "**Laws**").
5. Customer Data; Information Security Management. Trane agrees to establish and maintain an information security and privacy program, consistent with applicable HVAC equipment industry practices that complies with this Addendum and applicable Laws ("**Information Security Program**"). The Information Security Program shall include appropriate physical, technical and administrative safeguards, including any safeguards and controls agreed by the Parties in writing, sufficient to protect Customer systems, and Customer's Confidential Information from unauthorized access, destruction, use, modification or disclosure. The Information Security Program shall include appropriate, ongoing training and awareness programs designed to ensure that Trane's employees and agents, and others acting on Trane's, behalf are aware of and comply with the Information Security Program's policies, procedures, and protocols.
6. Monitoring. Trane shall monitor and, at regular intervals consistent with HVAC equipment industry practices, test and evaluate the effectiveness of its Information Security Program. Trane shall evaluate and promptly adjust its Information Security Program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other facts or circumstances that Trane knows or reasonably should know may have a material impact on the security of Customer Confidential Information, Customer systems and Customer property.
7. Audits. Customer acknowledges and agrees that the Trane SOC2 audit report will be used to satisfy any and all audit/inspection requests/requirements by or on behalf of Customer. Trane will make its SOC2 audit report available to Customer upon request and with a signed nondisclosure agreement.
8. Information Security Contact. Trane's information security contact is Local Sales Office.
9. Security Incident Management. Trane shall notify Customer after the confirmation of a Security Incident that affects Customer Confidential Information, Customer systems and Customer property. The written notice shall summarize the nature and scope of the Security Incident and the corrective action already taken or planned.
10. Threat and Vulnerability Management. Trane regularly performs vulnerability scans and addresses detected vulnerabilities on a risk basis. Periodically, Trane engages third-parties to perform network vulnerability assessments and penetration testing. Vulnerabilities will be reported in accordance with Trane's cybersecurity vulnerability reported process. Trane periodically provides security updates and software upgrades.
11. Security Training and Awareness. New employees are required to complete security training as part of the new hire process and receive annual and targeted training (as needed and appropriate to their role) thereafter to help maintain compliance with Security Policies, as well as other corporate policies, such as the Trane Code of Conduct. This includes requiring Trane employees to annually re-acknowledge the Code of Conduct and other Trane policies as appropriate. Trane conducts periodic security awareness campaigns to educate personnel about their responsibilities and provide guidance to create and maintain a secure workplace.
12. Secure Disposal Policies. Policies, processes, and procedures regarding the disposal of tangible and intangible property containing Customer Confidential Information so that wherever possible, Customer Confidential Information cannot be practicably read or reconstructed.
13. Logical Access Controls. Trane employs internal monitoring and logging technology to help detect and prevent unauthorized access attempts to Trane's corporate networks and production systems. Trane's monitoring includes a review of changes affecting systems' handling authentication, authorization, and auditing, and privileged access to Trane production systems. Trane uses the principle of "least privilege" (meaning access denied unless specifically granted) for access to customer data.
14. Contingency Planning/Disaster Recovery. Trane will implement policies and procedures required to respond to an emergency or other occurrence (i.e. fire, vandalism, system failure, natural disaster) that could damage Customer Data or any system that contains Customer Data. Procedures include the following
  - (i) data backups; and
  - (ii) formal disaster recovery plan. Such disaster recovery plan is tested at least annually.

15. Return of Customer Data. If Trane is responsible for storing or receiving Customer Data, Trane shall, at Customer's sole discretion, deliver Customer Data to Customer in its preferred format within a commercially reasonable period of time following the expiration or earlier termination of the Agreement or, such earlier time as Customer requests, securely destroy or render unreadable or undecipherable each and every original and copy in every media of all Customer's Data in Trane's possession, custody or control no later than [90 days] after receipt of Customer's written instructions directing Trane to delete the Customer Data.
16. Background checks Trane shall take reasonable steps to ensure the reliability of its employees or other personnel having access to the Customer Data, including the conducting of appropriate background and/or verification checks in accordance with Trane policies.
17. DISCLAIMER OF WARRANTIES. EXCEPT FOR ANY APPLICABLE WARRANTIES IN THE AGREEMENT, THE SERVICES ARE PROVIDED "AS IS", WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT AS TO SUCH SERVICES SHALL BE WITH CUSTOMER. TRANE DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES AND THE SERVICES PROVIDED HEREUNDER, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE SERVICES WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR RETURN/RESPONSE TO INQUIRIES WITHIN ANY SPECIFIC PERIOD OF TIME.

November 2023

## APPENDIX

### SERVICE BEST PRACTICES

Trane is completely dedicated to making buildings better. The ongoing pursuit of better buildings, using our long-term domain expertise to push new technologies into everyday use, keeps us at the forefront of the industry.

In addition to the services details in the agreement above, we take practical steps every day to ensure our approach is safe and efficient.

#### SAFETY

Since 2003, U.S. Bureau of Labor Statistics records have consistently shown the Total Recordable Incident Rate (TRIR) and Days Away From Work (DAFW) for Trane have been significantly lower than those for HVAC repair and maintenance contractors and specialty trade contractors (construction). The company's safety culture in America is unparalleled in the building service industry, with proven results in the continuous reduction of injury rates. Trane incident rates (OSHA) are consistently 50 to 70 percent below the industry average.

A wide range of safety training and resources are available to Trane technicians, including:

- Safety training—20 hours per year
- Electrical safety—NFPA 70E compliant, electrical PPE
- Fall protection
- Ergonomics
- USDOT compliance
- Refrigerant management training

#### ENVIRONMENTAL PRACTICES

Trane policies and procedures are compliant with all federal and state regulations. Refrigerant (and substitutes) handling, storage and leak repair processes are compliant with Environmental Protection Agency regulation 40 CFR Part 82. Service technicians are Universal-certified and use only certified recovery equipment

Refrigerant Management Software (RMS) captures, manages and reports all refrigerant activity at your site. Annually, Trane will send you a report documenting all refrigerant activity that we performed for each piece of equipment during the past 12 months

Trane adheres to all environmental regulations when removing used oil from refrigeration units.

#### CONSISTENCY

Nationwide, Trane technicians follow documented, formal processes that ensure uniform service delivery. As an OEM, Trane has developed exclusive service procedures which provide the most reliable outcomes, and extended equipment longevity, at the most cost-effective price.

- Exclusive service work flow processes provide detailed steps and information encompassing parts, materials, tools and sequence of execution
- Additional steps addressing safety, quality control, work validation and environmental compliance
- Technicians must consistently reference documented processes to ensure no critical steps are skipped or omitted
- Applicable service processes meet or exceed ASHRAE 180-2008 Standard Practice for Inspection and Maintenance of Commercial Building HVAC Systems



# Topeka Development Corporation

## Board of Directors

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### **ITEM: Results of the TDC 2023 Audit of Financial Statements**

**Date:** May 7, 2024

**Contact Person:** Ben Hart, Interim Chief Financial Officer

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April 30, 2024

AdamsBrown, LLC  
358 N. Main, Suite 100  
Wichita, Kansas 67202

This representation letter is provided in connection with your audit of the financial statements of Topeka Development Corporation, which comprise the statement of net position as of December 31, 2023, and the related statements of revenues, expenses, and changes in net position and cash flows for the period then ended, and the disclosures (collectively, the "financial statements"), for the purpose of expressing opinions as to whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

We confirm, to the best of our knowledge and belief, as of April 30, 2024, the following representations made to you during your audit.

#### **Financial Statements**

- We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated January 18, 2024, including our responsibility for the preparation and fair presentation of the financial statements in accordance with U.S. GAAP and for preparation of the supplementary information in accordance with the applicable criteria.
- The financial statements referred to above are fairly presented in conformity with U.S. GAAP and include all financial information of the Organization required by generally accepted accounting principles to be included in the financial reporting entity.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
- The methods, significant assumptions, and data used in making accounting estimates and their related disclosures are appropriate to achieve recognition, measurement, or disclosure that is reasonable in accordance with U.S. GAAP.
- Related-party relationships and transactions, including revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been appropriately accounted for and disclosed in accordance with U.S. GAAP.



- Adjustments or disclosures have been made for all events, including instances of noncompliance, subsequent to the date of the financial statements that would require adjustment to or disclosure in the financial statements.
- The effects of all known actual or possible litigation, claims, and assessments have been accounted for and disclosed in accordance with U.S. GAAP.
- Guarantees, whether written or oral, under which the Organization is contingently liable, if any, have been properly recorded or disclosed.
- Receivables recorded in the financial statements represent valid claims against debtors for transactions arising on or before the statement of net position date and have been reduced to their estimated net realizable value.
- We have no plans or intentions to discontinue the operations of any segment or discontinue any significant services.

#### **Information Provided**

- We have provided you with:
  - Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements, such as records (including information obtained from outside of the general and subsidiary ledgers), documentation, and other matters.
  - Additional information that you have requested from us for the purpose of the audit.
  - Unrestricted access to persons within the Organization from whom you determined it necessary to obtain audit evidence.
  - Minutes of the meetings of the Board or summaries of actions of recent meetings for which minutes have not yet been prepared.
- All material transactions have been recorded in the accounting records and are reflected in the financial statements.
- We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
- We have no knowledge of any fraud or suspected fraud that affects the Organization and involves:
  - Management,
  - Employees who have significant roles in internal control, or
  - Others where the fraud could have a material effect on the financial statements.
- We have no knowledge of any allegations of fraud or suspected fraud affecting the Organization's financial statements communicated by employees, former employees, regulators, or others.

- We have no knowledge of instances of noncompliance or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements, or waste or abuse, whose effects should be considered when preparing financial statements.
- We are not aware of any pending or threatened litigation, claims, or assessments or unasserted claims or assessments that are required to be accrued or disclosed in the financial statements, and we have not consulted a lawyer concerning litigation, claims, or assessments.
- We have disclosed to you the names of the Organization's related parties and all the related party relationships and transactions, including any side agreements.

**Government – specific**

- There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
- We have a process to track the status of audit recommendations.
- We have identified to you any previous audits, attestation engagements, and other studies related to the objectives of the audit and whether related recommendations have been implemented.
- We have identified to you any investigations or legal proceedings that have been initiated with respect to the period under audit.
- The Organization has no plans or intentions that may materially affect the carrying value or classification of assets, deferred outflows of resources, liabilities, deferred inflows of resources, and fund balance or net position.
- We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us, including tax or debt limits and debt contracts; and legal and contractual provisions for reporting specific activities in separate funds.
- We have identified and disclosed to you all instances of identified and suspected fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we believe have a material effect on the financial statements.
- There are no violations or possible violations of budget ordinances, laws and regulations (including those pertaining to adopting, approving, and amending budgets), provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the financial statements, or as a basis for recording a loss contingency, or for reporting on noncompliance.
- As part of your audit, you assisted with preparation of the financial statements and disclosures. We acknowledge our responsibility as it relates to those nonaudit services, including that we assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services. We have reviewed, approved, and accepted responsibility for those financial statements and disclosures.

- The Organization has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral.
- The Organization has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
- The financial statements properly classify all funds and activities in accordance with GASBS No. 34, as amended.
- All funds that meet the quantitative criteria in GASBS Nos. 34 and 37 for presentation as major are identified and presented as such and all other funds that are presented as major are particularly important to financial statement users.
- Components of net position (net investment in capital assets; restricted; and unrestricted) are properly classified and, if applicable, approved.
- Provisions for uncollectible receivables have been properly identified and recorded.
- Expenses have been appropriately classified in the statement of revenues, expenses, and changes in net position, and allocations have been made on a reasonable basis.
- Revenues are appropriately classified in the statement of revenues, expenses, and changes in net position.
- Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported.
- Deposits are properly classified as to risk and are properly disclosed.
- Capital assets, including infrastructure and intangible assets, are properly capitalized, reported, and, if applicable, depreciated or amortized.
- We have appropriately disclosed the Organization's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position is available and have determined that net position is properly recognized under the policy.
- We are following our established accounting policy regarding which resources (that is, restricted, committed, assigned, or unassigned) are considered to be spent first for expenditures for which more than one resource classification is available. That policy determines the fund balance classifications for financial reporting purposes.

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Signed

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Title

**TOPEKA DEVELOPMENT CORPORATION**

Financial Statements With Independent Auditors' Report

For the Period Ended December 31, 2023

DRAFT

**TOPEKA DEVELOPMENT CORPORATION**  
Financial Statements With Independent Auditors' Report  
For the Period Ended December 31, 2023

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DRAFT

## INDEPENDENT AUDITORS' REPORT

To the Board of Directors  
**Topeka Development Corporation**  
Topeka, Kansas

### Opinion

We have audited the accompanying financial statements of **Topeka Development Corporation**, a component unit of City of Topeka, Kansas, which comprise the statement of net position as of December 31, 2023, and the related statements of revenues, expenses and change in net position and cash flows for the period from inception (October 18, 2023) to December 31, 2023, and the related notes to the financial statements, which collectively comprise the Organization's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net position of **Topeka Development Corporation**, as of December 31, 2023, and the changes in its net position and cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of **Topeka Development Corporation**, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about **Topeka Development Corporation's** ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is

not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- exercise professional judgment and maintain professional skepticism throughout the audit.
- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of **Topeka Development Corporation's** internal control. Accordingly, no such opinion is expressed.
- evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about **Topeka Development Corporation's** ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

#### **Required Supplementary Information**

Management has omitted the management, discussion, and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.



**ADAMSBROWN, LLC**  
Certified Public Accountants  
Wichita, Kansas

April 30, 2024

**TOPEKA DEVELOPMENT CORPORATION**

## Statement of Net Position

December 31, 2023

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<b><u>ASSETS</u></b>	
<b>Current Assets</b>	
Cash and Cash Equivalents	\$ 495,566
Accounts Receivable, Net	14,165
Inventory	24,186
Prepaid Expenses and Other Assets	<u>100,979</u>
<b>Total Current Assets</b>	<u>634,896</u>
<b>Capital Assets</b>	
Building	7,287,977
Accumulated Depreciation	<u>(60,733)</u>
<b>Net Capital Assets</b>	<u>7,227,244</u>
<b>Total Assets</b>	<u>\$ 7,862,140</u>
<b><u>LIABILITIES</u></b>	
<b>Current Liabilities</b>	
Trade Accounts Payable	\$ 253,783
Other Payables	13,474
Accrued Payroll	24,053
Deposits Received	<u>34,626</u>
<b>Total Current Liabilities</b>	<u>325,936</u>
<b><u>NET POSITION</u></b>	
Invested in Capital Assets, Net of Related Debt	7,227,244
Unrestricted	<u>308,960</u>
<b>Total Net Position</b>	<u>7,536,204</u>
<b>Total Liabilities and Net Assets</b>	<u>\$ 7,862,140</u>

The accompanying notes are an integral part of the financial statements.



**TOPEKA DEVELOPMENT CORPORATION**  
Statement of Revenues, Expenses and Change in Net Position  
For the Period Ended December 31, 2023

<b><u>REVENUES</u></b>	
<b>Operating Revenues</b>	
Charges for Services	
Room	\$ 318,621
Restaurant	24,776
Banquet	92,769
Other	8,371
	<hr/>
<b>Total Operating Revenue</b>	<b>444,537</b>
	<hr/>
<b><u>EXPENSES</u></b>	
<b>Operating Expenses</b>	
<b>Payroll and Compensation Expense</b>	
Room	91,769
Food and Beverage	23,581
Restaurant	20,461
Banquet	28,219
Administrative and General	38,506
Sales and Marketing	30,888
Repairs and Maintenance	40,429
	<hr/>
<b>Total Payroll and Compensation Expense</b>	<b>273,853</b>
	<hr/>
<b>Professional Services</b>	
Room	16,858
Food and Beverage	5,855
Administrative and General	27,952
IT	23,362
Sales and Marketing	17,942
Repairs and Maintenance	4,447
	<hr/>
<b>Total Professional Services</b>	<b>96,416</b>
	<hr/>
<b>Supplies</b>	
Room	13,916
Food and Beverage	46,405
Other	2,893
Administrative and General	3,922
IT	1,233
Repairs and Maintenance	25,067
Utilities	69,154
Fixed	108,417
	<hr/>
<b>Total Supplies</b>	<b>271,007</b>
	<hr/>
<b>Depreciation</b>	<b>60,733</b>
	<hr/>
<b>Total Operating Expenses</b>	<b>702,009</b>
	<hr/>
<b>Net Operating Loss (carried forward)</b>	<b>\$ (257,472)</b>

The accompanying notes are an integral part of the financial statements.

**TOPEKA DEVELOPMENT CORPORATION**  
Statement of Revenues, Expenses and Change in Net Position  
For the Period Ended December 31, 2023

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<b>Net Operating Loss (carried forward)</b>	\$ <u>(257,472)</u>
<b><u>NON OPERATING REVENUES (EXPENSES)</u></b>	
Interest Income	21
Interest Expense and Finance Charges	<u>(14,867)</u>
<b>Net Nonoperating Revenues (Expenses)</b>	<u>(14,846)</u>
<b>Loss Before Contributions</b>	<u>(272,318)</u>
<b>Capital Contributions</b>	
Initial Capital Contribution	7,391,457
Other Capital Contribution	<u>417,065</u>
<b>Total Capital Contributions</b>	<u>7,808,522</u>
Change in Net Position	7,536,204
<b>Net Position Beginning of Period</b>	<u>-</u>
<b>Net Position End of Period</b>	\$ <u><u>7,536,204</u></u>

The accompanying notes are an integral part of the financial statements.

**TOPEKA DEVELOPMENT CORPORATION**  
Statement of Cash Flows  
For the Period Ended December 31, 2023

<b>Cash Flows From Operating Activities</b>	
Hotel Services	\$ 458,131
Payments to Suppliers	<u>(364,784)</u>
<b>Net Cash Provided by Operating Activities</b>	<u>93,347</u>
<b>Cash Flows From Capital and Capital Related Financing Activities</b>	
Capital Contributions Received	417,065
Interest Expense and Finance Charges	<u>(14,867)</u>
<b>Net Cash Provided by Capital and Capital Related Financing Activities</b>	<u>402,198</u>
<b>Cash Flows from Investing Activities</b>	
Interest Income	<u>21</u>
<b>Net Increase in Cash and Cash Equivalents</b>	495,566
<b>Cash and Cash Equivalents - Beginning of Year</b>	<u>-</u>
<b>Cash and Cash Equivalents - End of Year</b>	<u>\$ 495,566</u>
<b>Supplemental Disclosure</b>	
Noncash Capital Grants and Contributions Received	\$ 7,391,457
<b>Reconciliation of Net Operating Loss to Net Cash Provided by Operating Activities</b>	
<b>Net Operating Loss</b>	\$ (257,472)
<b>Adjustments to Reconcile Net Operating Loss to Net Cash Provided by Operating Activities</b>	
Depreciation	60,733
(Increase) Decrease in	
Accounts Receivable	3,374
Inventory	5,371
Prepaid Expenses	36,333
Increase (Decrease) in	
Accounts Payable	197,663
Other Payables	13,072
Accrued Payroll and Benefits	24,053
Deposits Received	<u>10,220</u>
<b>Net Cash Provided by Operating Activities</b>	<u>\$ 93,347</u>

The accompanying notes are an integral part of the financial statements.

## TOPEKA DEVELOPMENT CORPORATION

### Notes to Financial Statements

December 31, 2023

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#### NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### Nature of Activities

**Topeka Development Corporation** (the Organization) was incorporated on October 18, 2023, as a nonprofit organization for the exclusive benefit of City of Topeka, Kansas, in particular to aid, assist and foster the planning, designing, development, supervision, acquisition, construction, furnishing, equipping, management, operation and improvement of a convention center hotel in City of Topeka, Kansas. The Organization is a blended component unit of City of Topeka, Kansas and shares the same governing body as City of Topeka, Kansas. The Organization has no component units of its own.

##### Basis of Accounting

The accounting and reporting policies of the Organization, relating to the programs included in the accompanying financial statements, conform to generally accepted accounting principles applicable to state and local governments. Generally accepted accounting principles (GAAP) for local governments include those principles prescribed by the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants in the publication entitled Audits of State and Local Governments (GASB 34 Edition).

The Organization's financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of timing of related cash flows. For financial statement reporting purposes, the Organization is considered a special-purpose government engaged only in business-type activities and consists of one proprietary fund.

##### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

##### Cash and Cash Equivalents

Cash and cash equivalents include checking accounts.

##### Accounts Receivable, Net

Accounts receivables are recorded when services are rendered and are primarily related to credit card payments. There was no allowance for uncollectable accounts at year end.

##### Prepaid Expenses and Inventory

Payments made to vendors for goods or services that will benefit periods beyond the current year are recorded as inventory or prepaid expenses.

##### Capital Assets

Capital assets are defined by the Organization as assets with an initial, individual cost of \$5,000 or more and an estimated useful life of two years or greater. These assets are valued at historical cost, estimated historical cost if actual cost is not available, and estimated acquisition value on the date donated.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized. The sale or disposal of capital assets is recorded by removing cost and accumulated depreciation from the accounts and charging the resulting gain or loss to income.

## TOPEKA DEVELOPMENT CORPORATION

### Notes to Financial Statements

December 31, 2023

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Depreciation has been provided over the estimated useful lives using the straight-line method. The estimated useful life for the building is 20 years.

#### **Net Position**

The Organization's net position is classified as follows:

Invested in capital assets, net of related debt: This represents the Organization's total investment in capital assets, net of outstanding debt obligations related to those capital assets.

Unrestricted net position: The Organization receives various funds from organizations and hotel guests which are available for use at the discretion of the Organization.

#### **Hotel Service Revenue**

The Organization operates a full service hotel. Hotel revenues are recognized when services or goods have been rendered and it has a legal and enforceable right to receive payment. Hotel service revenues primarily consist of room rentals and restaurant and banquet charges.

#### **Income Taxes**

The Organization is exempt from federal income taxes on related income under Section 501(a) of the Internal Revenue Code (IRC), as an Organization described in IRC Section 501(c)(3). Further, the Organization has been classified as an Organization that is not a private foundation under IRC Section 509(a) and, as such, contributions to the Organization qualify for deduction as charitable contributions. However, income generated from activities unrelated to the Organization's exempt purpose is subject to tax under IRC Section 511. The Organization did not have any material unrelated business income tax liability for the period ended December 31, 2023.

#### **Management Agreement**

The Organization has contracted with TOKS Associates LLC to manage the operations of Hotel Topeka at City Center. The management agreement commenced on October 31, 2023, and was renewed for an additional six months on December 31, 2023. The agreement will automatically renew for an additional six months indefinitely until either party provides notice of termination of the agreement.

The Organization will pay a management fee equal to the greater of 3% of total revenues, or \$7,500 per month, provided that the total fee for any full fiscal year is not less than \$120,000. If, at the end of any full fiscal year, the total of the monthly installments is less than \$120,000, the Organization shall pay TOKS Associates LLC an amount equal to the difference. The Organization will also pay TOKS Associates LLC an accounting fee of \$1,500 per month.

All hotel employees are employees of TOKS Associates LLC and, as such, the Organization has no direct employees and no pension obligations.

For the period ended December 31, 2023, the Organization paid total management fees of \$17,572 and total accounting fees of \$3,050.

#### **Budgetary Information**

The Organization is not subject to legal annual operating budget requirements and, therefore, has not included any budgetary information in these financial statements.

#### **NOTE 2 – CASH**

##### **Deposits**

K.S.A. 9-1401 establishes the depositories which may be used by **Topeka Development Corporation**. The

## TOPEKA DEVELOPMENT CORPORATION

### Notes to Financial Statements

December 31, 2023

statute requires banks eligible to hold the Organization's funds have a main or branch bank in the county in which the Organization is located, or in an adjoining county if such institution has been designated as an official depository, and the banks provide an acceptable rate of return on funds. In addition, K.S.A. 9-1402 requires the banks to pledge securities for deposits in excess of FDIC coverage. The Organization has no other policies that would further limit interest rate risk.

K.S.A. 12-1675 limits the Organization's investments of idle funds to time deposits, open accounts, and certificates of deposit with allowable financial institutions; U.S. government securities; temporary notes; no-fund warrants; repurchase agreements; and the Kansas Municipal Investment Pool. The Organization has no investment policy that would further limit its investment choices.

#### Concentration of Credit Risk

State statutes place no limit on the amount the Organization may invest in any one issuer as long as the investments are adequately secured under K.S.A. 9-1402 and K.S.A. 9-1405.

#### Custodial Credit Risk – Deposits

Custodial credit risk is the risk that, in the event of a bank failure, the Organization's deposits may not be returned to it. State statutes require the Organization's deposits in financial institutions to be entirely covered by federal depository insurance or by collateral held under a joint custody receipt issued by a bank within the State of Kansas, the Federal Reserve Bank of Kansas City, or the Federal Home Loan Bank of Topeka, except during designated "peak periods" when required coverage is 50%. The Organization does not use "peak periods". All deposits were not legally secured at December 31, 2023. At December 31, 2023, the Organization's carrying amount of deposits and cash on hand was \$495,566 and the bank balance was \$415,807. Of the bank balance, \$400,021 was covered by federal depository insurance and \$15,786 was unsecured.

Cash balances at December 31, 2023 were as follows:

Demand Deposit – U.S. Bank	\$	150,021
Demand Deposit – Bank of America		340,545
Petty Cash on Hand		<u>5,000</u>
Total Cash	\$	<u>495,566</u>

### NOTE 3 – CAPITAL ASSETS

The following is a summary of changes in capital asset for the period ended December 31, 2023.

	<u>Beginning Balance</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balance</u>
<b>Depreciable Capital Assets</b>				
Building	\$ -	7,287,977	-	7,287,977
<b>Less Accumulated Depreciation</b>	<u>-</u>	<u>(60,733)</u>	<u>-</u>	<u>(60,733)</u>
<b>Capital Assets, Net of Accumulated Depreciation</b>	<u>\$ -</u>	<u>7,227,244</u>	<u>-</u>	<u>7,227,244</u>

## TOPEKA DEVELOPMENT CORPORATION

### Notes to Financial Statements

December 31, 2023

The Organization incurred total depreciation expense for the period ended December 31, 2023, of \$60,733.

#### NOTE 4 – CAPITAL CONTRIBUTION

The Organization is a blended component unit of City of Topeka, Kansas and received capital contributions from the City of \$417,065 in cash and an initial noncash contribution of \$7,391,457, which are included in the statement of revenues, expenses and changes in net position for the period ended December 31, 2023.

#### NOTE 5 – ACQUISITION

On June 7, 2023, City of Topeka, Kansas (City) entered into a purchase contract to acquire Hotel Topeka at City Center (Hotel) out of receivership for a total transaction price of \$7,668,750 with adjustments for working capital.

The transaction closed on October 31, 2023, with the final closing documents identifying **Topeka Development Corporation** as the acquiring entity. The funds for acquiring the Hotel were paid for by the City. The amounts paid by the City on behalf of the Organization have been accounted for as an initial contribution in these financial statements.

The acquisition of the Hotel has been accounted for in accordance with GASB 69 as the consideration paid was significant in relation to the assets and liabilities acquired. The operations of the Hotel became a part of the Organization's operations effective November 1, 2023.

The assets and liabilities were recorded at acquisition value in accordance with paragraph 32 of GASB 69. The following is the allocation of net assets acquired and consideration paid.

Cash	\$	5,000
Accounts Receivable, Net		12,539
Inventory		29,557
Prepaid Expenses		137,312
Capital Assets		7,287,977
Accounts Payable		(56,120)
Deposits Received		<u>(24,808)</u>
Total Consideration Paid	\$	<u>7,391,457</u>

#### NOTE 6 – SUBSEQUENT EVENTS

Management has evaluated subsequent events through April 30, 2024, which is the date the financial statements were available to be issued.